



# New politics

A better process for public appointments

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July 2022

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## Overview

Every year federal and state governments make hundreds of appointments to regulatory and economic agencies, courts and tribunals, and cultural institutions. A significant and growing percentage of appointees have political connections to the government that appointed them.

Across all federal government appointees, 7 per cent have a direct political connection. This figure rises to 21 per cent among those positions that are well paid, prestigious, and/or powerful. For the Administrative Appeals Tribunal (AAT), an important body that makes rulings on government decisions, the figure is 22 per cent after a significant rise in recent appointments with political connections.

This is not just a federal government or a Coalition phenomenon. Our analysis shows political appointments are also common at state level. Federal and state governments ignore and subvert good process. This creeping politicisation of public appointments harms the health of our democracy, for three reasons.

First, we miss out on some of the best people to run key institutions. Appointing people based on their political pedigree rather than their skills and talents erodes the leadership of important institutions and wastes taxpayers' money.

Second, jobs for mates introduces the risk of actual or perceived politicisation of the decisions of independent organisations. These risks range from accusations of politically skewed exhibitions at the Australian War Memorial, to concerns of political bias in AAT decisions.

Third, when governments view appointments as trinkets to reward friends and allies, it promotes an environment of political patronage. People become more afraid to speak their minds, including valid criticism of government policy, lest they cut off their chances of a future appointment or reappointment.

To improve the health of our democracy, federal and state governments should:

- Advertise all public board, tribunal, and statutory appointments, along with the selection criteria for each position.
- Establish an independent panel, including a new Public Appointments Commissioner, to assess applicants against the selection criteria and provide a shortlist of suitable candidates to the minister.
- Limit ministerial discretion to choosing from the shortlist, with annual reporting to parliament on compliance.

This better process should be legislated. It would reduce jobs for mates, improve our institutions, and ultimately enhance Australia's political culture. This report, along with forthcoming reports on how to crack down on pork-barrelling and the misuse of government advertising, lays the foundations for a new way of doing politics in Australia that safeguards the public interest over political interests.

## Recommendations

### Create a transparent, merit-based process for public appointments

1. All public board, tribunal, and statutory appointments should be advertised, along with the selection criteria for each position.
2. An independent panel, including the relevant departmental secretary and a new Public Appointments Commissioner, or their representatives, should assess applications against the selection criteria and provide a shortlist of suitable candidates to the minister.
3. The minister should choose from the shortlist, or redefine and republish the selection criteria, but should not directly select any candidate not shortlisted.
4. Reappointments should be made by an independent panel, but need not be re-advertised.
5. Federal and state governments should legislate this new process for public appointments.

### Establish a Public Appointments Commissioner

6. A new Public Appointments Commissioner should report to parliament on board and tribunal appointments and publish an annual report.
7. The Public Service Commissioner should report to parliament on statutory appointments to the public service.

## Table of contents

Overview . . . . .	3
Recommendations . . . . .	4
1 Public interest decision-making is central to good government . .	6
2 Political appointments are far too common . . . . .	11
3 Politicisation damages public institutions and democracy . . . . .	21
4 Australia needs a better appointments process . . . . .	27
A Government Business Enterprises (GBEs) . . . . .	31
B Many countries have better models than Australia . . . . .	32

## 1 Public interest decision-making is central to good government

Every day, federal and state governments make decisions that affect the lives of Australians. Australia's prosperity depends on these decisions being made in the public interest, rather than the decision-maker's self-interest or party-political interests.

Elections and anti-corruption laws provide important checks on the conduct of governments. They are a critical last line of defence against the most egregious conduct.

But there are thousands of decisions made by public officials where these defences provide only limited constraint. Historically, Australia has relied on a combination of targeted rules and norms, particularly ministerial accountability, to ensure that smaller and less visible decisions are made in the public interest.

Grattan Institute's *New politics* series of reports shows that federal and state governments appear increasingly willing to subvert these checks and to make decisions with an eye to party political interest.

Politicisation of public appointments, pork-barrelling of government grants, and misuse of taxpayer-funded advertising for political gain are areas ripe for political renewal.

This series recommends ways to improve the chances that these decisions are made in the public interest – starting with a better process for public appointments.

### 1.1 People in public office must serve the public interest

Acting in the public interest is fundamental to good government.<sup>1</sup>

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1. See Wheeler (2006).

Inquiries in the UK and Australia have attempted to define the boundaries of acceptable conduct for people in public office. In 1995, the UK Committee on Standards in Public Life set down seven ethical standards that became known as the Nolan Principles, after the committee's first chair, Lord Nolan.<sup>2</sup> In a similar vein, in 2014, former Australian judge Tony Fitzgerald outlined a series of principles for accountability and good governance, now known as the Fitzgerald Principles (see Box 1 on the following page).<sup>3</sup>

Australia has codes of conduct for ministers at both federal and state levels that outline the ethical standards required in the job, given their position of privilege and wide discretionary powers.

These codes require ministers to wield their powers in the public interest.<sup>4</sup> For example, the Australian Government Statement of Ministerial Standards states that:

Ministers are expected to conduct all official business on the basis that they may be expected to demonstrate publicly that their actions and decisions in conducting public business were taken with the **sole** objective of advancing the public interest.<sup>5</sup>

Ministers whose decisions breach these standards are accountable to parliament.<sup>6</sup>

2. Committee on Standards in Public Life (1995).
3. Accountability Round Table (2015).
4. The federal, NSW, Queensland, West Australian, NT, and ACT ministerial codes of conduct make it explicit that decisions are *solely* made in the public interest (or that the public interest is paramount). The Victorian and South Australian codes require decisions to be made in the public interest. Tasmania's code implies that the public interest is important.
5. Emphasis added. Department of the Prime Minister and Cabinet (2022, p. 4).
6. Ministers are individually accountable to parliament in terms of explaining themselves, and collectively accountable to parliament through a vote of no



### Box 1: The Nolan and Fitzgerald Principles

The **Nolan Principles** define the ethical standards that should apply to people in public office:<sup>a</sup>

- Selflessness: Holders of public office should act solely in terms of the public interest.
- Integrity: Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- Objectivity: Holders of public office must act and take decisions impartially, fairly, and on merit, using the best evidence and without discrimination or bias.
- Accountability: Holders of public office are accountable to the public for their decisions and actions, and must submit themselves to the scrutiny necessary to ensure this.
- Openness: Holders of public office should act and take decisions in an open and transparent manner. Information should not be

a. Committee on Standards in Public Life (1995).

b. Accountability Round Table (2015).

withheld from the public unless there are clear and lawful reasons for so doing.

- Honesty: Holders of public office should be truthful.
- Leadership: Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

The **Fitzgerald Principles** define standards of transparency and accountability.<sup>b</sup> They ask parliamentarians to:

- Govern for the peace, welfare, and good government of the state.
- Make all decisions and take all actions, including public appointments, in the public interest without regard to personal, party political, or other immaterial considerations.
- Treat all people equally, without permitting any person or corporation special access or influence.
- Promptly and accurately inform the public of the reasons for all significant or potentially controversial decisions and actions.

## New politics: A better process for public appointments

Adherence to these principles matters. Ministers who make decisions to serve personal or party-political interests short-change our nation and over time undermine our democracy.<sup>7</sup>

### 1.2 Elections and anti-corruption laws are an important last line of defence but can't do all the work

Elections impose a check on government decision-making that does not live up to these ideals.

A government that is viewed as sleazy or corrupt might find itself out of office come the next election. But democracy isn't a perfect safeguard of the public interest. Voting is ultimately a blunt check on bad behaviour. Governments make thousands of decisions every year, and most people understandably cast their vote based on just a few highly visible issues.<sup>8</sup>

Similarly, well-crafted and enforced corruption laws are necessary checks but not sufficient to ensure that governments act in the public interest. Misuse of public office for political gain falls within many definitions of corruption,<sup>9</sup> but it is not directly covered by criminal statutes (see Box 2). Anti-corruption commissions can investigate more broadly (if the matter is serious or systemic), and so they may be an important deterrent, and last line of defence, where they exist.

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confidence. But ministerial codes themselves are enforced by the Prime Minister or Premier.

7. Wheeler (2006) distinguishes 'public interest' from what it is *not*: private interests, personal interests of the decision-maker, personal curiosity, personal opinions, parochial interests, and partisan political interests.
8. Or on party loyalties, or personalities. Many argue that voters pass judgement on the overall performance of politicians, not their policies, e.g. Lenz (2012).
9. For example, Transparency International Australia defines corruption as 'abuse of entrusted power for private or political gain': Transparency International Australia (2022, p. 2). Speck and Fontana (2011) also support the inclusion of 'political gain' in definitions of corruption.

### Box 2: Criminal offences related to misuse of public office are narrowly defined and difficult to prove

Under federal criminal law, there are three main offences that relate to misuse of public office:<sup>a</sup>

1. **Bribery** can be punished by up to 10 years in prison but requires proof that the official acted dishonestly and with the *intention* of abusing their power.
2. **Fraud** can also be punished by up to 10 years in prison but requires proof of deception.
3. **Abuse of public office** – intentionally and dishonestly using information/influence/conduct to benefit/harm someone – can attract 5 years in prison, but again requires proving intentions.

There is also a common law offence in some states for misconduct in public office, but it remains difficult to prove and hinges on both the intent and the seriousness of the offence.<sup>b</sup>

Misuse of political 'entitlements' (such as using taxpayer-funded travel for personal engagements) and accepting corporate 'gifts' and 'hospitality' are not criminal offences but would normally be regulated by guidelines or a code of conduct.<sup>c</sup>

- a. These offences 'typically require a dishonest, corrupt, or improper motive as well as a link between a financial contribution and specific actions. Both are difficult to establish': Tham (2014, p. 73).
- b. Common law offences apply in NSW, Victoria, and South Australia. Misconduct in public office includes misuse of public resources and misuse of public power for an improper purpose. There is often insufficient evidence to found a prosecution but investigation by an anti-corruption commission may be able to establish a case. See Twomey (2022).
- c. For example, the Independent Parliamentary Expenses Authority sets rules on political entitlements. Codes of conduct apply to all Australian Public Service employees and to many state parliamentarians, but not yet to federal parliamentarians. See Wood et al (2018).



## New politics: A better process for public appointments

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The issues that are the focus of this series of Grattan Institute reports tend to be less visible. While the most egregious examples of politicised government appointments, pork-barrelling, or politically-motivated government advertising will occasionally make the nightly news or the newspaper front pages, more often they pass quickly, and generally without lodging in the public consciousness.

