

Inquiry into Commonwealth grants administration Submission

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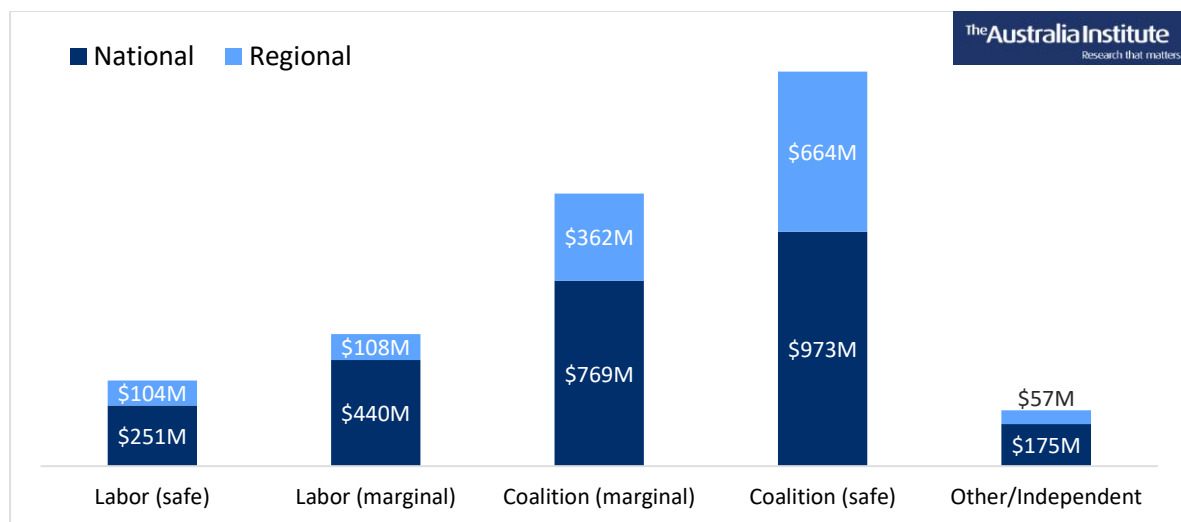
Summary

... many politicians appear to prefer to be seen to be handing out gifts to their electorate, even if it is unfair, inefficient, ineffective and a misuse of public funds for party gain. They justify this to themselves as being an aspect of ‘democracy’, but this degrades the meaning of the term.

Professor Anne Twomey¹

Last year, the Australia Institute’s analysis of Commonwealth grants programs between 2013 and 2021 (the term of the most recent Coalition Government) found a clear skew towards Coalition seats at the expense of Labor seats, particularly safe Labor seats.

Figure: Grants funding by party and marginality (2013–2021)



The constraints on government expenditure, including the Constitution, statutes, guidelines and ministerial standards, have been inadequate to ensure grants are always spent impartially and according to proper processes. This is despite the Independent Commission Against Corruption finding that ‘pork barrelling’ (allocating funds to targeted electors for political purposes) can constitute corrupt conduct in some circumstances.

This submission identifies red flags in grants administration, under four categories – unfair and ineffective distributions, poor processes, lack of transparency and lack of deterrence and remedies – and makes recommendations to address the problems found in each category.

¹ Twomey (2022) *When is pork barrelling corruption and what can be done to avert it?* p 30, <https://www.icac.nsw.gov.au/investigations/past-investigations/2022/investigation-into-pork-barrelling--operation-jersey>

Introduction

The Australia Institute welcomes the opportunity to make a submission to the Joint Committee of Public Accounts and Audit's inquiry into Commonwealth grants administration.

The Australia Institute's Democracy & Accountability Program was founded in 2021 to improve the quality of Australian governance and heighten public trust in politics and democracy. Although the program is new, the Australia Institute has written about democracy and accountability issues since it was founded in 1994.

The administration of Commonwealth grants has a long history of generating concerns about political bias or pork barrelling. Research by the Australia Institute and others has reinforced these concerns. A series of programs have been subject to adverse findings by the Auditor-General,² and some that were not audited have shown a significant discrepancy between stated program purpose and the nature of projects funded.

The Institute would welcome the opportunity to discuss research findings in further detail at any committee hearing.

² Including: ANAO (2022) *Award of funding under the building better regions fund*, <https://www.anao.gov.au/work/performance-audit/award-funding-under-the-building-better-regions-fund>; ANAO (2020) *Award of funding under the Community Sport Infrastructure Program*, <https://www.anao.gov.au/work/performance-audit/award-funding-under-the-community-sport-infrastructure-program>; ANAO (2019) *Award of Funding Under the Regional Jobs and Investment Packages*, <https://www.anao.gov.au/work/performance-audit/award-funding-under-the-regional-jobs-and-investment-packages>

Grants with ministerial discretion

In its 2021 report *Grants with ministerial discretion*, The Australia Institute examined funding allocated under seven Commonwealth grant programs with ministerial discretion that operated between 2013 and 2021, coinciding with the period of Coalition government.³ To be included the analysis programs had to be ongoing or to have been discontinued in the last five years.

