

New politics

Preventing pork-barrelling

Danielle Wood, Kate Griffiths, and Anika Stobart

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Overview

Pork-barrelling – using public money to target certain voters for political gain – is wasteful and undermines trust in governments. But this report shows that pork-barrelling is common in Australia.

In many federal and state government grant programs, significantly more money is allocated to government-held seats. Under the previous federal government, more than twice as much in discretionary grant funding was allocated to government seats, on average, compared to opposition ones. For some state government grant programs it was more than three times as much.

Some programs stood out. The federal Community Development Grants program allocated more than four times more per seat on average to government seats compared to opposition seats. For the NSW Stronger Communities Fund it was almost six times as much.

Marginal seats also receive disproportionate funding under many grant programs. Seven of the 10 federal electorates receiving the most discretionary grant funding are marginal. And headline-grabbing allocation announcements for major grant funds such as the Building Better Regions Fund are conveniently made just before elections.

Political leaders themselves increasingly acknowledge the politicisation of grant programs. Some have publicly rationalised the misuse of funds on the basis that everyone does it.

Pork-barrelling prioritises political interest over the public interest. Poor-quality projects go ahead at the expense of higher-value ones. And the perceived political advantage means ever more grants are rolled out at the expense of more important spending.

But waste isn't the only harm. Pork-barrelling undermines public trust, and risks entrenching power and promoting a corrupt culture. Most Australians say politicians should resign if they engage in pork-barrelling.

Pork-barrelling is not just a fact of life. Program design matters. Ministerial discretion in choosing grant recipients was a common feature across all the grant programs in our analysis with politically skewed allocations. In contrast, we found no evidence of politicised spending for grant programs with guardrails around ministerial discretion.

Australia needs stronger processes and oversight to prevent pork-barrelling.

First, all grants should be allocated through an open, competitive, merit-based process.

Second, ministers should establish grant programs, and define their purpose and selection criteria, but should not be involved in choosing grant recipients.

Third, compliance with grant rules should be overseen by a multi-party standing parliamentary committee. Funding for Auditors-General should also be increased to enable wider and more frequent auditing of grant programs.

Taking the pork off the table would improve the quality of public spending and strengthen our democracy. Alongside the other recommendations in this *New politics* series of reports, it would lay the foundations for a new way of doing politics in Australia that safeguards the public interest over political interests.

Recommendations

Improve the grants process

1. All grants should be allocated through an open, competitive, merit-based assessment process. Expected outcomes and selection criteria should be published, and selection processes documented.
2. Ministers should decide grant programs not grant recipients: the process of shortlisting applicants and selecting grant recipients is an administrative function for the relevant department or agency.
3. If a minister is unhappy with the recommended recipients, the minister can redefine and republish the selection criteria but should not intervene in shortlisting or selection.
4. Any exception to the new process should be reported to the finance minister, who in turn should report to parliament at least quarterly. It should also be published by the relevant department alongside the outcome of the grant round.

Strengthen oversight of public spending

5. A multi-party standing parliamentary committee should oversee compliance with grant rules.
6. Funding for federal and state audit offices should be increased and their budgets should be determined at arms-length from the government of the day.
7. A strong and well-resourced integrity commission should act as a last line of defence in investigating pork-barrelling.

Make grants administration more transparent

8. Federal and state finance departments should publish annual reports covering all grant programs, including compliance with the process outlined here.
9. State and territory governments should publish grant data more consistently, through a portal such as the federal government's GrantConnect.

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1 Pork-barrelling is not 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. But there are thousands of decisions made by ministers and 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 in many cases federal and state governments have subverted these checks and made decisions with an eye to party political interest.

This report highlights concerns about pork-barrelling of government grants. Pork-barrelling wastes money and over time can promote a corrupt culture and undermine trust. It is a long way from public interest decision-making.

1.1 Pork-barrelling is not in the public interest

A core part of our democratic system is that Australians place trust in our elected officials to make decisions on our behalf, including on how public funds are spent. This trust is reinforced by a raft of rules and guidelines to help politicians, political advisers, and public officials make decisions that 'advance the common good of the people of Australia'.¹

1. Department of the Prime Minister and Cabinet (2022, clause 14.2).

Codes of conduct for ministers at both federal and state levels outline the ethical standards required in the job, given their position of privilege and wide discretionary powers.² These codes require ministers to wield their powers in the public interest.³ Inquiries in the UK and Australia have also attempted to define the boundaries of acceptable conduct for people in public office.⁴

Yet, despite these rules and norms, federal and state governments on both sides of politics have sometimes spent public money to meet partisan goals rather than in the public interest.⁵ Pork-barrelling is perhaps the starkest example of this (see Box 1).