### 1.3 Behavioural norms are not as strong as they once were

In liberal democracies like Australia, elections and anti-corruption laws are not the sole means of securing public interest decision-making. Interlocking institutions, rules, and norms are used to diffuse power and guard against misuse of public office. That is why weakening of these institutions and norms is a cause for concern.<sup>10</sup>

Historically, any serious breach of ethical standards would be reason for a minister to resign, or be sacked by the prime minister or premier. This is particularly the case on matters where the minister has direct control – for example, personal conduct or the exercise of ministerial discretion.<sup>11</sup>

But over time, the bar for what might trigger such sanctions seems to have risen significantly. One analyst has argued that 12 out of 23 members of the federal cabinet in the former Coalition government had been involved in incidents that in the past might well have led to their resignation.<sup>12</sup>

In the 1990s, a federal minister resigned when it was found that she had awarded grants for sporting facilities primarily motivated by

electoral considerations.<sup>13</sup> In contrast, in 2020 a larger and more obviously rorted scheme did not trigger a ministerial resignation or prime ministerial censure.<sup>14</sup>

The fact that a minister once stood down following his wife's failure to properly declare a Paddington Bear at customs now seems unthinkable.<sup>15</sup>

Similar raising of the 'responsibility bar' has been observed at a state government level too.<sup>16</sup> And decisions that clearly depart from public interest considerations are defended publicly on the basis that 'everyone does it' or it's 'within the rules', representing a new brazenness in misusing public office.<sup>17</sup>

### 1.4 Australia needs more formal checks and balances

The conduct detailed in this report, and in the next two in Grattan Institute's *New politics* series, suggests that principles of good government are not consistently being adhered to in Australia.

All three reports reveal evidence that suggests systemic use of discretionary ministerial powers to favour party-political interests of ministers and their governments, rather than the public interest.

Regular breaches of rules or norms can contribute to the public's perception of a corrupt culture. Australia has dropped in both rank and score under Transparency International's Corruption Perceptions Index (Figure 1.1), which captures business perceptions of whether a country is clean (high-ranking) or corrupt (low-ranking).

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10. Mounk (2018).

11. In theory, ministerial accountability also extends to taking responsibility for actions of the department, over which the minister may have had no direct control. But resignations on this basis have always been rare and indeed some suggest non-existent: Maddigan (2011).

12. Ireland (2021).

13. Wright (2020).

14. Speers (2020). Minister Bridget McKenzie resigned later but for a different reason. She was found to have breached ministerial standards by not declaring membership of a gun club that received one of the grants: Bunn (2020).

15. Wright (2019).

16. For example: Davies (2020), AAP (2022) and Mahony (2021).

17. Davies (2020); and Murphy (2021).

Australians deserve better. Voters should be confident that their elected representatives will make decisions solely in the public interest.

Strong public ethics and norms among our elected leaders are the best way to address this concern. If leaders gravitate to ‘what’s right’ according to their broad conception of the public interest, prescriptive rules would be unnecessary.

But sadly, Australia today cannot rely exclusively on a culture of good behaviour. It is therefore necessary to codify these expectations and to introduce safeguards to support good government. The three reports in this series show how.

### 1.5 Structure of this report

The remainder of this report focuses on politicisation of public appointments and what can be done to restore principles of good government to these decisions.

**Chapter 2** examines a wide range of federal and state board appointments and highlights the prevalence of appointees with direct political affiliations to the government that appointed them.

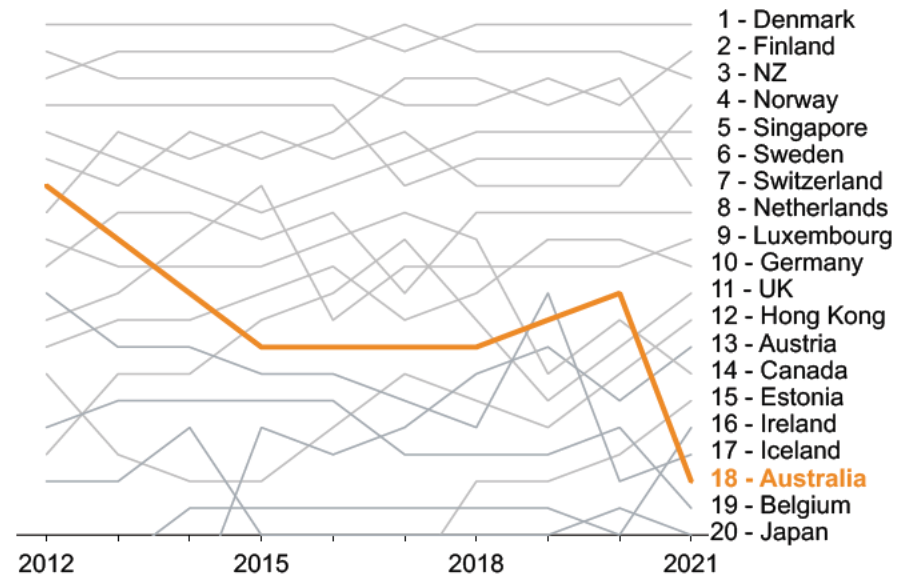
**Chapter 3** shows why politicisation of public appointments is harmful for our institutions and democracy, and identifies the costs borne by all Australians when governments choose mates over merit.

**Chapter 4** recommends a better process for making public appointments in Australia, drawing on best practice internationally.

This report is the first in Grattan Institute’s *New politics* series, examining misuse of public office for political gain. Subsequent reports will investigate pork-barrelling of government grants, and politicisation of taxpayer-funded advertising.

**Figure 1.1: Australia is falling behind on international measures of corruption**

Corruption Perceptions Index rank, 2012-2021, top 20 countries in 2021



Notes: The index scores countries on how corrupt their public sectors are seen to be, according to surveys of business people, analysts, and others. Since 2012, Australia has had the largest decline of top-10 ranked countries (from a score of 85 and a rank of 7th in 2012, to a score of 73 and a rank of 18th in 2021). Where countries had the same score they are ranked in the order reported. This report was published on 17 July 2022. This chart was corrected and updated on 1 September 2022.

Source: Transparency International (2022).

## 2 Political appointments are far too common

Many government boards, tribunals, and independent agencies are populated by former politicians, political advisors, and party officials.

Across the full range of federal government public appointees, about 7 per cent are people with direct political connections. Among the most desirable appointments – those that are well-paid, powerful, and/or prestigious – 21 per cent of appointees have political connections.

This much higher rate of political connections among the more desirable public roles reinforces the perception that plum jobs go to political mates.

Some might argue that political experience and/or political networks are helpful for public appointees. Yet politically affiliated appointees are almost universally appointed from the same side of politics as the government of the day, suggesting that mateship is prevailing over merit.

And the problem seems to be getting worse. Our analysis of the history of the Administrative Appeals Tribunal (AAT) shows a growing share of political appointments in the final years of the former Coalition government.

### 2.1 How do we define political appointments?

This report takes a conservative approach to identifying political appointments, focusing on appointees to public roles who have direct political experience rather than other political or ideological links to the government that appointed them.<sup>18</sup>

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18. This report focuses on appointments to public boards, tribunals, and statutory appointments. The analysis does not include departmental secretaries. Politicisation of the public service is a much broader issue, tackled in depth by others (see for example, Thodey et al (2019)).

We categorise an appointee as having a political connection if they are or have previously worked in politics – as a politician, candidate, political advisor, or employee of a political party. This includes anyone who has gained, or actively sought, preselection as a candidate for a political party. It also includes official roles within political parties, such as secretary or president of a party branch.

We do not count known members of political parties, political donors, prominent supporters, union officials, friends, relatives, or other forms of political activity as a political connection for the purposes of this report. We do not count ‘ideological’ appointments either.<sup>19</sup> These types of political affiliations can be difficult to consistently identify based on publicly available information.

Taking this narrow approach means the level of political affiliation we unearth is only a floor.<sup>20</sup>

Some appointees with political connections may have been chosen on merit via proper selection processes. But the general absence of robust processes (Chapter 3) and the high and growing number of

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19. Some appointees appear to be chosen for their loyalty to a particular ideological position. These types of appointments are not included in our numbers, but they can still represent a risk to the public interest, particularly where an appointee's ideology conflicts with the organisation's purpose. Ideological appointments may be deliberately used to weaken a public organisation that the government of the day would like to hobble or abolish but is constrained from doing so because it fears a public backlash.

20. The international literature on politicisation of government appointments always includes at a minimum the categories we have classed as evidence of a political connection. Many international studies take a broader definition, including people who are members or prominent supporters of a party (see, for example, Ennser-Jedenastik (2016) and Ennser-Jedenastik (2014)), or from party aligned organisations, such as unions (see, for example, Dahlstroem and Niklasson (2013), Niklasson (2013) and Wilkinson and Morison (2022)).

## New politics: A better process for public appointments

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appointments going to people with political connections suggest that other factors are at play.

The following sections examine the politicisation of public appointments at the national and state level. We focus largely on appointments made by the federal and Victorian governments before June 2022. This enables a comparison of two jurisdictions with long-serving governments<sup>21</sup> where most current appointees were appointed (or at least reappointed) under that government.

### 2.2 Some government boards have more politically affiliated members than others

Federal and state governments make thousands of public appointments across a wide range of public boards, tribunals, advisory councils, and agencies.

At the federal level there are about 3,600 public roles,<sup>22</sup> and about 7 per cent of appointees to these roles have a direct political connection.<sup>23</sup>

But these public positions vary widely in terms of pay, power, and prestige. The more desirable tend to be more attractive targets for politicisation: 21 per cent of federal appointees to high-paying, powerful, and/or prestigious boards have political connections.<sup>24</sup>

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21. The Coalition was in power federally from 2013 to May 2022. Labor has been in power in Victoria since 2014.

22. As at July 2021, there were 3,647 public appointments, of which 2,829 were paid roles. We identified 242 appointees with a direct political connection (6.6 per cent), including 192 appointees among the paid roles (6.8 per cent). We excluded parliamentary and ex-officio appointments.

23. Defined as per Section 2.1 on the preceding page.

24. This captures appointments to the AAT, Government Business Enterprises, powerful boards (as defined in Section 2.2.2), and prestigious boards (as defined in Section 2.2.3).

### 2.2.1 Well-paid government business boards are often politicised

Government Business Enterprises (GBEs) include major businesses such as Australia Post, NBN, Sydney Water, and Victorian public transport operator V/Line, which employ thousands of people and manage income in the billions.<sup>25</sup> GBEs are controlled by governments but are legally independent of government and are set up to engage in commercial activities in the private sector.<sup>26</sup>

All federal and state government GBE board appointments are made by the relevant government, and many of these well-paid roles are filled by former politicians, staffers, and party officials. The chair of a federal GBE board can be paid nearly \$200,000 per annum, the deputy chair about \$110,000 per annum, and other board members about \$95,000 per annum for a part-time role.<sup>27</sup>

Despite their supposed independence, political ‘board stacking’ of GBEs appears to be rife. In most jurisdictions, at least one in 10 appointees to government business boards have direct political connections. And most connections are to the party that appointed them (Figure 2.1 on the next page).

Among the Labor jurisdictions, Queensland and the ACT have 14 per cent of GBE board members with political affiliations and they are all

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25. In 2020-21, Australia Post had 34,734 employees and income of \$8.3 billion, NBN Co had 4,951 employees and income of \$4.7 billion, Sydney Water had 2,975 employees and income of \$2.7 billion, and V/Line had 2,253 employees and income of \$1 billion (as per their 2020-21 annual reports).