The programs considered, the number of grants and the total funds allocated under each, are set out in Table 1, below.

Table 1: Grants programs with ministerial discretion

Fund	Category	Grants	Funds
Community Development Grants	National	1,382	\$1,711 million
National Stronger Regions Fund	National	256	\$703 million
Female Facilities and Water Safety Stream	National	40	\$136 million
Environmental Restoration Fund Grants	National	91	\$58 million
Building Better Regions Fund	Regional	952	\$806 million
Regional Growth Fund	Regional	16	\$257 million
Regional Jobs and Investment Package	Regional	231	\$232 million

Note: Grants and funds figures as at 30 June 2021. Grants that were allocated to multiple postcodes/electorates are counted as multiple grants. Data from GrantConnect.

The top four programs were national in scope, the remainder were regional.

Between 2013 and June 2021, \$3.9 billion was allocated under these programs. As shown in Figure 1, the vast majority of funding (\$2.8 billion or 71%) was directed to projects in Coalition seats. Just 23% (\$0.9 billion) went to Labor seats, and 6% (\$0.2 billion) to seats held by minor parties or independents. Both national and region-specific programs showed similar patterns of distribution.

³ Melville-Rea, Seth-Purdie & Browne (2021) *Grants with ministerial discretion: distribution analysis*, <https://australiainstitute.org.au/report/grants-with-ministerial-discretion/>

