August 2019

Submission to the Senate’s ‘revolving door’ inquiry

(Compliance by former Ministers of State with the requirements of the Prime Minister's Statement of Ministerial Standards)

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Summary

We welcome the opportunity to present our views to the Senate inquiry into the compliance by former ministers with the requirements of the Prime Minister's Statement of Ministerial Standards.

The ‘revolving door’ between politics and lobbying roles is a growing challenge in Australia. Restrictions on post-ministerial employment – also known as ‘revolving door’ restrictions – serve an important function in upholding public trust in politics and minimising the risks of undue influence over public policy.

In theory, Australia imposes restrictions on post-ministerial employment: when someone becomes a federal minister, they must commit to waiting at least 18 months after their ministerial duties cease before lobbying on any issue they were officially involved with in their final 18 months in office.

But in practice, the current restrictions are unenforceable, because the Prime Minister retains the discretion to determine a breach and there are no practical sanctions. There are many examples of former ministers moving into lobbying roles related to their former portfolio within the 18-month period without sanction.

Parliament should fix the revolving door rules so the Statement of Ministerial Standards serves its purpose.

Potential breaches of the Ministerial Standards, and the Lobbying Code of Conduct, should be independently investigated, and the findings published. Such arms-length administration of the rules is necessary to build public confidence that codes of conduct are respected and adhered to.

If a breach is determined, then the relevant political party should encourage the former minister to resign from the new role or defer taking on the new role.

If the individual refuses, then their access to Parliament House and to all government officials should be restricted; they should be required to report any contact with government officials; and they should be subject to penalties imposed by the parliament, at levels that apply for contempt of parliament.

They should not be allowed to attend political party functions – another critical avenue of influence – and political parties that fail to enforce this sanction could be subject to fines.

Organisations employing any former minister in breach of the code could also be penalised: their access to Parliament House, government officials and government tenders could be restricted.

Effective revolving door restrictions would help to reduce the likelihood (both actual and perceived) of ‘buying’ influence in Australian politics. And they should be supported by broader integrity reforms to improve transparency and accountability in policy making and reduce undue influence over public policy.

1 Why the Australian Government needs effective revolving door restrictions

When politicians move directly from a position of great public power and trust into a lobbying role for a private interest, it undermines the integrity of the parliamentary system. Yet this ‘revolving door’ between politics and lobbying roles is common in Australian political life.

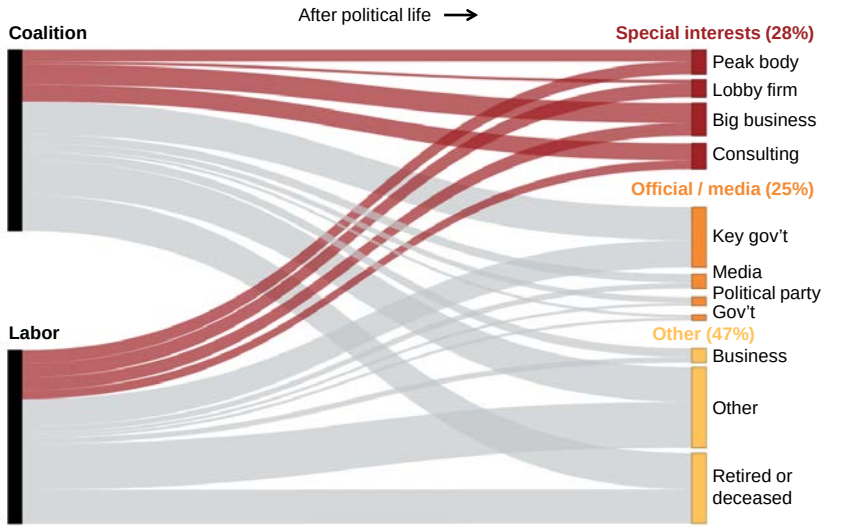
1.1 What is the ‘revolving door’?