26. Board members are appointed by – and accountable to – the relevant portfolio minister who, in turn, is accountable to parliament for the performance of the GBEs in their portfolio: Bottomley (2000).

27. For example, in 2020-21, the Australia Post chair received \$193,710, the deputy chair \$108,100, and non-executive directors \$96,890: Australia Post (2021). In 2020-21, the Australian Rail Track Corp chair received \$182,788, and non-executive directors between \$91,400 and \$107,783: Australian Rail Track Corporation (2021).

New politics: A better process for public appointments

to Labor. In the NT it is 11 per cent, and again all Labor. In Victoria and WA, it is 10 per cent and 9 per cent respectively, mostly to Labor. South Australia was the only jurisdiction with no politically affiliated GBE board members.<sup>28</sup>

The federal government has by far the highest rate of politically affiliated appointees – making up 22 per cent of GBE board members. Of these, 93 per cent are linked to the Coalition (which was in power for nine years up to May 2022).

Political connections are especially evident on the board of Australia Post (Figure 2.2 on the following page), where half of board members are former Coalition politicians, senior staffers, or party officials.<sup>29</sup>

By contrast, people with political affiliations make up less than 2 per cent of all board members among ASX boards<sup>30</sup> – despite GBE and ASX boards having essentially identical roles and presumably therefore requiring very similar skill sets.

Some might argue that political experience is more valuable to GBE boards than other corporate boards, because interactions with government, as the major shareholder, will form a larger part of the role. This is a long bow given the commercial focus of these organisations, but even if this were the case then we would expect political experience from either side of politics to be valued (especially given the potential for a change in government). Yet across all jurisdictions, 87 per cent of GBE board members with political connections are from the same side of politics as the appointing government.

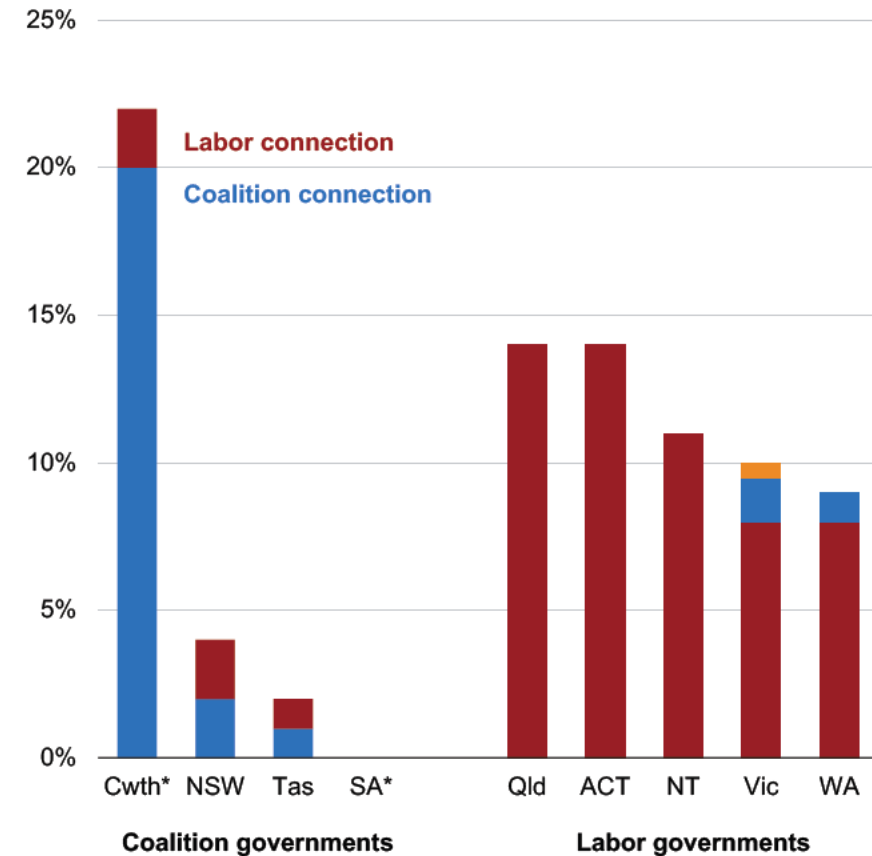
28. Grattan analysis of federal and state government GBEs as at May 2022, see Appendix A for the full list of state GBEs.

29. Four out of eight board members, as at May 2022.

30. Only 13 former politicians, political advisers, or party officials were identified out of 793 ASX100 company board members.

**Figure 2.1: Most politically affiliated GBE board members are from the same side of politics as the government that appointed them**

Proportion of GBE board members with political affiliations



Notes: Orange indicates a person with a political connection as an independent.

\*All Commonwealth and South Australian appointments were made by Coalition governments before Labor came to office in recent elections. See Appendix A for the state government GBEs included in this analysis.

Source: Grattan analysis as at May 2022.



### 2.2.2 Powerful positions are often politicised

Regulators and independent commissions are examples of institutions with significant power to influence government policy and its implementation.

Independent agencies are established under their own legislation, for a specific purpose that is best achieved at arms-length from government. This includes providing independent research and advice to government (such as the Productivity Commission) or regulating specific industries and enforcing legislation (such as ASIC and APRA).

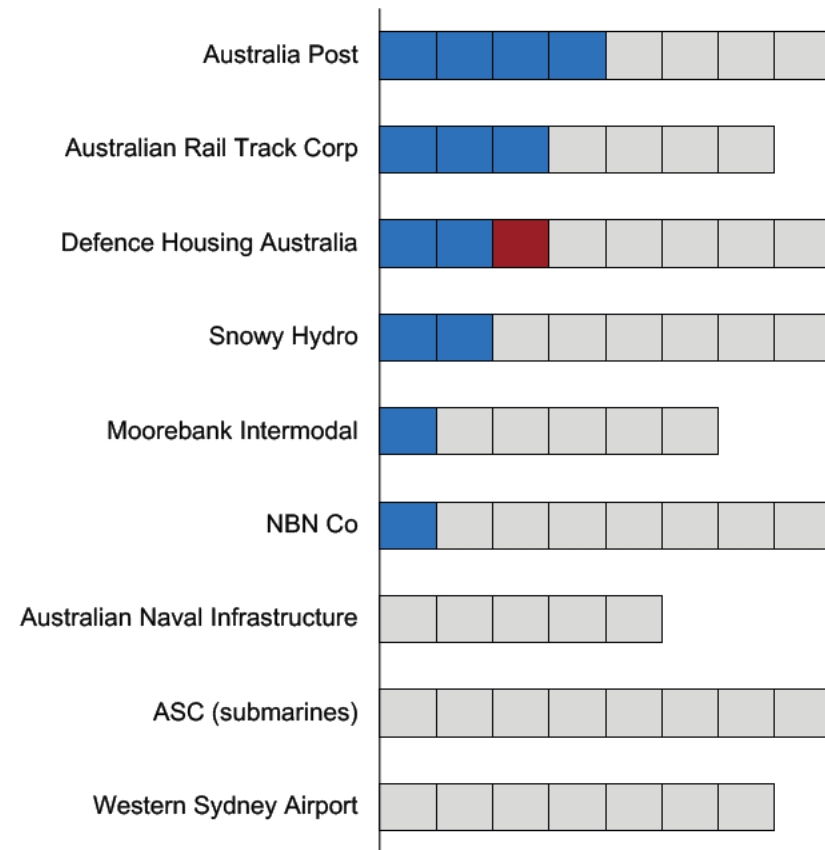
The directors or commissioners who lead these agencies also have the capacity to place political pressure on governments by publicly questioning their policies, or by recommending policies at odds with their stated positions.

Many of these powerful and influential roles are filled by people with political connections to the appointing government. Among the most powerful federal boards (Figure 2.3 on the next page), 20 per cent of board members appointed by the Coalition had previously worked for the Coalition (as a politician, staffer, or party official). And in the cases of the Productivity Commission and Commonwealth Grants Commission, 50 per cent of current appointees have political connections to the appointing government.

The story is similar for many of the powerful boards at state level, but overall, the rate of politicisation is lower. Among the most powerful Victorian boards (Figure 2.4), 12 per cent of board members have political connections, and all of these are to the same side of politics as the appointing government (in this case, Labor).

**Figure 2.2: About 22 per cent of federal government business board members have political connections**

Board members, coloured by their political affiliation



Notes: Blue indicates connections to the Coalition. Red indicates connections to Labor. All members were appointed since 2014, so by a Coalition government.

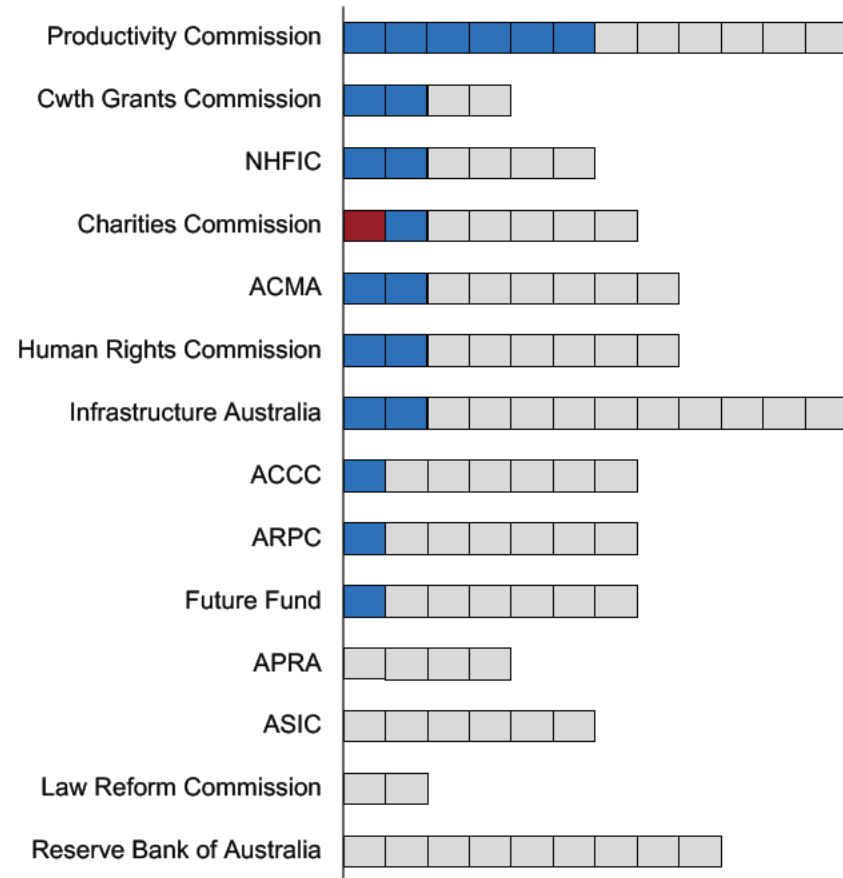
Source: Grattan analysis as at May 2022.