Figure 1: Grants funding by party and marginality

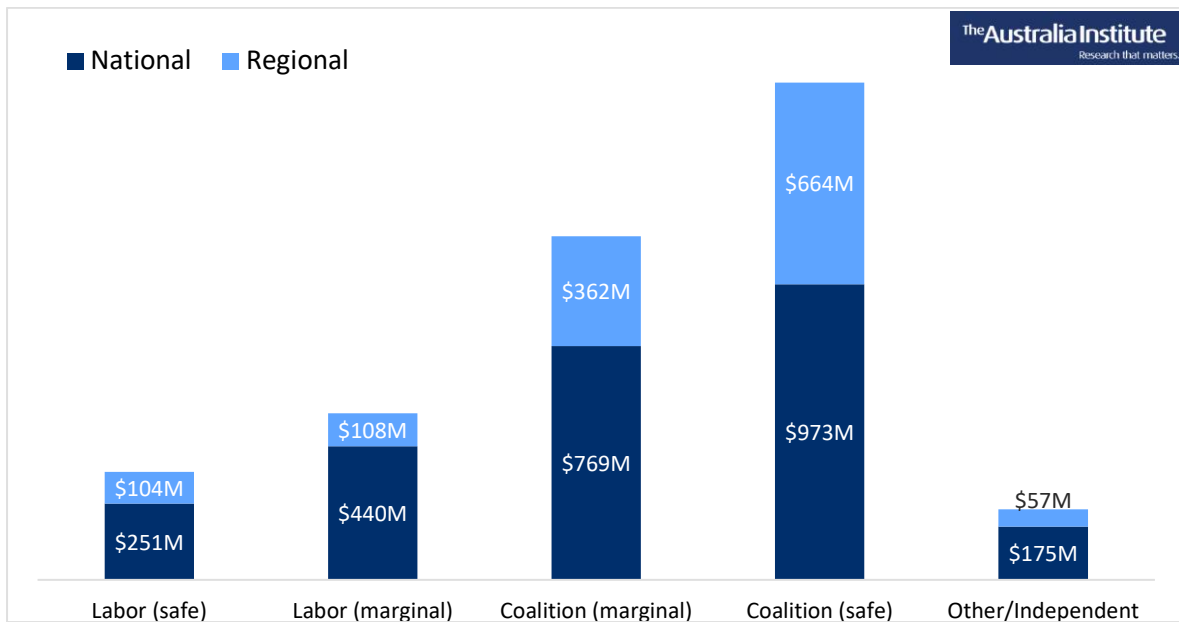


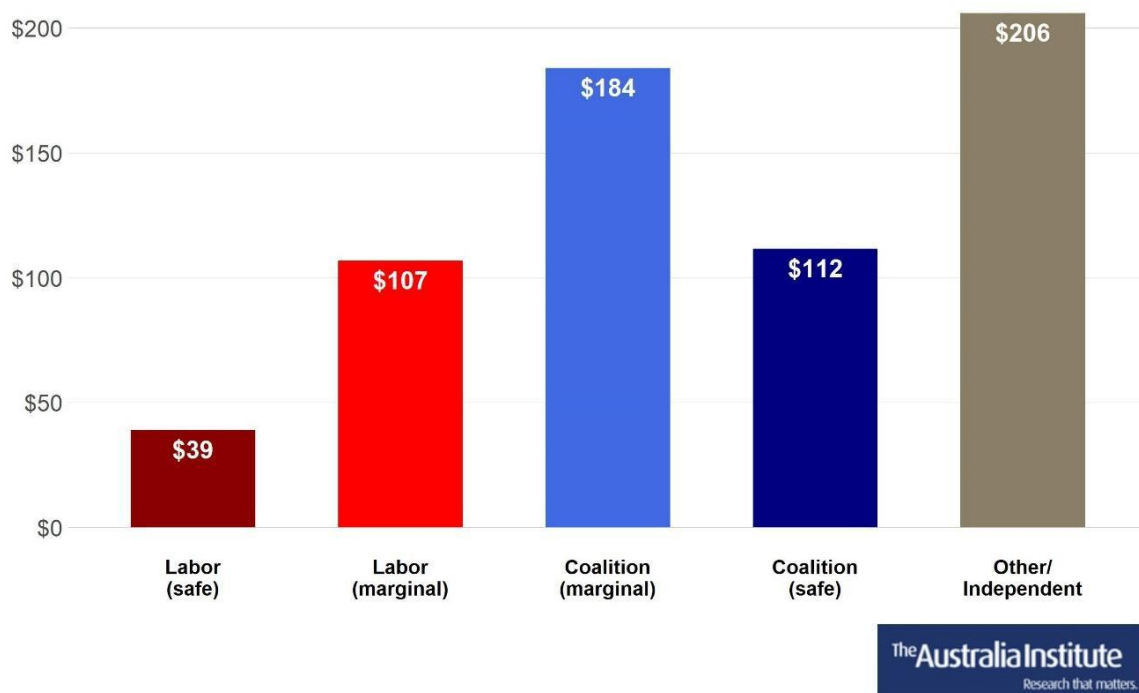
Figure 1 also breaks down allocation of grant funding by the marginality of seats. Seats are considered marginal where the seat is held by 6 percentage points or less. Figure 1 shows that safe Coalition seats received over \$1.6 billion, marginal Coalition seats over \$1.1 billion, marginal Labor seats around \$550 million, safe Labor seats just \$355 million and Other/Independent seats \$232 million.

The spread of population among electorates is not even. For the time period considered, around 8.7 million people lived in safe Coalition seats, 6.4 million in safe Labor seats, 4.2 million in marginal Coalition seats, 4.1 million in marginal Labor seats and 0.8 million in other/independent seats.

Figure 2 below shows the per capita distribution of the \$2.6 billion in national grants programs based on the populations living in the electorates that received funds, by party and by marginality. Regional programs were analysed separately.

Marginal Coalition seats received an average \$184 per person, almost five times the \$39 per person received by safe Labor seats. The small handful of seats represented by minor parties or independent candidates have especially benefited from grants, receiving \$206 per person.

Figure 2: National grants programs, per capita electorate spend by party and marginality