The ‘revolving door’ refers to the exchange of people between politicians’ offices and lobby groups. This exchange enables a certain ‘cosiness’ and increases the likelihood that well-resourced groups are heard more often and more sympathetically in policy discussions.

The revolving door can pose a risk to good decision-making: policy makers should be listening to those with the best ideas, not simply those with the right connections.[1]

Ministers are more likely to go from politics to lucrative lobbying roles rather than the other way around (a ‘golden escalator’ rather than a revolving door).[2] Since 1990, more than a quarter of former federal ministers or assistant ministers have taken up roles with special interests after political life (Figure 1.1). Former government officials also make up a large and growing share of commercial lobbyists at the federal level (Figure 1.2).

Figure 1.1: A quarter of federal ministers or assistant ministers take on roles with special interests after politics

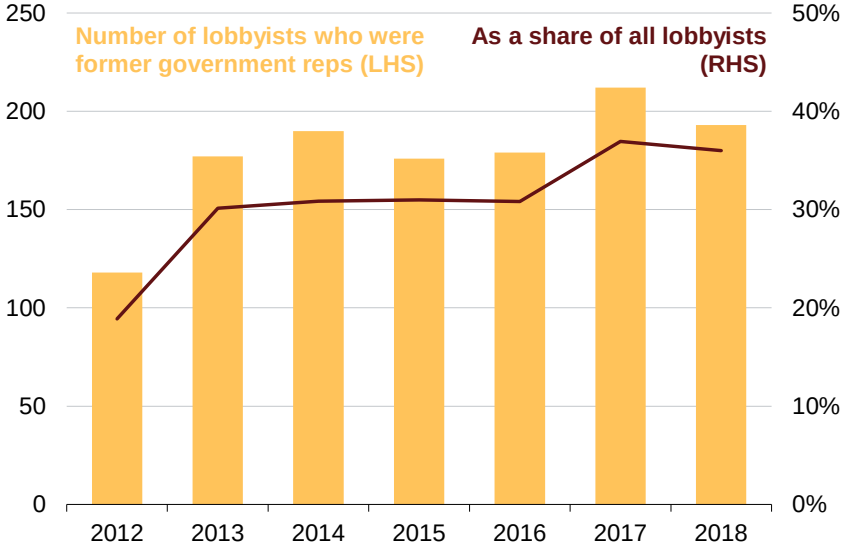


Notes: Includes 191 people who were either federal ministers or assistant ministers and left politics in the 1990s or later. Some have had more than one role since. ‘Big business’ is Top 2000 Australian firms by revenue in 2016. ‘Key government’ positions include Ambassadors, High Commissioners, Consulate-generals and other senior government appointments.
Sources: Grattan analysis of Parlinfo.aph.gov.au (2018), Linkedin (2018), Wikipedia (2018), news articles, and various internet sources.

[1] La Pira and H. F. Thomas (2014).

[2] Lucas (2018).

Figure 1.2: The 'revolving door' phenomenon is growing



Source: Grattan analysis of the Australian Government Lobbyists Register in Feb/March each year since first made public in 2012.

Lobbying firms that employ former government officials are more successful at getting meetings with government.[3]

Relationships matter in politics because they affect both the opportunity to influence and the likelihood of influence. Individuals with personal connections are more likely to get time with policy makers and a sympathetic hearing when they do.[4]

It's human nature that we're more likely to listen to people we know and like. Establishing credibility is critical to persuasion, and existing relationships help clear that initial barrier. This is why hiring or employing people with the right connections can 'buy' influence.

1.2 Why have a revolving door restriction?

Revolving door restrictions prevent or place limits on key policy makers moving into lobbying roles.