New politics: A better process for public appointments

**Figure 2.3: About 20 per cent of federal government appointments to powerful boards have political connections**

Board members, coloured by their political affiliation

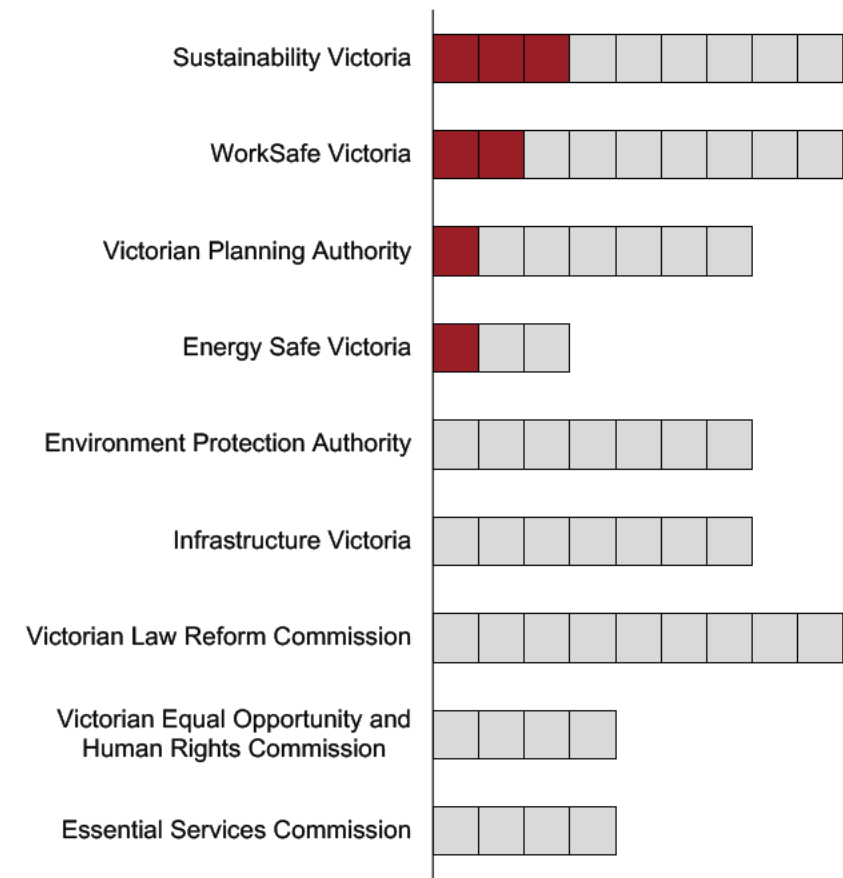


Notes: Blue indicates connection to the Coalition. Red indicates connection to Labor. NHFIC = National Housing Finance and Investment Corporation; ACMA = Australian Communications and Media Authority; ACCC = Australian Competition & Consumer Commission; ARPC = Australian Reinsurance Pool Corporation; APRA = Australian Prudential Regulation Authority; ASIC = Australian Securities & Investments Commission. All appointments made since 2014, that is, by the Coalition.

Source: Grattan analysis as at April 2022.

**Figure 2.4: About 12 per cent of Victorian government appointments to powerful boards have political connections**

Board members, coloured by their political affiliation



Notes: Red indicates connection to Labor. All appointments made since 2013, that is, by Labor. This sample excludes Victorian service-delivery organisations such as healthcare services and TAFEs.

Source: Grattan analysis as at April 2022.

## New politics: A better process for public appointments

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Powerful boards include a higher proportion of former political advisers than other boards where former politicians tend to dominate.<sup>31</sup> An appointment to a powerful board may be seen as career-enhancing.

While many boards have 'only' one or two members with political connections, members with political links often hold the chair position, which sets the tone for the board. At the federal level, in five of the 12 boards with politically affiliated members, the chair or managing director<sup>32</sup> is politically affiliated. And in Victoria, in one of the four boards with politically affiliated members (Figure 2.4), the chair has a political connection.

### 2.2.3 Prestigious positions are often politicised

Some government-appointed roles are desirable due to the prestige they impart. For example, being on the board of the Australian Sports Commission or the Sydney Harbour Federation Trust bestows a certain status and is likely to involve many enjoyable social experiences and contacts which may be leveraged to further one's career.

Governments may see these sorts of appointments as an opportunity to reward loyal colleagues.<sup>33</sup> The pay for these positions varies, and some give little opportunity to influence government actions, but the prestige they bestow still makes them desirable.

Among the most prestigious federal board positions (Figure 2.5 on the following page), 20 per cent of appointees have direct political

connections, overwhelmingly to the Coalition. Among the most prestigious Victorian positions (Figure 2.6 on the next page), 13 per cent of appointees have direct political connections, overwhelmingly to Labor. And many of these are the chair. Three of the 10 Victorian boards with political connections – 30 per cent – have a chair with a political affiliation.

Old Parliament House, the Australian War Memorial, and the Queen Victoria Women's Centre particularly stand out. While political connections are directly relevant to the work of the Old Parliament House board (on all sides of politics), it is less clear why 40 per cent of War Memorial board members have political links to the Coalition and 20 per cent of the Queen Victoria Women's Centre board have political links to Labor.<sup>34</sup>

Diplomatic appointments are also highly prestigious (and sometimes powerful too). While some diplomatic posts have a long history of going to former politicians (in particular the UK and US), more recently former politicians have been chosen for other senior postings too.<sup>35</sup> Politicisation of these appointments can risk diplomatic relations.<sup>36</sup>

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31. Nearly 50 per cent of those with a political connection are former staffers, about 40 per cent are former politicians, and the remainder are former candidates and party officials: Grattan analysis.

32. 'Managing director' refers to the government-appointed positions of Charities Commissioner and CEO/Deputy Chair of the Australian Communications and Media Authority (ACMA).

33. About 60 per cent of people with a political connection on prestigious boards are former politicians.

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34. The Queen Victoria Women's Centre hosts cultural events, exhibits work by artists, and collaborates with not-for-profit organisations that support women. It is located at an iconic Melbourne building in the city.

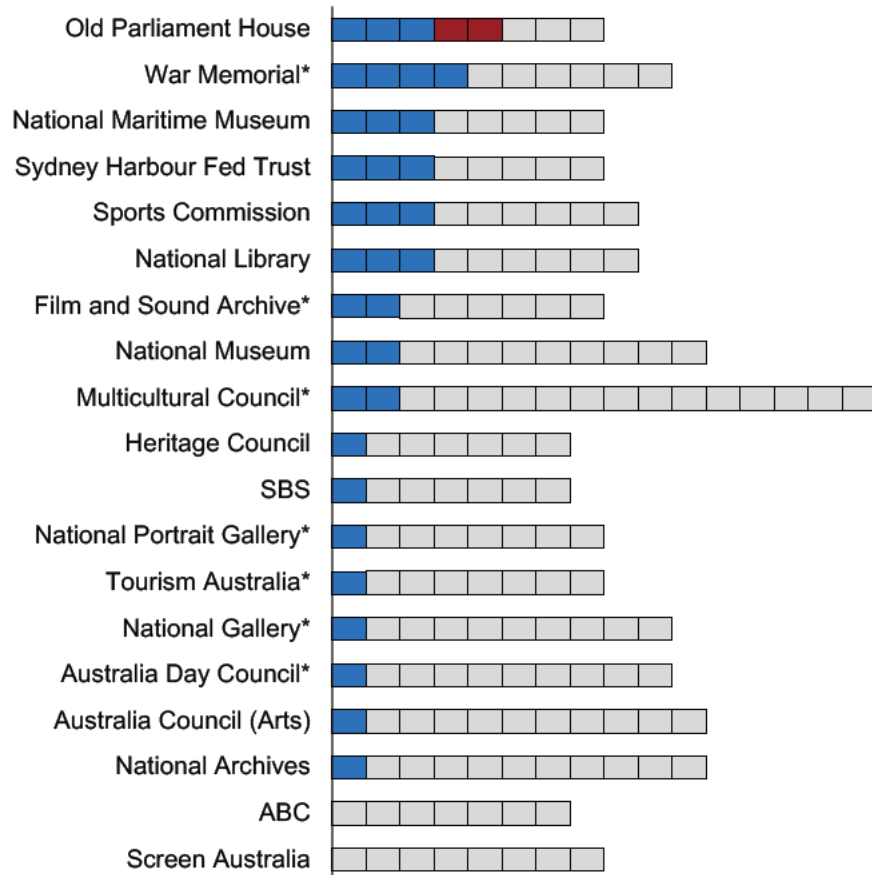
35. Two of Australia's most senior diplomatic postings, Ambassador to the US and UK High Commissioner, have regularly been held by former politicians since their inception. More recently though, former politicians have been appointed to Singapore, New Delhi, and Tokyo too. In 2021, Australia had 91 Ambassadors and High Commissioners, of whom seven were former politicians (8 per cent).

36. Historically, career diplomats have helped to smooth transitions between governments back home. Politically affiliated appointments puts this at risk. See: Flitton (2019) and Flitton (2020).

New politics: A better process for public appointments

**Figure 2.5: About 20 per cent of prestigious federal government board appointments have political connections**

Board members, coloured by their political affiliation

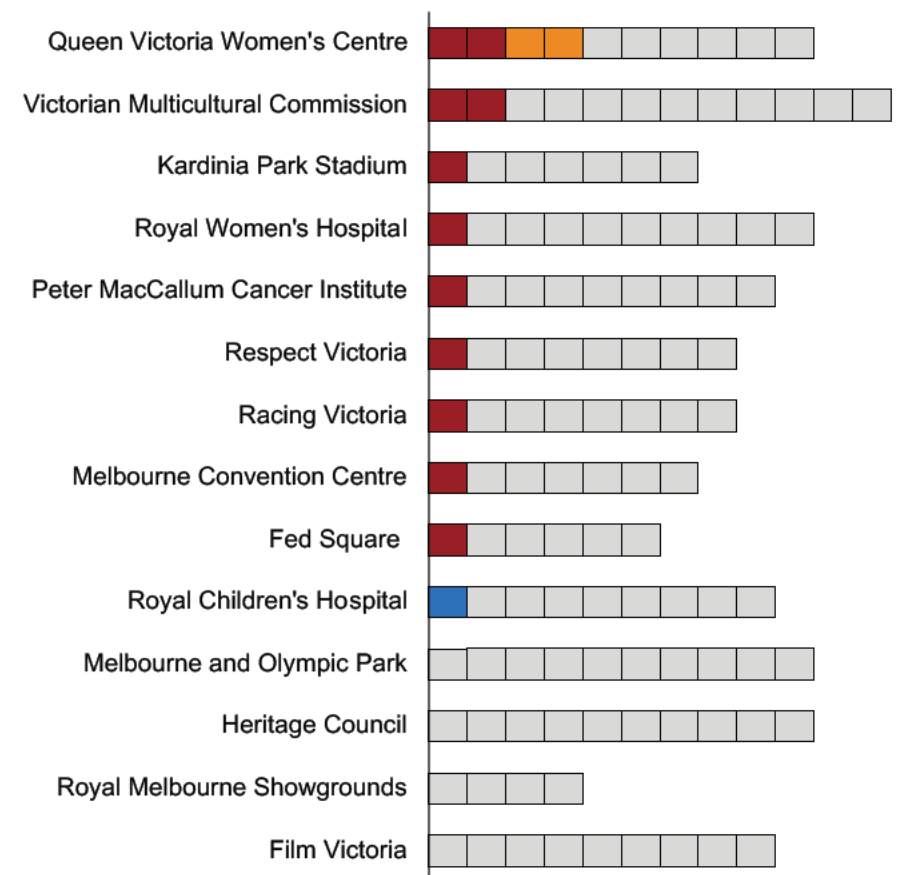


Notes: Excludes ex-officio members. Asterisk (\*) indicates an additional two or more members with 'soft' political links, such as a known political donor. Blue indicates a connection to the Coalition. Red indicates a connection to Labor. All appointments made since 2014, that is, by the Coalition.