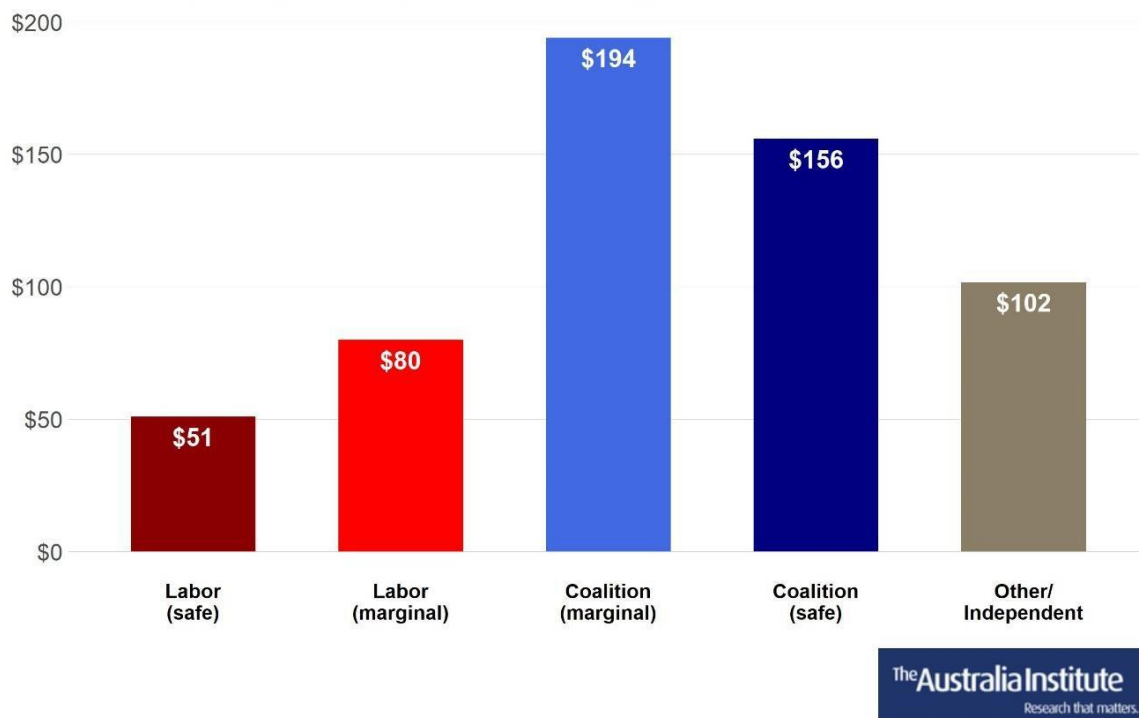


If the funding level accorded to marginal Coalition seats had been achieved by other seats the following additional amounts would have been allocated: \$928 million to safe Labor seats; \$316 million to marginal Labor seats; and \$626 million to safe Coalition seats.

Figure 3 below shows the per capita distribution of the \$1.3 billion under regional grants programs, based on the Australian population that lives outside of Urban Centres and Localities with populations over one million, by party and by marginality.

The graph shows how both safe and marginal Coalition seats were favoured ahead of Labor seats. Australians living outside of urban centres and within marginal Coalition electorates received almost four times as much funding (\$194 per person) as those outside of urban centres and within safe Labor seats (\$51 per person).

Figure 3: Regional grants programs, per capita electorate spend by party and marginality



The analysis in *Grants with ministerial discretion* supports concerns that grant funding has been distributed in a partisan manner, with a focus on winnable seats rather than community need or project merit.

Constraints on expenditure

When exercising their discretion in allocating grants, ministers are constrained by law, guidelines and scrutiny from other politicians, accountability institutions, the media and the public.

Relevant law

In a paper for the NSW Independent Commission Against Corruption (ICAC) investigation into pork barrelling, Professor Anne Twomey set out the relevant law.⁴ Key is the High Court's judgment in a case, *Williams v Commonwealth*, which determined 'the capacity of the Commonwealth to spend public money and enter into contracts without parliamentary authorisation, other than an appropriation'.⁵

In that case, the High Court held that Commonwealth expenditure of legally appropriated funds is valid only if it is one of the following:

1. authorised by the Constitution;
2. made in the execution or maintenance of a statute or expressly authorised by a statute;
3. supported by a common law prerogative power;
4. made in the ordinary administration of the functions of government; or
5. (possibly) supported by the nationhood power.⁶

Despite this decision, the Commonwealth has continued to fund grant programs that do not appear to satisfy these conditions.⁷

Public Governance, Performance and Accountability Act

Special purpose legislation, the *Public Governance, Performance and Accountability Act 2010 (Cth) (PGPA Act)*, places an enforceable obligation on ministers 'not to approve grants unless satisfied, after making reasonable inquiries, that the expenditure is an efficient, effective, economical and ethical use of the money'.⁸

⁴ Twomey (2022) *When is pork barrelling corruption and what can be done to avert it?*

⁵ Twomey (2014) *Post-Williams expenditure—when can the Commonwealth and States spend public money without parliamentary authorisation?* p 9, <http://classic.austlii.edu.au/au/journals/UQLawJl/2014/2.pdf>

⁶ Twomey (2014) *Post-Williams expenditure—when can the Commonwealth and States spend public money without parliamentary authorisation?* pp 9-10

⁷ Twomey (2021) *Rorts scandals in politics are rife. So what exactly are the rules?*

<https://theconversation.com/rorts-scandals-in-politics-are-rife-so-what-exactly-are-the-rules-157411>

⁸ Twomey (2022) *When is pork barrelling corruption and what can be done to avert it?* p 28

Ministerial decisions that contravene this provision could be challenged under administrative law but there are no sanctions in the *PGPA Act* itself for breaching this provision.⁹

Commonwealth Grants Rules and Guidelines

The Commonwealth Grants Rules and Guidelines (CGRG) require grants administrators to consider seven key principles:

1. robust planning and design;
2. collaboration and partnership;
3. proportionality;
4. an outcomes orientation;
5. achieving value with relevant money;
6. governance and accountability; and
7. probity and transparency.¹⁰

The Guidelines give effect to these principles by requiring Ministers to consider written advice from officials on the application and selection process and the merits of individual proposals, and to document reasons for accepting or rejecting departmental recommendations.

These guidelines are not enforceable.