This can help to reduce the likelihood (both actual and perceived) of interest groups 'buying' influence. With respect to ministers there are three main risks it helps to minimise:

1. A minister could make decisions in office with a view to their future employment.

2. A former minister may bring privileged information with them to their new role.

[3] In Queensland, there are about 170 registered lobbying firms, but the top 10 firms have made 70 per cent of all lobbying contacts since 2013. Eight of the top 10 firms employ former politicians or advisers. At the federal level, seven of the top 10 lobbying firms (by number of clients) employ former politicians or advisers, but it's not possible to assess their success because lobbying contacts and ministerial diaries are not published at the federal level: Wood et al (2018, pp. 20-22).

[4] Wood et al (2018, pp. 20-26).

3. A former minister's relationships may enable privileged opportunities to influence.

Each of these risks 'cools' over time[5] – for example, privileged information may no longer be relevant after a tender process is complete, or a change of government might make relationships less valuable to the new employer.

The length of the revolving door restriction (or 'cooling-off period') and the scope of the ban (the jobs ministers are restricted from taking) needs to strike a balance between minimising actual and perceived conflicts and the restriction on people's career opportunities.

All Australian states and territories have some form of revolving door restrictions for ministers.[6] Other countries, including Canada, the UK and the US, also have revolving door bans which vary in length from one to five years to address these risks.[7]

[5] Transparency International (2015).
[6] Daley et al (2018, Chapter 11).
[7] Canada's *Lobbying Act 1985* specifies a 5-year prohibition on lobbying for designated public office holders, including ministers. In the UK, the revolving door ban for ministers is two years. And in the US, it is one year for Members of the House of Representatives and two years for Senators (see McKeown, 2014).

2 The current revolving door restrictions are toothless

When someone becomes a federal minister in Australia, they must commit to waiting at least 18 months after their ministerial duties cease before lobbying on any issue they were officially involved with in their final 18 months in office.[8] Ministerial advisers and senior public servants are subject to a 12-month revolving door ban.[9]

The Ministerial Standards signal the right intention. However, the restrictions are meaningless in their current form because they are unenforceable.

2.1 The Ministerial Standards set the right intention

The Ministerial Standards restrict post-ministerial employment to:

- ensure ministers act 'in the best interests of the people they serve' while in public office, particularly given their 'wide discretionary power';[10]
- recognise the privileged position and information of ministers and former ministers;[11] and to
- 'maintain the trust of the Australian people'.[12]

Former ministers are not allowed to lobby 'on any matters on which they have had official dealings as minister in their last eighteen months in office'.[13] Beyond 18 months, the employment of former ministers is unrestricted.

But in practice, the lack of enforceability means these restrictions have no real effect on reducing the risks associated with moving straight into lobbying roles post-politics.

2.2 The revolving door ban lacks an enforcement mechanism

The Ministerial Standards reflect the expectations that the Prime Minister holds of his ministers. They are administrative only – meaning that former ministers who move straight into a lobbying role are breaking the rules, but not the law, and it is up to the Prime Minister to determine a breach.[14]

The only sanction explicitly provided for in the Standards is loss of ministerial duties,[15] which of course means nothing to a former minister.

One of the original authors of the Ministerial Standards, Howard Whitton, argues that 'the standards were designed to be

[8] Australian Government (2018).
[9] Australian Government (2019, section 7.2).
[10] Australian Government (2018, pp.3-4).
[11] Australian Government (2018, pp.4-5).
[12] Australian Government (2018, pp.3-4).
[13] Paragraph 2.25 of the Prime Minister's Statement of Ministerial Standards, dated 30 August 2018: 'Ministers are required to undertake that, for an eighteen month period after ceasing to be a Minister, they will not lobby, advocate or have business meetings with members of the government, parliament, public service or defence force on any matters on which they have had official dealings as Minister in their last eighteen months in office. Ministers are also required to undertake that, on leaving office, they will not take personal advantage of information to which they have had access as a Minister, where that information is not generally available to the public.'
[14] Australian Government (2018, Section 7).
[15] Australian Government (2018, paragraphs 7.1 and 7.2).

enforceable as a form of contract'.[16] He also notes that 'the common law offence of misconduct in public office may apply'.[17] This is yet to be tested and it is unclear who would take it to court.