Source: Grattan analysis as at April 2022.

**Figure 2.6: About 12 per cent of the most prestigious Victorian government board appointments have political connections**

Board members, coloured by their political affiliation



Notes: The hospitals chosen have a special profile because they have state-wide leadership for treatment of large cohorts. Red indicates a connection to Labor. Blue indicates a connection to the Coalition. Orange indicates a person with a political background as an independent. Asterisk (\*) indicates an additional two or more members with 'soft' political links, such as a known political donor.

Source: Grattan analysis as at April 2022.

### 2.3 The Administrative Appeals Tribunal offers the trifecta: powerful, prestigious, and well-paid positions

The Administrative Appeals Tribunal (AAT) is an independent expert body that plays a critical role in government accountability and access to justice. Members of the public can ask the AAT to review a government decision that affects them.<sup>37</sup> The independence of the AAT is therefore critical to upholding public trust and confidence in government decision-making.<sup>38</sup>

But the AAT has become a frequent target for political appointments in recent years. AAT appointments have the trifecta for risk of politicisation: roles on the tribunal are prestigious, pay well (members earn between \$193,990 and \$496,560 per year),<sup>39</sup> and come with considerable power given members make consequential judgments on government decisions.

There are currently 320 members of the AAT.<sup>40</sup> Of these 70, or 22 per cent, have a direct political affiliation.<sup>41</sup> It is unlikely that such a high proportion of politically affiliated people would emerge from a completely merit-based recruitment process. If experience in politics was judged to be useful for the AAT, we would expect to find members with political connections on both sides of politics. Yet of the 70 politically affiliated members, 64 (91 per cent) are connected to the party that appointed them.

AAT members are selected by the Attorney-General, who makes a recommendation to Cabinet, which is then signed off by the

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37. The AAT can review decisions made under more than 400 Commonwealth Acts and legislative instruments: Administrative Appeals Tribunal (2022) and Bedford (2019).

38. Bedford (2019).

39. Remuneration Tribunal (2021).

40. Including new appointees, as at April 2022.

41. About half are former political advisers, one third are former politicians, and the remainder are former party officials or candidates.

Governor-General (as a matter of formality).<sup>42</sup> The President of the AAT usually makes recommendations to the Attorney-General as part of this process, based on the AAT's needs. But the Attorney-General can make selections beyond these recommendations without publishing reasons (Box 3 on the following page).

This provides the opportunity for ministers to nominate political friends and colleagues, without them going through a merit selection process. The only requirement is that an AAT member must have been enrolled as a legal practitioner for at least five years or have 'special knowledge or skills relevant to the duties of a member'.<sup>43</sup> 'Special knowledge or skills' is not defined (and rarely justified by the appointing minister), but it appears to be regularly drawn on in choosing members, especially those with a direct political connection. Only about half of the politically affiliated AAT members have a law degree, compared to 60-to-80 per cent of the members without political affiliations.<sup>44</sup>

AAT members with political affiliations are also, on average, appointed for longer terms than members without political affiliations (see Figure 2.7 on the next page). The appointment term and decision to reappoint is at the discretion of the government, subject to a maximum term of seven years.

AAT appointments also appear to have become more politicised over time (see Figure 2.8 on page 20). The number of members has increased substantially since 2015 because of the amalgamation of the Migration Review Tribunal, Refugee Review Tribunal, and Social Security Appeals Tribunal with the AAT. This has coincided with a significant number, and a much higher share, of politically affiliated candidates being appointed.

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42. Attorney-General's Department (2021a). AAT members are officially 'appointed' by the Governor-General: *Administrative Appeals Tribunal Act 1975*, s. (6(1)).

43. *Administrative Appeals Tribunal Act 1975*, s. 7.

44. Some members have little or no online presence, so we were unable to determine whether they have legal qualifications.

**Box 3: Ministerial picks versus AAT recommendations**

The President of the AAT makes recommendations to the Attorney-General on AAT appointments, reappointments, and promotions ‘on the basis of merit’.<sup>a</sup> But the Attorney-General may also select their own candidates outside of this process.

It is not clear what Attorneys-General take into account when selecting their own candidates. In response to a Freedom of Information (FOI) request, some records were provided to Grattan Institute relating to one round of AAT appointments.<sup>b</sup> The documents show that after the Attorney-General’s department received the AAT President’s recommendations, the Attorney-General’s office recommended 19 additional appointments.

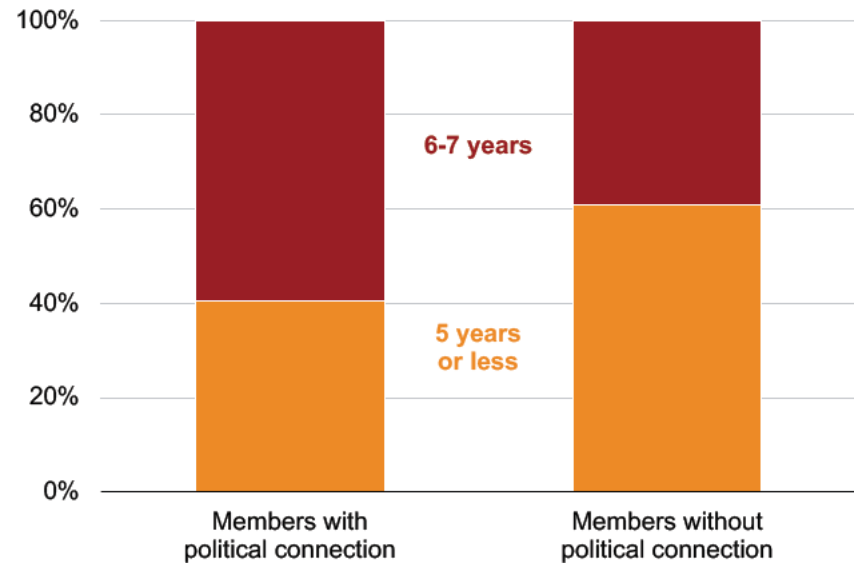
Of the 19 ‘ministerial picks’, 10 (53 per cent) had a direct political affiliation with the Coalition and 3 had other personal connections to the Coalition. One is a known Liberal Party member, one is a friend of former Health Minister Greg Hunt (as stated in Hansard), and one was former Attorney-General Christian Porter’s debating coach.

Many of these candidates, who were subsequently appointed to the AAT, were not known to the department. In many cases, the department had to request contact details and CVs.

a. Attorney-General’s Department (2022).  
b. Attorney-General’s Department (2021b), for appointments late-2018 to early 2019.

**Figure 2.7: AAT members with political connections are more likely to be appointed for longer terms**

Proportion of current members by specified appointment term



*Note: All political connections are to the same political party as the appointing government.*

*Source: Grattan analysis of AAT annual reports, media releases, and table of statutory appointments (as at 14 April 2022).*

In the 12 years before the amalgamations, just 3 per cent of new members had political connections to the appointing government. In the seven years since, 18 per cent of new members had political connections to the appointing government – and 31 per cent since 2017-18. Many of these appointments were made on ‘election eve’ – in the final days before the caretaker period commenced in the lead-up to the past two federal elections.

One possible reason that political appointments appear to have grown over time is that many ex-politicians and staffers looking for paid work



New politics: A better process for public appointments

post-politics no longer have a pre-politics career to fall back on.<sup>45</sup> Political parties may also be looking for somewhere to ‘park talent’ until their side of politics returns to government.

Whatever the reasons though, appointing so many members with political connections risks undermining the performance and independence of the AAT, as well as public confidence in its decisions.

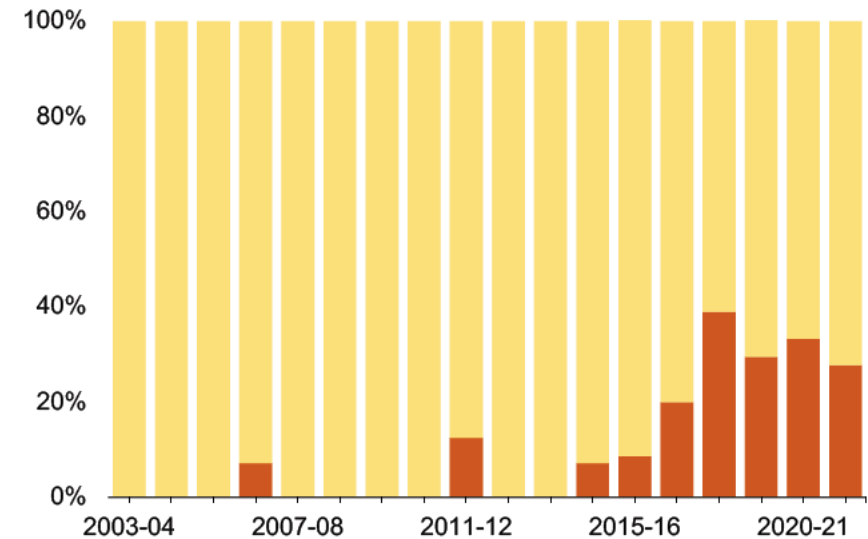
Other tribunals

There are signs that other tribunals are also regularly politicised. For example, there is a long-running political battle over appointments to the Fair Work Commission, which is responsible for determining minimum wages and employment conditions. About 10 per cent of Fair Work Commission board members have direct political affiliations (mostly to Labor and appointed during the Rudd-Gillard era).<sup>46</sup> And many more appointments to the Fair Work Commission are seen as being ‘ideological’, with Coalition governments largely appointing people with employer backgrounds and Labor governments largely appointing former union officials.<sup>47</sup>

By contrast, the Victorian Civil and Administrative Tribunal (VCAT) has few members with direct political connections. Our analysis suggests only 0.5 per cent of current appointees have political connections, despite high salaries and a similar appointments process to the AAT.