Ministerial Code of Conduct

The Albanese Government's Code of Conduct for Ministers requires them to act in accordance with principles of integrity, fairness, accountability, ministerial responsibility, and in the public interest – 'that is, based on their best judgment of what will advance the common good of the people of Australia'.¹¹

However, the previous government's Statement of Ministerial Standards had substantially similar requirements that ministers exercise their powers in a lawful and disinterested manner and make decisions unaffected by bias or considerations of private advantage.¹² This did not prevent the problems observed in grants administration.

⁹ Twomey (2022) *When is pork barrelling corruption and what can be done to avert it?* p 29

¹⁰ Department of Finance (2017) *Commonwealth Grants Rules & Guidelines*, para 2.2

¹¹ Australian Government (2022) *Code of conduct for ministers*, <https://www.pmc.gov.au/resource-centre/government/code-conduct-ministers>

¹² Compare Australian Government (2022) *Code of conduct for ministers*, ss 1.3, 2.3 and Australian Government (2022) *Statement of ministerial standards*, ss 1.3, 3.2, <https://www.pmc.gov.au/resource-centre/government/statement-ministerial-standards>

Lack of enforcement or enforceability of clear standards has been a recurring theme in the history of discretionary grants administration,¹³ indicating that additional safeguards are required.

¹³ See for example Kelly (2008) *Strategic review of the administration of Australian government discretionary grant programs, undertaken for the Minister of Finance, Australia*, https://www.researchgate.net/publication/298721483_STRATEGIC_REVIEW_OF_The_Administration_of_Australian_Government_Discretionary_Grant_Programs_undertaken_for_the_Minister_of_Finance_Australia

Pork barrelling: potential for corruption

Since the Australia Institute's *Grants with ministerial discretion* was published, the NSW Independent Commission Against Corruption (the ICAC) reported on the results of its Operation Jersey Inquiry, carried out in response to complaints about political bias in the distribution of state funds in grant programs.

The ICAC defined 'pork barrelling' as 'the allocation of public funds and resources to targeted electors for partisan political purposes'¹⁴ and noted that: 'A typical hallmark of pork barrelling is disproportionate allocation of funding to marginal electorates.'¹⁵

It identified five examples in which a minister's behaviour may constitute corrupt conduct involving pork barrelling (under NSW law). In summary, they involve a minister:

1. influencing a public servant to exercise a power or function in a dishonest or partial way;
2. influencing a public servant to exercise a power or function in a manner that knowingly involves the public servant in a breach of public trust;
3. conducting a merits-based grants scheme in a way that dishonestly favours political and private advantage over merit;
4. approving grants in a manner that favours family members, party donors or party interests, if the program's guidelines state grants are to be made on merit according to criteria; or
5. making grants in favour of marginal electorates, when this is contrary to the purpose for which the power was given.¹⁶

¹⁴ ICAC (2022) *Report on investigation into pork barrelling in NSW*, p 14, <https://www.icac.nsw.gov.au/media-centre/media-releases/2022-media-releases/icac-finds-pork-barrelling-could-be-corrupt-recommends-grant-funding-guidelines-be-subject-to-statutory-regulation>; ICAC's definition was adopted from Connolly (2020) *The Regulation of Pork Barrelling in Australia*, <https://www.aspg.org.au/wp-content/uploads/2020/11/The-Regulation-of-Pork-Barrelling-in-Australia.pdf>

¹⁵ ICAC (2022) *Report on investigation into pork barrelling in NSW*, p 14

¹⁶ Summarised by the authors from ICAC (2022) *Report on investigation into pork barrelling in NSW*, p 6

THE DAMAGE CAUSED BY PORK BARRELLING

The ICAC found pork barrelling:

- erodes public trust in government if it is seen as self-serving;
- is antithetical to democratic principles, such as the political equality of citizens; and
- overrides important principles that should underpin decisions on public expenditure, including transparency, public policy need, merit assessment, and value for money.¹⁷

In addition to the harms listed by the ICAC, pork barrelling:

- contravenes Commonwealth principles designed to ensure transparency, integrity and value for money in expenditure of funds;
- wastes the time of deserving but unsuccessful grant applicants, in those cases where grants are actually open to competition; and
- risks potentially meritorious policy interventions being discarded or never assessed, in favour of less worthy but politically valued interventions.