The discretion of the Prime Minister in determining a breach, and the lack of relevant sanctions, makes the revolving door restrictions unenforceable in their current form.

Even what appear to be likely breaches have escaped any sanction. For example, Bruce Billson accepted a lobbying role with the Franchise Council of Australia within six months of retiring as Minister for Small Business, while still a sitting MP. He was censured by parliament for failing to declare his new paid employment but not for accepting the employment in the first place. Billson's offence was not even deemed worthy of the potential $5,000 fine.[18]

The 12-month revolving door restrictions for ministerial advisers and senior public servants is similarly ineffective. For example, the successful French bid to supply Australia with a new fleet of submarines was led by the former Chief of Staff to the Defence Minister, who left his position in January 2015 and joined the French bid four months later.[19] There was no sanction.

Former ministers, ministerial advisers and senior public servants who lobby during the cooling-off period may be reported to the Secretary of the Attorney-General's Department under the Lobbying Code of Conduct.[20] Yet if a breach is established, the sanction is merely deregistration from the Register of Lobbyists, which is unlikely to be of any concern to the individual given that the Register applies only to lobbyists in commercial lobbying firms and relies on self-policing by busy politicians.[21]

2.3 There are many loopholes

Table 2.1 shows examples of former ministers moving into lobbying roles potentially related to their former portfolio within the 18-month window. Despite many raising serious concern with the public, none of these cases was determined by the Prime Minister of the day to breach the Ministerial Standards.

Moving to in-house or peak body lobbying roles were justified as not in breach because of the narrow definition of 'lobbyist' under the Lobbying Code of Conduct.[22] Others simply provided reassurance that they would not to do anything in breach of their obligations. To the best of our understanding, there is no ongoing monitoring or checking of these assurances.

These examples highlight the gulf between the stated intention of the Ministerial Standards – including maintaining public trust – and their lack of effect in practice with respect to the revolving door.

[16] Manning (2019).
[17] Manning (2019).
[18] Fantin (2018). The punishments for contempt of parliament, which either house may apply, are set by the 1987 Act as fines of $5,000 for individuals and $25,000 for corporations, and up to six months imprisonment for individuals: Parliament of Australia (2018).
[19] McPhedran (2015).
[20] Australian Government (2019, sections 7 and 9).
[21] Australian Government (2019, sections 3, 4, 9 and 10).
[22] Under the code 'lobbyist' means only those lobbying on behalf of a third party client (Australian Government, 2019).

Table 2.1: There are many excuses for why former ministers moving into lobbying roles within 18 months do not breach the code

Former minister	*Retirement date*	*Interest group*	*Less than 18 months?*	*Justification*
Christopher Pyne, Defence Minister	Apr 2019	EY (defence consulting)	Yes – appointed June 2019[23]	He has 'mechanisms' in place to ensure compliance with the standards[24]
Julie Bishop, Foreign Affairs Minister	Aug 2018 (minister); Apr 2019 (parliament)	Palladium (DFAT contractor)	Yes – appointed July 2019[25]	Palladium did not 'expect her to engage on any Australian-based projects'[26]
Andrew Robb, Trade Minster	Feb 2016	Landbridge Group (Chinese multinational)	Yes – appointed July 2016	'Broad portfolio', 'must be careful he isn't prohibited completely from work';[27] In-house lobbyists not required to register
Bruce Billson, Small Business Minister	Sep 2015 (minister); May 2016 (parliament)	Franchise Council of Australia	Yes – appointed Mar 2016 while still in Parliament	Payments in office 'commonplace and acceptable';[28] Peak bodies not required to register as lobbyists
Ian Macfarlane, Industry Minster	Sep 2015	Queensland Resources Council	Yes – appointed Sep 2016	Peak bodies not required to register as lobbyists[29]
Martin Ferguson, Resources Minster	Mar 2013	APPEA (oil and gas peak body)	Yes – appointed Oct 2013[30]	Peak bodies not required to register as lobbyists
Mark Arbib, Small Business Minister	Mar 2012	Consolidated Press Holdings (Packer)	Yes – appointed June 2012[31]	In-house lobbyists not required to register
Nick Sherry, Small Business Minister	Dec 2011	Citi (financial services multinational)	Yes – joined in Oct 2012[32]	In-house lobbyists not required to register