Figure 2.8: Politically affiliated appointments to the AAT have increased in recent years

Share of new members **with** and **without** political links to the appointing party



Notes: No new members commenced in 2019-20. Only includes members with connections to the same political party as the appointing government.

Source: Grattan analysis of AAT annual reports, media releases, and table of statutory appointments (as at 14 April 2022).

45. See Daley (2021, Figure 4.3). A recent study found that more than half of former Victorian MPs took at least six months to find paid work post-politics, and most reported that their efforts to set up new careers were hampered by their time in politics. The study suggests several ways to better support outgoing MPs that don't require gifting public appointments: Nethery et al (2022).  
46. Grattan analysis. Fair Work Commission members typically have long appointment terms.  
47. Hannan (2015); Schneiders (2013); and Bonyhady (2020).



### 3 Politicisation damages public institutions and democracy

Handing out a cushy job to a political mate might seem harmless in isolation – ‘everyone does it’ – but ministers exercising their discretion are required to do so only in the public interest.

Politicisation of public appointments has real, pervasive consequences for Australian democracy. When public office is misused for political gain, it can compromise government regulation or oversight, promote a corrupt culture, and undermine public trust.

#### 3.1 Politicisation of appointments can undermine the performance of important institutions

Each year governments around Australia make hundreds of appointments to regulators, courts and tribunals, and important cultural and economic institutions.

When political mates are chosen for roles without proper process, a key risk is they may not have the necessary skills and experience to carry out their responsibilities effectively.<sup>48</sup>

Researchers in the US have found that federal programs administered by political appointees don’t perform as well on average as programs run by other appointees or career executives.<sup>49</sup>

In Australia, performance data show that AAT members with political affiliations perform worse on average than those without. Almost a quarter (24 per cent) of appointees with political connections were well under their performance targets, compared to 17 per cent of non-political appointees.<sup>50</sup>

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48. Edwards (2006).

49. Gallo and Lewis (2012).

50. Grattan analysis of performance data provided for members of the Migration and Refugee Division of the AAT in 2018-19. ‘Well below’ performance targets means

AAT members with political affiliations are less likely to have a legal qualification than other members (Section 2.3). The 2018 Callinan review suggested that the lack of legal qualifications of some members made the AAT less efficient, because these members put a greater burden on legal staff for assistance.<sup>51</sup>

These risks apply to any appointment where a particular set of skills is necessary. Former Productivity Commission chair Gary Banks highlighted the risks to the quality of the commission’s policy research and standing if political consideration prevailed over merit in appointing commissioners.<sup>52</sup>

An appointee who was appointed on political grounds, and lacked the necessary skills, would struggle in the job. Commissioners need to preside on inquiry topics that can be quite contentious, that demand a detailed understanding of the subject matter, and that ultimately require good judgement. The commission is quite exposed to public scrutiny and must be able to defend its reasoning. . .

Ultimately, poor decisions waste public money. While the dollars involved in funding these important leadership roles are small in the scheme of government spending, many individual appointments are well-remunerated and would attract outstanding candidates if they were advertised.<sup>53</sup> Appointing based on mateship rather than merit is not an ‘efficient, effective, economical, and ethical’ use of public funds, as required by law.<sup>54</sup>

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members were more than 10 per cent below their performance benchmark (as per the division’s performance expectations). See also Robin (2021).

51. Callinan (2020, pp. 166–67).

52. Productivity Commission (2011).

53. Note that some, albeit very few, appointments to public boards and tribunals are advertised.

54. *Public Governance, Performance, and Accountability Act 2013*.

### 3.2 Actual or perceived politicisation can compromise the independence of key institutions

Politicisation of public appointments can also compromise the perceived or actual independence of important institutions and therefore their capacity to deliver on their mandate.

It is simply more likely that people with political connections will consider the political implications of any particular decision. Indeed, there is some evidence that appointees may show more consideration for the appointing government even when they don't have a pre-existing political connection.<sup>55</sup> These risks are heightened where the person has existing friendships with or loyalties to those who appointed them (Box 4).

Cultural institutions such as the Australian War Memorial are not immune from claims of undue political influence.<sup>56</sup> But these types of concerns about political stacking are most damaging where they apply to bodies such as the AAT that review government decisions.

An anonymous submission to the 2018 Callinan review of the AAT asserted that political appointees were more likely to make decisions that favour the appointing government.<sup>57</sup> Previous work by Ng (2012)

55. For example, Leslie et al (2021) found evidence of a loyalty effect in High Court decisions. The authors examined High Court decisions from 1995 to 2019 and found that High Court justices were more likely to find in favour of the federal government if the Prime Minister who appointed them was in office. Similarly, Simpson (2020) reviewed more than 2,000 AAT refugee visa application decisions from 2015 to 2018 and found that AAT members appointed by a Labor government were 1.46 times more likely to decide in favour of a refugee visa applicant than members appointed by a Coalition government.

56. O'Mallon (2018, p. 6).

57. Callinan (2020) summarised an anonymous submission: 'The submitter asserts that there have been "political appointments", disposed to make politically popular decisions.'

#### Box 4: Appointments can politicise independent agencies

Political appointments can introduce political considerations into the decision-making of independent agencies.<sup>a</sup>

A European study found that the more independent from government a regulator was, the greater the share of political appointees – a point the authors argue reflects the fact that governments have an incentive to try to restore the power they have otherwise lost through independence.<sup>b</sup>

A US study found that the greater the number of Senate-confirmed appointees to government agencies, the lower the effectiveness of Inspectors-General in unearthing issues with the agency.<sup>c</sup> The authors suggest that political appointees may be slowing or stifling the work of Inspectors-General to avoid embarrassing the President.

An earlier US study on politicisation of state Supreme Court justices found that judges 'respond to the interests of those that placed them on the bench'.<sup>d</sup> And a Canadian study that looked at appointments to the Ontario Court of Appeal over 13 years came to a similar conclusion. It found that political ties influenced how judges voted in some cases.<sup>e</sup>

- a. Kopecký et al (2012) argue that political appointments in European democracies are now increasingly used to control the infrastructure of government, rather than used as rewards.
- b. Ennser-Jedenastik (2016).
- c. Hudak and Wallack (2016).
- d. Savchak and Barghothi (2007).
- e. Hausegger et al (2013).

## New politics: A better process for public appointments

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found that immigration tribunal members who made decisions against the minister were less likely to be reappointed.<sup>58</sup>

And the Law Council has called out the practice of reappointing members just before elections (but well in advance of the expiry of their terms) – which happened again before the 2022 federal election – arguing this may give rise to:

a reasonable apprehension that decisions are affected by political considerations and therefore compromise the reputation of the tribunal.<sup>59</sup>

### 3.3 Political appointments can create a culture of patronage

Politicisation of public appointments can create and promote a culture of patronage, where loyalty is rewarded over merit.

This may deter appointees from providing ‘frank and fearless’ advice in their roles.<sup>60</sup> It can encourage potential candidates and those in the roles to ‘follow the party line’ for fear of being blacklisted from powerful and well-remunerated roles in future.

Some have argued that fear of loss of board positions is having a chilling effect on people who may otherwise take a public stand against the politics or policies of the government of the day.<sup>61</sup> A recent Senate inquiry into the performance and integrity of Australia’s administrative review system noted: ‘There were repeated claims that the selection of members – particularly in recent years – has been inappropriately influenced by personal connections and political affiliations.’<sup>62</sup>

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58. Ng (2012). Note that the immigration tribunals investigated have since been amalgamated into a division of the AAT.

59. Law Council of Australia (2019).

60. Daley (2021); and Law Council of Australia (2018).

61. Hardaker (2022).

62. Senate Legal and Constitutional Affairs Committee (2022, p. 37).

International literature highlights how political appointments can be used to maintain party allegiance. For example, to secure party donations in exchange for appointment, or as a bargain to keep party members in line.<sup>63</sup>

And politicians and advisers are less likely to pursue difficult but important policy reforms if they fear that going against immediate party interests – ‘rocking the boat’ – would limit their career options post-politics.<sup>64</sup>

A culture of patronage can also increase the risk of corruption.<sup>65</sup> Corruption may go unchecked if a regulator is politicised. Or the potentially insecure nature of a political appointee’s position could make them more likely to collude with the interests of private industry.<sup>66</sup> A European study found that countries with lower levels of political appointments were less prone to corruption. In fact, making recruitment decisions based on merit was a key ‘corruption-containing’ factor.<sup>67</sup>

### 3.4 Ministerial discretion without transparency creates suspicion

Australian governments draw on a variety of processes when making public appointments, though the ultimate responsibility for selection invariably resides with one or more ministers behind closed doors.

Figure 3.1 on the following page shows examples of existing processes for some key board and tribunal appointments. Even where there is a formal process, ministers usually retain the discretion to select their own candidates from outside the main process (‘captain’s picks’).<sup>68</sup>

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63. Quaresima (2019, pp. 22–24).

64. Daley (2021, pp. 23, 54).

65. Rose-Ackerman and Palifka (2016); and Heywood and Meyer-Sahling (2013).

66. Quaresima (2019, pp. 38–39).

67. Dahlström et al (2011).

68. Edwards (2006); and Edwards (2012).

New politics: A better process for public appointments

Figure 3.1: Examples of existing appointment processes in Australia

	Ultimate responsibility	Transparent process	Advertised with criteria	Independent panel	Conditions on ministerial discretion	Oversight	Exemptions to standard process
ABC	Minister appoints <sup>b</sup>	Yes – detailed in legislation	Yes – role advertised and selection panel assesses applicants against published selection criteria	Yes – panel appointed by Secretary of PM&C	Yes – must table reasons in Parliament for not selecting from panel shortlist. Former MPs and senior political staff are ineligible for 12 months.	No oversight body or auditing of appointment decisions	Minister or Chair can recommend re-appointments without going through a merit-based process
Australian Public Service agency heads <sup>a</sup>	Minister appoints <sup>b</sup> (with PM or Cabinet approval)	Published policy, owned by government	Yes	Yes – panel chaired by Secretary who selects panel members. Must include Public Service Commissioner (or representative)	Minister must write to the PM outlining reasons for not appointing from panel shortlist (included in Cabinet records)	No – only oversight is PM / Cabinet	Minister can bypass process where urgent, or an ‘eminent person’ is available, with PM approval
Administrative Appeals Tribunal	Attorney-General appoints <sup>b</sup> (with Cabinet approval)	No	Yes – expressions of interest sought annually	No – President of AAT makes recommendations to Attorney-General	No – Attorney-General may select candidates not recommended by AAT President	No – only oversight is Cabinet	Attorney-General may select candidates not recommended or not on the AAT’s register
Federal Government Business Enterprises	Shareholder ministers appoint (with PM or Cabinet approval)	Published guidelines	Optional	No – Chair makes recommendations to Minister	Consult Prime Minister	No – only oversight is PM / Cabinet	No enforceable process
Queensland Government Business Enterprises	Shareholder ministers appoint (with Cabinet approval)	Published guidelines	No – primarily through the Queensland Register of Nominees	No – Cabinet makes recommendation to the Governor in Council after Premier’s approval	None stated	No – only oversight is Cabinet	None stated

Notes: Yellow = good process; orange = somewhat compromised process; red = poor process. <sup>a</sup> Secretary and Secretary-equivalent and part-time appointments are excluded. There are a range of other exemptions including offices where the PM grants an exemption. <sup>b</sup> Under legislation, appointments are made by the Governor-General, but in practice the final decision rests with the relevant minister with the approval of Cabinet.