Twomey found additional, indirect effects of pork barrelling, asserting that it ‘undermines the fairness of elections and aids democratic decay by heightening public distrust of politicians and the efficacy of the system of government’.¹⁸

¹⁷ ICAC (2022) *Report on investigation into pork barrelling in NSW*, p 16

¹⁸ Twomey (2021) “*Constitutional risk, disrespect for the rule of law and democratic decay*”, p 295, <https://www.cjcl.ca/wp-content/uploads/2021/05/10-Twomey.pdf>

Red flags in grants administration

UNFAIR AND INEFFECTIVE DISTRIBUTIONS

Political skew in distribution of funds

As discussed in 'Grants with ministerial discretion', above, Australia Institute research found a political skew in the distribution of grants under the last government. Coalition seats received significantly more funds than Labor seats.¹⁹

Restricted application process

Analysis by the Grattan Institute has found that only a small portion of distributed funds (between 13 and 28 per cent in the period 2018 to 2021) were the subject of an open, competitive process.²⁰

Some grants, for example those under the Environmental Restoration Fund, the Community Development Grant, and the Female Facilities & Water Safety Stream, were by invitation only.²¹

Funds not allocated in line with grant objectives

Some programs, such as the Female Facilities and Water Safety Stream, were advertised with clear aims and specific outcomes, but were not subject to a competitive assessment process, and were primarily allocated through election commitments. The main purpose of the program was:

to improve opportunities for women and girls to play sport and be physically active through access to female change rooms; and to increase access to swimming facilities and safety programs in regional communities.²²

¹⁹ Melville-Rea et al (2021) *Grants with ministerial discretion: distribution analysis*, p 7

²⁰ Wood, Griffiths and Stobart (2022) *New politics: preventing pork-barrelling*, p 24, <https://grattan.edu.au/report/new-politics-preventing-pork-barrelling/>

²¹ Melville-Rea et al (2021) *Grants with ministerial discretion: distribution analysis*, pp 16, 41, 42

²² Department of Health (1920) *MS20 – 00488, Commitment approval for grants over \$2 million for the Female Facilities and Water Safety Stream program*, <https://www.health.gov.au/sites/default/files/documents/2021/07/foi-request-2329-female-facilities-and-water-safety-stream-ministerial-submission-ms20-000488.pdf>

Out of a total allocation of \$190 million, \$150 million was ear-marked for spending on ‘female change room facilities at sporting grounds and community swimming facilities’.²³ A substantial share of the funds was not allocated in keeping with the main purpose of the program, as it funded construction or upgrades of pools, rather than female change facilities, and many of these were not located in regional areas.²⁴

Recommendations

That Commonwealth Grant Rules and Guidelines and the *PGPA Act* be amended to specify that political bias in the allocation of discretionary grant funds is pork barrelling and may constitute corrupt conduct.

That the Commonwealth Grant Rules and Guidelines and the *PGPA Act* be amended to mandate that all Commonwealth grants be awarded on the basis of an open, transparent, merit-based process.

That the Commonwealth Grant Rules and Guidelines and the *PGPA Act* be amended to proscribe approval of grant expenditure under a specific program for a project that is not in keeping with that program’s aims and outcomes.

POOR PROCESSES

Election commitments bypass proper processes

Twomey has identified election commitments as a ‘large loophole’ used to circumvent strict Commonwealth expenditure guidelines. While election promises are not exempt from the *PGPA Act* or the CGRGs, ‘in practice, blind eyes are turned to such matters where an election commitment has already been given’.²⁵

The Grattan Institute’s report on pork barrelling describes the lead up to an election as a ‘vulnerable time for public money’. It distinguishes between committing to fund *types* of projects and committing to fund *specific* projects, and argues that federal governments and oppositions should avoid promising funding to specific local projects.²⁶

²³ Melville-Rea et al (2021) *Grants with ministerial discretion: distribution analysis*, p 41

²⁴ Melville-Rea et al (2021) *Grants with ministerial discretion: distribution analysis*, pp 41-42; ANAO (2021) *Australian Government Grants Reporting*, <https://www.anao.gov.au/work/information/australian-government-grants-reporting>

²⁵ Twomey (2022) *When is pork barrelling corruption and what can be done to avert it?* pp 29-30

²⁶ Wood et al (2022) *New politics: preventing pork-barrelling*, p 19

Constitutional validity

Some Commonwealth grant program expenditure continues to fall outside the categories established by the High Court in *Williams* (see ‘Relevant law’ above), notably when projects are within the jurisdiction of state or local governments. Twomey says that the risk of constitutional challenge seems to be assessed as manageable given the low probability that a plaintiff will emerge who combines legal standing with the motivation and means to mount a case.²⁷

An example of the approach taken by departments to this issue can be seen in a Ministerial Submission from the Department of Health to then Minister Richard Colbeck released under the *Freedom of Information Act (1982)*, concerning expenditure on the Female Facilities and Water Safety Stream (FFWSS) Program. Under the heading Spending and Grant Rules, the Department said:

The Department advised you in September 2019 (MS19-900215 refers) that it will not be seeking advice on the constitutional risk rating from the Australian Government Solicitor (AGS) for the FFWSS program. As the Government made the decision on the allocation of grants and the Department is implementing the decision, it was decided to not seek formal AGS advice on the constitutional risk rating and legislative authority.²⁸

Recommendations

That Commonwealth Grant Rules and Guidelines and the *PGPA Act* be strengthened to make it absolutely clear that they are binding on decision-making on all forms of grant expenditure, including that undertaken to meet election commitments.