Notes: Restrictions on post-separation employment of ministers were first introduced in December 2007. The 'retirement date' is retirement from ministerial duties, unless otherwise specified.

[23] Tadros and McIlroy (2019).
[24] Murphy (2019).
[25] Hewett (2019).
[26] Murphy (2019).
[27] Belot (2017).
[28] Long (2017).
[29] Henderson and Bradfield (2016).
[30] Manning (2014).
[31] Nicholls and Feneley (2012).
[32] Sherry (2018).

3 How to create effective restrictions on the revolving door

3.1 The rules should be independently administered

The first challenge in enforcing revolving door restrictions is determining whether a breach has occurred. Currently, this is at the discretion of the Prime Minister.

Potential breaches of the Ministerial Standards (as well as the Lobbying Code of Conduct) should be investigated independently. Such arms-length administration of the rules is necessary to build public confidence that codes of conduct are respected and adhered to.[33]

An independent body should have an educative role, to help parliamentarians, ministerial staff, and lobbyists understand their responsibilities and disclosure obligations.[34] The independent body should be able to investigate potential non-compliance with codes of conduct, publish its findings, and refer breaches when they occur.

No such body currently exists at the federal level, but the Independent Parliamentary Expenses Authority could be extended to take on administration of the codes of conduct.[35]

A separate ethics adviser should also be appointed, to enable current and former parliamentarians to seek advice when they are in doubt.

In NSW, former ministers are required to seek the advice of the Parliamentary Ethics Adviser before accepting employment related to their former portfolio within the 18-month window.[36] If they then choose to accept the employment offer, the advice they received must be tabled in Parliament. Parliament could use this information to determine whether a breach has occurred.

3.2 Link the restrictions to appropriate penalties

The second challenge is the lack of relevant sanctions.

If a breach is determined (Section 3.1), then the relevant political party should encourage the former minister to resign from the new role or defer taking on the new role. If the individual refuses, then they should be subject to sanctions designed to restrict their ability to lobby and influence during the 18-month period.

For example, if the individual has a parliamentary pass it should be taken away until they resign or their 18-month ban is up.[37]

[33] Wood et al (2018, pp. 61-62).
[34] It could even play a broader role in professional development, see Coghill (2008a and 2008b).
[35] Brown et al (2018) propose an Independent Parliamentary Standards Authority as an extension of the IPEA.
[36] Independent Commission Against Corruption Amendment (Ministerial Code of Conduct) Regulation 2014, Part 5.
[37] Wood et al (2018, pp. 58-59).

Sanctions could also extend to the employer of any former minister in breach of the code. This would encourage employers to respect the 18-month ban.

The following sanctions should be considered:

- Restricting access to Parliament House for former ministers and other lobbyists who breach the code of conduct.
- Requiring the individual to report quarterly on contact with government officials during the 18-month ban (whether or not they had any contact). The reports should be published.
- Restricting access to government officials via a Lobbyists Watch List (as exists in NSW[38]). This should include not allowing access to political party functions – with fines for political parties that fail to enforce the sanction.
- Extending access restrictions to the former minister's new employer (until the former minister no longer works for them or the 18-month ban is up).
- Restricting the former minister's new employer from government tenders (until the former minister no longer works for them or the 18-month ban is up).
- Other penalties imposed by the parliament and at levels that apply to contempt of parliament.[39]

Generally, penalties related to access are preferable over fines because fines can be absorbed by some employers simply as 'the cost of doing business'. In contrast, access is critical to influence, and this is at least partly what employers are 'buying' when hiring former ministers within the 18-month window.