Source: Grattan analysis.

## New politics: A better process for public appointments

Most of these processes lack transparency – many public appointments are not advertised, and there is little published information on selection criteria, assessment processes, and on how often ministerial discretion is exercised (even when requested under Freedom of Information laws).<sup>69</sup> The federal government's *Merit and Transparency* policy covers some public appointments, but can still be circumvented (Box 5).

Independent panels are rarely involved in shortlisting for public appointments. The ABC and SBS boards are exceptions because an independent panel is required by law.<sup>70</sup> But ministers still retain discretion over the final appointments – they can and do choose from outside the shortlist, although in such instances they must table their reasons in parliament.<sup>71</sup>

Some state governments have guidelines for appointments processes,<sup>72</sup> but these are not always published and rarely involve advertising appointments, independent panels, or oversight of the process.<sup>73</sup> For example, a 2022 Queensland Auditor-General's report found that board positions for Queensland GBEs were not advertised

69. Documents provided by the Attorney-General's Department on appointments to the AAT under a Freedom of Information request from Grattan Institute included selection criteria and a description of the main appointments process, which allows full ministerial discretion, but the documents did not reveal how often ministers go outside of the process to make appointments.

70. The *Australian Broadcasting Corporation Act 1983* and the *Special Broadcasting Service Act 1991* were both updated in 2012 to include provisions on 'merit-based appointment of non-executive directors', including that one independent member must be on the nomination panel.

71. *Australian Broadcasting Corporation Act 1983*.

72. For example, Victorian Government (2022), NSW Public Service Commission (2013), ACT Government (2017), Queensland Government (2019) and Queensland Department of the Premier and Cabinet (2013).

73. Victoria advertises some board appointments through <https://getonboard.vic.gov.au/>. A 2013 Victorian Ombudsman's report on the governance of public sector boards found that appointment processes vary widely. The Ombudsman also noted that its previous work had found 'inadequate processes for appointing board members': Victorian Ombudsman (2013).

### Box 5: The federal government's Merit and Transparency policy lacks teeth

In 2008, the federal government introduced a *Merit and Transparency* policy to guide public service appointments.

The policy requires that positions are advertised, that selection of candidates is made by a panel that includes the Public Service Commissioner, and that the panel report to the relevant minister recommending a shortlist of candidates.<sup>a</sup>

There are many exemptions to the policy (including public sector board appointments),<sup>b</sup> and in practice, the policy lacks teeth. The relevant minister (with the Prime Minister's approval) may ignore the policy when it is deemed 'urgent' to fill a position, or when an 'eminent person' is available.<sup>c</sup> And since 2015, the Public Service Commissioner is no longer involved in AAT appointments and a panel is not used for these appointments.<sup>d</sup>

There is also little clarity on how the policy is enforced and whether ministers and agencies are adhering to it. The Australian Public Service Commission used to publish the number of public service appointments it oversaw each financial year but stopped doing so in 2014-15.

The Thodey review of the public service concluded that the *Merit and Transparency* guidelines 'were often circumvented'.<sup>e</sup>

a. APSC (2020).

b. The policy does not cover public sector boards and departmental secretaries. Various positions are also specifically exempted, such as Chair of the Future Fund, members and chairs of the Australian Competition and Consumer Commission, and the Australian Statistician. See APSC (2018).

c. APSC (2020, clause 2.6.6).

d. Senate Committee (2019, p. 93).

e. Thodey et al (2019, p. 289).



## New politics: A better process for public appointments

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broadly, and instead ‘relied heavily on using the networks of the department and the minister’, which ‘can give the impression that appointees are not independent’.<sup>74</sup>

Even where a proper process exists, ministers can overrule, as in the recent case of former NSW Deputy Premier John Barilaro’s office overruling an appointment that was ultimately offered to Barilaro himself.<sup>75</sup>

For many public appointments, there are no published criteria or rules to ensure merit-based selection, and virtually no opportunity for public scrutiny of appointments processes. This gives ministers enormous discretion and keeps the public in the dark.

Ministers themselves are subject to Ministerial Standards, which require them to make decisions with impartiality and ‘with the sole objective of advancing the public interest’.<sup>76</sup> But, as highlighted in Chapter 1, the lack of enforcement of these standards and the shifting bar for ministerial accountability mean this cannot be relied on as a check on behaviour.

A stronger appointments process would help to ensure public appointments are made in the public interest and would help dissolve the cloud of suspicion and distrust over political appointees.

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74. Queensland Audit Office (2022).

75. McGowan (2022).

76. Department of the Prime Minister and Cabinet (2022, Clause 6.1).



## 4 Australia needs a better appointments process

Many important public appointments go to people with strong political connections.

If Australia had transparent, merit-based appointments processes then we could be confident that appointees were there on merit, whether they are politically affiliated or not. But instead, public appointments are usually made behind closed doors, with no independent oversight, creating suspicion that these jobs go to mates instead of the best candidate for the job.

This problem has an easy fix. Establishing a better public appointments process that is legislated, and overseen by a dedicated Public Appointments Commissioner, would restore public confidence in appointees, help rebuild trust in government, and could lift the performance of public sector boards and tribunals.

Over time, it would encourage a reset in political culture so that seeking the best person for the job becomes the only consideration that ministers bring to bear on these decisions.

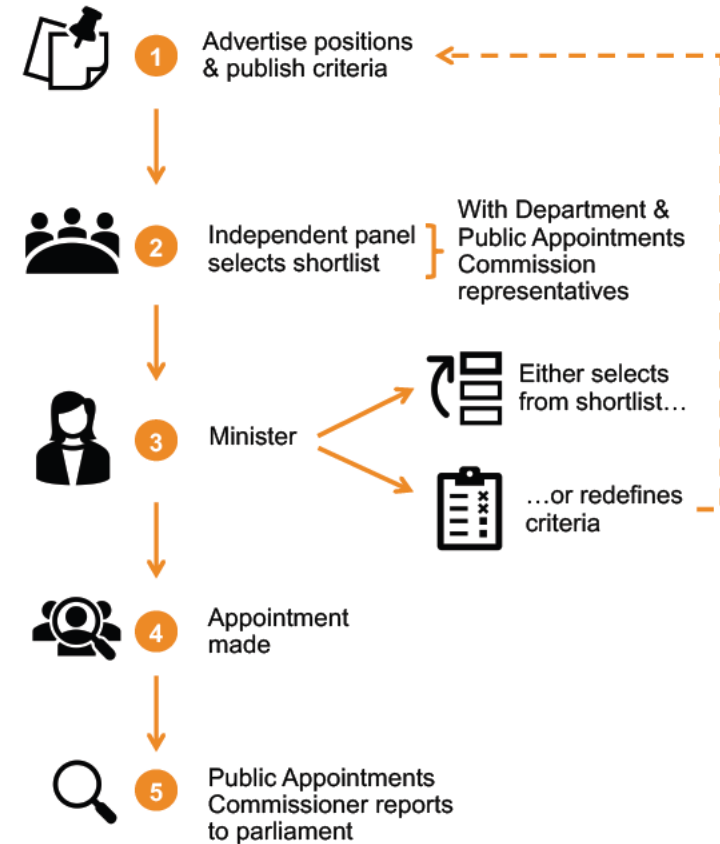
### 4.1 Australia needs a transparent, merit-based process

Australia needs greater transparency and oversight of its public appointments system to build public confidence that governments are appointing the best candidates. Australian governments should adopt a more transparent and merit-based process (see Figure 4.1), drawing on best practice overseas (Appendix B).

#### 4.1.1 All public appointments should be advertised, and the selection criteria published

Advertising all public board, tribunal, and statutory appointments and the selection criteria for each position would provide transparency on

Figure 4.1: A better process for public appointments



*Note: If a minister chooses to redefine the selection criteria, the new criteria should be published, but the position need not be re-advertised. The panel can assess the existing pool of candidates against the new criteria or broaden the pool.*

## New politics: A better process for public appointments

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what the minister is looking for before an appointment is made. It would also provide transparency on what appointees should be accountable for during their tenure.

The selection criteria would still be agreed with the relevant minister before the appointment process commenced. In setting the selection criteria for public positions, ministers would determine the job requirements specific to each position and set the parameters for assessment.

Ministers should seek advice in developing the selection criteria, including from their department, the relevant board, the new Public Appointments Commissioner (Section 4.2) and, in the case of statutory appointments to the public service, the Public Service Commission.<sup>77</sup> For example, they might ask the board to assess current skills and expertise and identify gaps that need to be filled in line with current and emerging priorities for the board.<sup>78</sup> The minister would also be able to suggest candidates to the panel for assessment, or encourage a candidate to apply to the panel. Competition for positions would then help find the best person for the job.

Currently, head-hunting approaches are common,<sup>79</sup> but this sort of process can miss many outstanding candidates of whom the recruitment firm, panel, department, and/or minister is unaware.<sup>80</sup> Advertising allows for unexpected expressions of interest and doesn't preclude running a head-hunting process in parallel.

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77. This includes all statutory appointments under the federal Merit and Transparency policy.

78. Edwards (2006).

79. AusTender data show about \$3 million worth of 'executive search' contracts in 2019-20.

80. Executive search processes often also limit the diversity of candidates, because boards tend to be looking for people like themselves: Doldor et al (2012) and Meriläinen et al (2015).

Advertising is not unduly onerous; it is basic widespread practice in the public and private sectors.<sup>81</sup> Advertising does run the risk of missing out on some high-calibre candidates who would have accepted a direct appointment but would prefer not to 'throw their hat in the ring'.<sup>82</sup> For senior people the risk of being unsuccessful in a process may be a deterrent. But this is a smaller risk to the overall calibre of appointments than the current uncompetitive approach. Further, as this approach becomes the norm for these roles some of the reluctance is likely to fade.

### 4.1.2 An independent panel should do the shortlisting

An independent panel should assess applications for public board, tribunal, and statutory appointments against the selection criteria and provide a shortlist of suitable candidates to the minister.<sup>83</sup>

Some roles may require a more intensive and rigorous process than others. For example, recruitment for a full-time well-paid high-profile appointment would be more likely to involve one or more interviews than for a part-time role with little or no remuneration.

The make-up of the panel should *not* be subject to ministerial direction. The relevant departmental secretary and a new Public Appointments Commissioner (or their representatives) should be on the panel (see Section 4.2). For statutory appointments to the public service, the

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81. All public service positions are required to be advertised, selection criteria are published, and recruitment processes are ultimately overseen by the Public Service Commissioner and Merit Protection Commissioner.