That Commonwealth Grant Rules and Guidelines and the *PGPA Act* be amended to include requirements that Commonwealth spending on grants should conform with the validity requirements set out by the High Court in *Williams*.

²⁷ Twomey (2021) *Rorts scandals in politics are rife. So what exactly are the rules?*

<https://theconversation.com/rorts-scandals-in-politics-are-rife-so-what-exactly-are-the-rules-157411>

²⁸ *Department of Health (1920) MS20 – 00488, Commitment approval for grants over \$2 million for the Female Facilities and Water Safety Stream program*

LACK OF TRANSPARENCY

Cabinet confidentiality cloaks assessment

The involvement of Cabinet in grants processes can obscure the process from both parliamentary and public scrutiny, even the parts Cabinet was not involved in.²⁹

For example, documentation related to the assessment of grants under the Regional Growth Fund was not accessible because a closed Cabinet process selected which projects would proceed to a final assessment stage.³⁰ In the Building Better Regions Fund, a ministerial panel was established to make final determinations and ‘any reasons for its allocation of funding were redacted from documents before they were publicly released’.³¹

Ministerial intervention cuts across merit assessment

Despite the publication of clear assessment criteria in some grant programs, there were allegations of political interference in decision-making in the case of the Building Better Regions Fund that compromised merit assessment and prima facie contravened Commonwealth standards.³²

The Auditor-General’s Report on the Building Better Regions Fund found that appropriate funding recommendations were provided for only three of the five completed rounds, funding decisions were not appropriately informed by departmental advice and the basis for the funding decisions had not been appropriately documented. The award of funding was only partly consistent with the guidelines.³³

In its analysis of awards under the Community Sport Infrastructure (CSI) grants program the ANAO concluded that 61 per cent of grants approved by the minister would not have been approved had projects been funded according to merit.³⁴

In the case of the Female Facilities and Water Safety Stream program, the role of the public service was limited to confirming the identity of recipients and overseeing delivery. The \$150 million over four years announced for the Female Facilities and Water Safety Stream

²⁹ Melville-Rea et al (2021) *Grants with ministerial discretion: distribution analysis*, pp 34-35

³⁰ Melville-Rea et al (2021) *Grants with ministerial discretion: distribution analysis*, p 48

³¹ Twomey (2022) *When is pork barrelling corruption and what can be done to avert it?* p 31

³² Farrell & Elton (2021) *Michael McCormack and secret group of ministers funded projects against department recommendations*, <https://www.abc.net.au/news/2021-04-06/michael-mccormack-ministers-intervened-bbrf-funding-grants/100049166>

³³ Auditor-General (2022) *Award of funding under the Building Better Regions Fund*, <https://www.anao.gov.au/work/performance-audit/award-funding-under-the-building-better-regions-fund>

³⁴ Melville-Rea et al (2021) *Grants with ministerial discretion: distribution analysis*, p 45

program in March 2019 was almost exhausted by pre-election commitments made before mid-May, and in the absence of any grant eligibility criteria.³⁵

Limited disclosure of ministerial conflict of interest

Ministers who approve grants despite departmental advice to reject them must report this to the Finance Minister, who tables the details once per year.³⁶

In the last parliament, Senator Katy Gallagher introduced a private senator's Bill that would require the details to be tabled within 35 days of the grant approval, and expand the reporting requirements to include grants that are within their own electorates and grants that did not meet any of the relevant selection criteria.³⁷

Failure to document decisions

Twomey identifies that the government has failed, despite Commonwealth guidelines, to document properly, or, on occasion, at all, decisions to overturn departmental recommendations concerning grant applications.³⁸

The ANAO found in its audit of the Safer Communities Fund that:

Funding decisions were not appropriately informed by departmental briefings and, for the majority of decisions, the basis for the decisions was not clearly recorded.³⁹

Recommendations

That deliberation and documentation concerning grant expenditure should ordinarily take place outside of Cabinet and not be shielded by any secrecy classification that would remove it from public scrutiny. Alternative accountability arrangements should be afforded grants affected by commercial in confidence or national security classifications.

That when a minister rejects or approves a grant contrary to departmental advice, or approves a grant in their own electorate, full documentation including the minister's reasons for the decision should be tabled within 35 days of the approval.