3.3 Supporting checks and balances

The revolving door restrictions should be supported by broader integrity reforms to improve transparency and accountability in policy making and reduce undue influence over public policy. The Commonwealth Government lags state governments in addressing these concerns.[40]

Greater transparency is particularly important as an additional check on the revolving door ban. Ministerial diaries should be published, so voters know who our most senior policy makers are meeting.[41] And the lobbyist register should be broader so that it includes in-house lobbyists, not just commercial lobbyists. This would mean former ministers employed by companies, unions, peak bodies, and other groups would be required to register themselves and abide by the Lobbying Code of Conduct.[42]

Further detail about the need for and nature of these broader reforms is provided in the attached Grattan Institute report, *Who's in the room? Access and influence in Australian politics*.

Together with effective revolving door restrictions, these reforms would strengthen the integrity of Australian politics.

[38] NSWEC (2019).
[39] The punishments for contempt, which either house may apply, are set by the 1987 Act as fines of $5,000 for individuals and $25,000 for corporations, and up to six months imprisonment for individuals: Parliament of Australia (2018).
[40] Wood et al (2018); Daley et al (2018, Chapter 11); Daley et al (2019, Chapter 12).
[41] Wood et al (2018, pp.57-58).
[42] Wood et al (2018, pp.27-28 and 58-59).

References

Australian Government (2018). Statement of Ministerial Standards. 30 August 2018. Department of the Prime Minister and Cabinet. https://www.pmc.gov.au/sites/default/files/publications/statement-ministerial-standards_1.pdf

Australian Government (2019). Lobbying Code of Conduct. https://lobbyists.ag.gov.au/about/code

Belot, H. (2017). "Robb 'didn't break rules' by taking $880k job with Chinese billionaire". http://www.abc.net.au/news/2017-06-07/andrew-robb-china-consultancy-role-billionaire-scott-ryan/8596854

Brown et al. (2018). Brown, A., Graycar, A., Kelly, K., Coghill, K., Prenzler, T. and Ransley, J. A National Integrity Commission – Options for Australia. August. Griffith University and Transparency International Australia. https://www.griffith.edu.au/__data/assets/pdf_file/0029/518249/Full-Report-National-Integrity-Options-August-2018.pdf

Coghill et al. (2008a). Coghill, K., Donohue, R. and Holland, P. "Parliamentary Accountability To The Public – Developing MPs' Ethical Standards". *Australasian Parliamentary Review* 23.1, pp. 101-120.

Coghill et al. (2008b). Coghill, K., Holland, P., Donohue, R., Rozzoli, K. and Grant, G. "Professional development programmes for members of parliament". *Parliamentary Affairs* 61.1, pp. 73-98.

Daley et al. (2018). Daley, J., Duckett, S., Goss, P., Terrill, M., Wood, D., Wood, T. and Coates, B. State Orange Book 2018: Policy priorities for states and territories. Grattan Institute. https://grattan.edu.au/report/state-orange-book-2018/

Daley et al. (2019). Daley, J., Duckett, S., Goss, P., Norton, A., Terrill, M., Wood, D., Wood, T. and Coates, B. Commonwealth Orange Book 2019: Policy priorities for the federal government. Grattan Institute. https://grattan.edu.au/report/commonwealth-orange-book-2019/

Fantin, E. (2018). "Parliament Censures Former Minister Bruce Billson For Undeclared Payments". ABC News. http://www.abc.net.au/news/2018-03-27/parliament-censures-formerminister-bruce-billson/9593082

Henderson, A. and Bradfield, E. (2016). "Former resources minister Ian Macfarlane says new mining job complies with code of conduct". ABC News. http://www.abc.net.au/news/2016-09-26/ian-macfarlane-appointed-to-run-queensland-mining-lobby/7876942