1.1.1 Pork-barrelling is grey corruption

Misuse of public office for political gain falls within many definitions of corruption,⁶ but it is not directly covered by criminal statutes

2. 'The exercise of ministerial discretion is subject to the rule of law, which ensures that it must accord with public trust and accountability principles': ICAC NSW (2022).
3. For example: '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': Department of the Prime Minister and Cabinet (2022).
4. Committee on Standards in Public Life (1995) and Accountability Round Table (2015); see Wood et al (2022) for a summary.
5. Connolly (2020).
6. Transparency International Australia defines corruption as 'abuse of entrusted power for private or political gain': Brown et al (2020). Speck and Fontana (2011) also support the inclusion of 'political gain' in definitions of corruption. In NSW, pork-barrelling may amount to corrupt conduct under the *Independent Commission Against Corruption Act 1988* where a public official obtains a personal benefit from exercising duties in relation to public money or where there is a serious breach of public trust: ICAC NSW (2020). See Twomey (2022) for a fuller discussion.

(see Box 2). Despite this, a recent report by the NSW Independent Commission Against Corruption concluded that pork-barrelling ‘can, under certain circumstances, involve serious breaches of public trust and conduct that amounts to corrupt conduct’.⁷

Proving misuse of public office, including pork-barrelling, typically hinges on intentions, which can be difficult to prove (especially when decision-making is not well documented). For this reason, we refer to pork-barrelling and other forms of misuse of public office for political gain as ‘grey corruption’.⁸

But while pork-barrelling might be legally ‘grey’, it is clearly not consistent with public-interest decision-making. And it is not how public money is supposed to be spent.⁹ As Simon Longstaff, Executive Director of The Ethics Centre, puts it: ‘The practice of pork-barrelling. . . contravenes the core requirements of democracy and as such should be deemed an illicit form of conduct that corrupts the democratic process.’¹⁰

1.1.2 Pork-barrelling is a waste of money

Politicising public money is wasteful because it offers poor value for money and means there is less money and time to spend on higher-value projects or purposes. Pork-barrelling, by definition, does not use public money where it will have the most public benefit.¹¹

Channelling public money into projects to benefit friends and supporters, or to win votes, means less money for more valuable

Box 1: What is pork-barrelling?

Pork-barrelling is the use of public resources to target certain voters for partisan purposes^a – for example spending public money in particular electorates to try to win more votes (rather than spending public money where it is most needed or most effective).

Some governments engage in pork-barrelling to ‘reward’ voters in safe seats and ‘buy votes’ in marginal seats.^b

Pork-barrelling may also be used to reward allies and galvanise support within a political party.

Public resources can be directed through grant programs, infrastructure projects, or other government decisions. This report focuses on pork-barrelling via grant programs, for reasons outlined in Section 1.2.

a. Connolly (2020).

b. Connolly (2020); and Hoare (1992).

7. ICAC NSW (2022, p. 12).

8. See Prenzler (2021).

9. For example, under the *Public Governance, Performance, and Accountability Act 2013*, ‘proper’ use of public resources means efficient, effective, economical, and ethical. See Chapter 3. See also ICAC NSW (2020, p. 7).

10. Longstaff (2022).

11. Daley (2021, p. 55).

projects, and less for core spending such as health and education which can improve the lives of all Australians and the productive capacity of the economy.¹²

Inefficiencies arise in a federal system when governments make decisions outside their constitutional responsibility – as they often do when pork-barrelling.¹³ It can create duplication, overlap, and ambiguity in accountability.¹⁴

1.1.3 Pork-barrelling risks entrenching power and skewing elections

Pork-barrelling creates an uneven playing field in elections – between incumbent governments (who hold the purse strings) and oppositions, as well as between major parties (who have the potential to form government) and minor parties and independents (who do not).

It is unclear whether pork-barrelling actually delivers any political gain.¹⁵ But the perception of political advantage creates a seemingly irresistible temptation to roll out ever more grants.

12. Wood (2022).

13. For example, the federal government is not best placed to be making decisions to build female changing facilities, commuter carparks, or breeding ponds for turtles – these are spending domains of state and local governments that are closer to local citizens and therefore better placed to respond to their needs. Some pork-barrelling is probably unconstitutional: see Chapter 3 and Twomey (2021a).