82. This may be partly remedied by running a head-hunting process in parallel and asking potential candidates if they would be willing to be considered.

83. The size of the shortlist would depend on the number of positions required and the breadth of suitable candidates, but as a guide, a shortlist of at least three suitable candidates is required for ABC and SBS board positions. For longer shortlists (more than three candidates for one position), the panel should provide a ranking of the candidates.

## New politics: A better process for public appointments

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Public Service Commissioner would replace the Public Appointments Commissioner.<sup>84</sup>

The Commissioner should select the remaining members of the panel, which might include the chair of the body, relevant subject-matter experts, and/or community representatives. A diverse group involved in assessing applications and preparing the shortlist gives the best chance of making appointments in the public interest. Panel members' names should be published, to enable public scrutiny of the panel's independence.

### 4.1.3 Ministers should choose from the shortlist

In representative democracies such as Australia's, ministers usually have ultimate responsibility for public appointments.<sup>85</sup>

Ministers should retain the discretion to choose a candidate. But ministers should choose from the panel's shortlist, which should include only candidates who have been assessed as suitable for the position and are recommended by the panel.<sup>86</sup>

There may still be circumstances where shortlisted candidates are no longer suitable, or the job requirements have changed. In these circumstances, the minister should publish new selection criteria, and ask the independent panel to revisit the shortlist given the new criteria.

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84. This includes all statutory appointments under the federal Merit and Transparency policy. Statutory appointments to the ACCC and Productivity Commission are excluded under the policy (APSC (2018)) – these appointments should be overseen by the new Public Appointments Commissioner.

85. Most public appointments require Cabinet approval, but it is usually the minister's decision with Cabinet signing off. Under legislation, many appointments are technically made by the Governor-General, but in practice the final decision rests with the relevant minister with the approval of Cabinet. See Figure 3.1.

86. For longer shortlists (more than three candidates for one position), the panel should provide a ranking of the candidates, and ministers who choose a lower-ranking candidate should table their reasons in parliament.

By both approving the criteria at the beginning of the process and choosing from the final shortlist, ministers would retain ultimate responsibility for public appointments. But greater transparency and consistency of process would provide assurance that the final appointees have been tested against a broad field and are well-equipped for the role.

### 4.2 Establish a Public Appointments Commissioner

A Public Appointments Commissioner is needed to oversee the thousands of board and tribunal appointments that governments make.

The new Commissioner should report to parliament, at least annually, on all board and tribunal appointments made, and any exceptions to the best-practice appointments process outlined here (including if a minister overrules the panel and appoints someone not on the shortlist).

The Public Appointments Commissioner could also have a role in improving the diversity of public appointees, by encouraging a more diverse pool of applicants and ensuring that independent selection panels include different perspectives.

### An expanded role for federal and state public service commissions

Federal and state public service commissioners should be involved in all statutory appointments to the public service (that is, agency heads). This builds on their knowledge and experience and is consistent with the Australian Public Service Commissioner's stewardship of the federal government's Merit and Transparency policy.<sup>87</sup> The Merit and Transparency policy should be updated to reflect the best-practice appointments process outlined here.

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87. See Box 5 on page 25.

## New politics: A better process for public appointments

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### Appointing commissioners

The independence and impartiality of the Public Appointments Commissioner and Public Service Commissioner roles is essential to the integrity of our proposed new public appointments process. Appointees to these roles should be agreed with the Leader of the Opposition, similar to the existing legislated approach for integrity agency heads at the federal level.<sup>88</sup> This was also recommended by the independent Thodey review of the public service.<sup>89</sup>

### 4.3 Legislate the new appointments process, with explicit checks and exemptions

This new process for public appointments should be legislated.

The new process should apply to all appointments, except where an interim acting appointment may be necessary. Good process doesn't necessarily slow down appointments, but sometimes when a position is vacated unexpectedly, a quick appointment may be necessary. In these circumstances ministers could nominate someone to 'act' in the position until a proper appointment process can be conducted. The minister could also consult with the opposition leader to seek bipartisan support in the absence of a formal process. The justification for 'exceptional circumstances' should be tabled in parliament.

Although reappointments may not require re-advertising, they should not be automatic. An independent panel (as per Section 4.1.2) should still be involved in reappointment processes, which should include a review of the incumbent's performance and a recommendation on whether or not to reappoint.

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88. See *Independent National Security Legislation Monitor Act 2010*, s. 11, and *Inspector-General of Intelligence and Security Act 1986*, s. 6(3).

89. Thodey et al (2019, p. 289).

The new Public Appointments Commissioner should monitor compliance with the process outlined here for all public board and tribunal appointments, review any complaints, and publish the findings in an annual report,<sup>90</sup> in addition to reporting to parliament.

The Public Service Commission should continue to monitor and report on public service appointments.

Federal and state Auditors-General may also choose to audit public appointments as they see fit.

### 4.4 A better process could help drive cultural change

Better appointment processes should stem the erosion in ministerial ethics that has taken hold around political appointments.

These appointments are not 'nice things to give mates', they are important roles that should be filled with the most meritorious candidates.

A robust process can help change culture. In the public service, where more structure around recruitment processes has long been required, the idea of merit-based recruitment is deeply entrenched. We hope a restoration of the same principles for positions with ministerial discretion will help rebuild important norms, and therefore improve the way politics is done in Australia.

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90. The Public Appointments Commissioner should report on acting appointments too, to help identify any blockages in the appointments process that might be preventing quick appointments where necessary.

## Appendix A: Government Business Enterprises (GBEs)

Victoria	NSW	Queensland	South Australia	Western Australia	Tasmania	Northern Territory	ACT
V/Line Corporation	Essential Energy	CS Energy	SA Water	Aqwest (Bunbury Water Corporation)	Sustainable Timber Tasmania	PowerWater Territory	ActewAGL
VicForests	Forestry Corporation of NSW	Stanwell Corporation	Forestry SA	Busselton Water Corporation	Hydro Tasmania	Generation	Icon Water
Victorian Ports Corporation (Melbourne)	Hunter Water Corporation	CleanCo	Funds SA	Fremantle Port Authority	Motor Accidents Insurance Board	Jacana Energy	Cultural Facilities Corporation
Port of Hastings	Landcom	Powerlink Queensland (Queensland Electricity Corporation)		Gold Corporation (Perth Mint / Western Australian Mint)	Port Arthur Historic Site Management Authority		
VicTrack	Port Authority of NSW	Energy Queensland Ltd		Horizon Power (Regional Power Corporation)	TASCORP (Tasmanian Public Finance Corporation)		
18 water corporations	Sydney Water Corporation	Ports North (Far North Queensland Ports Corporation Limited)		Kimberley Ports Authority	Public Trustee of Tasmania		
Transport Accident Commission	Transport Asset Holding Entity	Gladstone Ports Corporation		DevelopmentWA (LandCorp / WA Land Authority)	Aurora Energy		
Victorian Funds Management	Water NSW	North Queensland Bulk Ports Corporation		Mid-West Ports Authority	Metro Tasmania		
Development Victoria		Port of Townsville Ltd		Pilbara Ports Authority	Tasmania Irrigation		
		SunWater		Southern Ports Authority	TasNetworks (Tasmanian Networks Corporation)		
		QIC Ltd		Synergy (Electricity Generation and Retail Corporation)	TasPorts (Tasmanian Ports Corporation)		
		Queensland Rail		TAB (Racing and Wagering WA)	TasRail (Tasmanian Rail)		
		Queensland Bulk Water Supply Authority (trading as Seqwater)		Water Corporation WA	Tasracing		
				Western Power (Electricity Networks Corporation)	TT-Line (Spirit of Tasmania)		

Note: This is the sample of state GBEs included in the analysis for Figure 2.1.

## Appendix B: Many countries have better models than Australia

Many countries have stronger public appointments processes than Australia, including greater transparency and independent oversight (Figure B.1).

The **UK** has a particularly sophisticated system for making public appointments. Ministers in the UK retain the power to make public appointments, but these are made in accordance with long-established merit-based principles (the ‘Nolan Principles’, see Box 1 on page 7) and a Governance Code that clearly sets out the recruitment process.

The UK’s appointments system is overseen by an independent Public Appointments Commissioner, who also audits compliance with the code.<sup>91</sup> This process ensures that candidates must go through a merit-based process before being selected by the minister. Consequently, the UK has very low rates of politicised appointments.<sup>92</sup>

**Canada** has a central system where senior public appointments are advertised, and the selection criteria and appointments process are published. Final appointments are also subject to parliamentary scrutiny.<sup>93</sup>

Some Canadian provinces have gone further. In Nova Scotia, for example, legislative committees have the power to veto ministerial appointments.<sup>94</sup>

The **New Zealand** process involves greater transparency but no additional oversight. Appointments are advertised by the relevant department. Departments assess applicants and seek additional

nominations from agencies such as the Ministry for Women to promote a more diverse pool of candidates, before providing a shortlist to the minister.<sup>95</sup>

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91. UK Cabinet Office (2022).

92. Matthews (2020); and UK Commissioner for Public Appointments (2019).

93. Government of Canada (2021).

94. Edwards (2006), Nova Scotia Executive Council (2021a), and Nova Scotia Executive Council (2021b, Rule 60).

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95. e.g. NZ Treasury (2020) and NZ Dept of Internal Affairs (2022).



New politics: A better process for public appointments

Figure B.1: International public appointment processes

	Ultimate responsibility	Transparent process	Advertised with criteria	Independent panel	Conditions on ministerial discretion	Oversight	Exemptions to standard process
UK	Minister appoints	Yes but owned by government (previously owned by Appointments Commissioner)	Yes – minister agrees criteria and advertising before recruitment process commences	Yes – panel includes department official and independent member	Yes – ministers must choose from the shortlist or re-run the process	Appointments Commissioner provides oversight and can audit appointments	Direct appointments in exceptional cases – the Appointments Commissioner must be consulted and reasons made public
Canada	Minister appoints	Yes but owned by government	Yes – positions advertised and selection criteria set by the selection committee	Not fully independent – ministerial staff and a senior department official participate on most panels	No conditions except PM approval	Privy Council Office ensures appointment meets statutory provisions. Appointment tabled for committee review, but cannot be overturned.	Guidelines state that ministers may use other methods of recruitment to identify candidates if they choose
New Zealand	Agreed with minister	Yes but owned by government	Yes	Yes – panel assembled by departments. Must consult other agencies (e.g. Ministries for Women and Maori Development) to encourage diversity.	Yes – appointments cannot be made directly before a general election. Public servants cannot be appointed.	Most require Cabinet approval. Some require consultation with other political parties. Can be subject to judicial review.	If a full appointment process isn't followed, the minister must explain reasons to Cabinet

Note: Yellow = good process; orange = somewhat compromised process; red = poor process.

Source: Grattan analysis.

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