Hewett. J. (2019). "Julie Bishop joins Palladium board". Australian Financial Review, 2 July. https://www.afr.com/politics/federal/julie-bishop-joins-palladium-board-20190701-p5230f

Legislative Assembly of Queensland (2018). *Code of Ethical Standards*. https://www.parliament.qld.gov.au/documents/assembly/procedures/codeofethicalstandards.pdf

Long, S. (2017). "The Labor Insider Turned Adani Lobbyist Who Smoothed The Way For The Mega Mine". ABC News. http://www.abc.net.au/news/2017-11-23/the-labor-insider-who-lobbied-for-adani/9181648

Lucas, A. (2018). "Revealed: The Extent Of Job-Swapping Between Public Servants And Fossil Fuel Lobbyists". The Conversation. https://theconversation.com/revealed-the-extent-of-job-swappingbetween-public-servants-and-fossil-fuel-lobbyists-88695

Manning, P. (2014). "Martin Ferguson's revolving door puts energy industry in a spin". Crikey. https://www.crikey.com.au/2014/06/17/martin-fergusons-revolving-door-puts-energy-industry-in-a-spin/

Manning, P. (2019). "No, minister: The ministerial standards were supposed to be legally enforceable". The Monthly. https://www.themonthly.com.au/today/paddy-manning/2019/07/2019/1565148938/no-minister

McKeown, D. (2014). "Who pays the piper? Rules for lobbying governments in Australia, Canada, UK and USA". August. https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1415/LobbyingRules

McPhedran, I. (2015). "Former Senior Defence Adviser Now Heading French Sub Builder". News.com.au. https://www.news.com.au/national/former-senior-defence-adviser-now-heading-french-sub-builder/news-story/9afdad459b857261f019743a7cd1165e

Murphy, K. (2019). "Pyne and Bishop's jobs set for Senate inquiry as Rex Patrick rejects explanation". The Guardian, 22 July. https://www.theguardian.com/australia-news/2019/jul/22/pyne-and-bishops-jobs-set-for-senate-inquiry-as-rex-patrick-rejects-explanation

Nicholls, S. and Feneley, R. (2012). "The Packer dynasty's long game". Sydney Morning Herald. https://www.smh.com.au/national/nsw/the-packer-dynastys-long-game-20121026-28ay0.html

NSWEC (2019). Lobbyist Watch List. NSW Electoral Commission. https://www.elections.nsw.gov.au/Political-participants/Third-party-lobbyists/Lobbyists-watch-list

Parliament of Australia (2018). Parliamentary Privilege. https://www.aph.gov.au/about_parliament/work_of_the_parliament/parliament_at_work/parliamentary_privilege

Sherry, N. (2018). LinkedIn profile. https://www.linkedin.com/in/nicholas-sherry-38449b74/

Tadros, E. and McIlroy, T. (2019). "The Fixer in a fix over EY move". Australian Financial Review, 26 June. https://www.afr.com/business/accounting/the-fixer-in-a-fix-over-ey-move-20190626-p521cj

Transparency International (2015). *Cooling-off periods: regulating the revolving door*. https://www.transparency.org/files/content/corruptionqas/Cooling_off_periods_regulating_the_revolving_door_2015.pdf

Wood, D., Chivers, C. and Griffiths, K. (2018). States and territories have improved integrity measures, but Commonwealth lags far behind. *The Conversation*, November 2:

https://theconversation.com/states-and-territories-have-improved-integrity-measures-but-commonwealth-lags-far-behind-105046

Wood, D., Daley, J., and Chivers, C. (2018). *A crisis of trust: The rise of protest politics in Australia*. Grattan Institute: https://grattan.edu.au/report/a-crisis-of-trust/

Wood, D., Griffiths, K., and Chivers, C. (2018). *Who's in the room? Access and influence in Australian politics*. Grattan Institute: https://grattan.edu.au/report/whos-in-the-room/