14. In a well-functioning federal system of government, the responsibility of a function should be held by the lowest level of government that can perform it well: Twomey (2008), Access Economics (2006, pp. 13–15), Ratnapala (2015) and OECD (2022, p. 31).

15. Analysis of 2018-2019 Australian sports grants found that although funding was disproportionately allocated to marginal seats, this had no impact on the 2019 federal election: Leigh and McAllister (2021). But the evidence is mixed. See Leigh (2008) and Klingensmith (2014).

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:^a

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 five years in prison, but again requires proving intentions.

There is also a common law offence in some states for misconduct in public office, which can include pork-barrelling, but hinges on both the intent and the seriousness of the offence.^b

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.^c

- a. Tham (2014): All 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’.
- 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 federal 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 (2018b).

1.1.4 Pork-barrelling promotes a corrupt culture

When governments appear to be exercising their powers to favour private or political interests over the public interest it promotes a culture of corruption. Decisions to use public money for political gain contribute to a ‘whatever it takes’ culture that undermines the ethical norms in government and marginalises members who want to do the right thing.

Grey corruption, including pork-barrelling, can have insidious impacts on the economy and society – increasing complexity and uncertainty for business and investment, deterring entrepreneurship, breeding suspicion, and weakening social cohesion.¹⁶ It fundamentally ‘undermines the ethos of democracy’.¹⁷

While Australia is generally high-performing, perceptions of government corruption are worsening. 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).¹⁸

1.1.5 Pork-barrelling undermines trust in government

Pork-barrelling also contributes to an erosion of public trust.¹⁹ Using taxpayers’ money to ‘buy votes’ makes it obvious to citizens that governments are happy to behave unethically when it suits their purposes. The public considers this a serious breach of faith: more than three-quarters of Australians agree politicians should resign if they engage in pork-barrelling.²⁰

16. Wood (2022); Prenzler (2021); and OECD (2015).

17. Longstaff (2022).

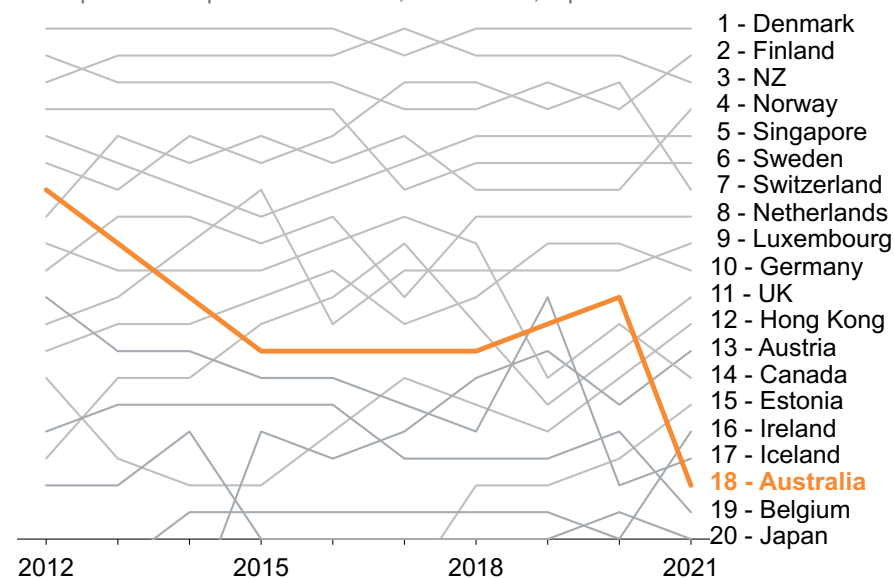
18. Transparency International (2022).

19. Twomey (2021a) states that pork-barrelling ‘undermines the fairness of elections and aids democratic decay by heightening public distrust of politicians and the efficacy of the system of government’.

20. 77 per cent agreed: Briggs (2021).

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 businesspeople, 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.

Source: Transparency International (2022).

This conduct contributes to a cynicism about politicians' behaviour and motives more broadly.

And cynicism is on the rise. Three-quarters of Australians suspect governments make decisions for political gain over the public interest, up from 58 per cent 15 years ago. Over this period there has also been a rise in the proportion of people not satisfied with democracy (Figure 1.2). At the 2022 federal election there was a record vote for minor parties and independents.²¹

Trust matters to the legitimacy of government and its ability to get things done. Baked-in cynicism also makes it harder for governments to pursue difficult reforms²² – people are less likely to be receptive to arguments that they should take some pain for the greater good if they do not trust leaders to follow through in the public interest.