³⁵ Twomey (2022) *When is pork barrelling corruption and what can be done to avert it?* pp 30-31

³⁶ Baker (2021) *Ministers going against departmental advice in allocating millions in grants*, <https://www.abc.net.au/news/2021-05-27/federal-government-grants-ministers-dismissing-department-advice/100170278>

³⁷ *Public Governance, Performance and Accountability Amendment (Improved Grants Reporting) Bill 2021* (Cth), https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1311

³⁸ Twomey (2022) *When is pork barrelling corruption and what can be done to avert it?* pp 31-32

³⁹ ANAO (2022) *Award of funding under the Safer Communities Fund*, <https://www.anao.gov.au/work/performance-audit/award-funding-under-the-safer-communities-fund>

That full documentation on grant decisions should be recorded contemporaneously so that their degree of compliance with relevant guidelines and legislative requirements can be demonstrated.

LACK OF DETERRENCE AND REMEDIES

Grants administration scandals have occurred despite the existence of enforceable legal requirements, government guidelines, and ministerial standards or codes of conduct. Media reports and public outrage have exacted some penalties, for example when former Sports Minister Bridget McKenzie lost her cabinet position as a result of the ‘sports rorts’ affair.

The establishment of a strong national integrity body should strengthen existing deterrence and accountability arrangements.

Disallowance of grants by Parliament

In the *Democracy Agenda for the 47th Parliament*, the Australia Institute proposed a Senate Standing Committee for the Scrutiny of Grants, modelled on the successful, non-partisan Senate Standing Committee for the Scrutiny of Delegated Legislation. The committee could analyse grants for compliance with the Constitution, law, codes and guidelines, and a house of parliament could disallow any grant that did not comply.⁴⁰

Personal liability

The lack of enforceable penalties for politically biased allocation of grant money creates a moral hazard for decision-makers. Penalties, particularly if accompanied by personal liability to make good the harms caused by partial decision-making, might be expected to strengthen deterrence and increase public trust in the executive.

The UK case of *Porter v Magill* is a rare example of public officials being held personally liable to pay large amounts of compensation for a financial loss that resulted from their ‘wilful misconduct’. One of the officials involved, Dame Shirley Porter, owed £42 million, of which she ultimately paid £12.3 million. The statute under which the compensation order was made was subsequently repealed.⁴¹ However, this example shows that it is possible to create legislation that imposes financial penalties on public officials who misuse their office.

⁴⁰ Browne (2022) *Democracy Agenda for the 47th Parliament*,

<https://australiainstitute.org.au/report/democracy-agenda-for-the-47th-parliament-of-australia/>

⁴¹ Twomey (2022) *When is pork barrelling corruption and what can be done to avert it?* pp 17, 45; Millward (2004) *Porter pays £12.3m in homes for votes case*,

<https://www.telegraph.co.uk/news/uknews/1466284/Porter-pays-12.3m-in-homes-for-votes-case.html>

Recommendations

That a strong national integrity commission be established without delay, both as a deterrent and an accountability mechanism.

Consideration could also be given to the following options:

- Making ministers personally liable for damage caused by bad faith decisions on grant applications.
- Establishing a Senate Committee for the Scrutiny of Grants, modelled on the Senate scrutiny committees, with the power to recommend disallowance of a proposed grant by a house of parliament.
- Establishing an appeal mechanism so that aggrieved applicants can have access to merits-based reconsideration by a body like the Administrative Appeals Tribunal (AAT), or by a special purpose ombudsman, before funds are distributed.
- Limiting the role of ministers in grant funding to the development of policy and eligibility guidelines for national programs with senior departmental officials given the responsibility of impartial assessment of applications and distribution of funds.

Conclusion

The administration of discretionary grants by the Commonwealth has been prey to significant problems. Australia Institute research last year found that the distribution of funds between 2013 and 2021 showed a marked skew towards Coalition seats at the expense of Labor seats in particular.

With the ICAC finding that pork barrelling can, in some circumstances, constitute corrupt conduct, the case for reform of the grants administration process is increasingly pressing. To address the unfair and ineffective distribution of funds, guidelines and the *PGPA Act* should require grants to be distributed in an open and merits-based manner, in accordance with the aims of the program under which they are distributed, and clarify that pork barrelling can constitute corrupt conduct.

To address poor processes, including grants of dubious constitutional validity, guidelines and the *PGPA Act* should require all grants to be valid. The guidelines and Act should clearly specify that they cover grants made as part of election commitments.

The decision-making process for grants is often obscure, sometimes deliberately so. Records are not always made or kept, making it difficult to hold decision-makers to account. Ministers have hidden behind cabinet confidence. Reasons for decisions should be kept, ministers should have to disclose if they overrule departmental advice, and cabinet confidence should not generally be available as a reason for failing to provide information on the grants process.

Currently, there are few remedies available for misconduct in grants making. A strong national integrity commission would help identify and prevent corrupt conduct in this area. Other measures, like personal liability for ministers, parliamentary scrutiny of grants or limiting the role of ministers in allocating grants, could also be considered.