Strong public ethics and norms among our elected leaders are the best way to address these concerns. But recent attempts by governments to normalise pork-barrelling (Section 2.2) show that Australia cannot rely exclusively on a culture of good behaviour.²³ It is therefore necessary to codify these expectations and to introduce safeguards to support good government.

1.2 Why this report focuses on grant programs

This report focuses on the most prevalent type of pork-barrelling – the use of grant programs for partisan purposes.²⁴

21. The minor-party vote is often a protest vote (see Wood et al (2018a)), but many minor parties and independents also stood at the 2022 election on a platform of integrity policies.

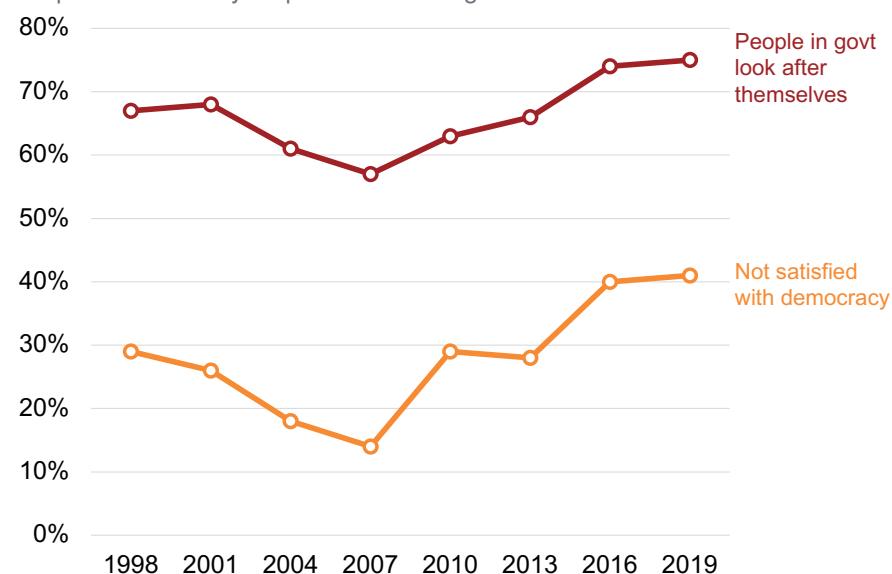
22. Daley (2021).

23. See also Grattan (2022) and Longstaff (2022); and a broader discussion on erosion of principles in the UK: Blick and Hennessy (2019).

24. Connolly (2020). A 'grant' is an arrangement for the provision of financial assistance, from one government to another government or other entity, to help

Figure 1.2: Australians suspect governments make decisions for political gain over the public interest

Proportion of survey respondents who agree



Note: Latest data is from the 2019 federal election.

Source: The Australian Election Study (2022).

Granting money in particular seats to try to ‘buy votes’ is one of the most visible forms of pork-barrelling. Grants processes often allow substantial ministerial discretion, with little transparency around decision-making,²⁵ making them ‘an ideal vehicle for delivering pork’.²⁶

Federal and state governments collectively award tens of billions of dollars via grants each year.²⁷ If even just a small proportion of this is allocated based on political considerations, it represents significant waste.

But there are other ways that governments pork-barrel, including preferring particular seats or states in infrastructure and procurement decisions, and even relocating government agencies.²⁸ When these sorts of decisions are made on political grounds they can also be very costly. These other vehicles for ‘delivering pork’ are beyond the scope of this report. A recent Grattan Institute report recommended ways to eliminate pork-barrelling from transport infrastructure spending.²⁹

Some ‘election commitment’ spending meets the definition of pork-barrelling – it often involves politicians choosing to fund specific projects in specific electorates for partisan purposes. This sort of

achieve one or more of the government’s policy outcomes: Department of Finance (2017, p. 2.3).

25. See Chapter 3. Also Department of Finance (2008).

26. Connolly (2020).

27. At the federal level, \$75 billion in grants have been awarded over the past 4.5 years since reporting commenced via GrantConnect (and this does not include some federal grants that are excluded from reporting requirements, let alone state government grants, which are not centrally reported).

28. One notable example was a decision by the then federal Agriculture Minister, Barnaby Joyce, to move the Australian Pesticides and Veterinary Medicines Authority from Canberra to his electorate of New England. The government’s own cost-benefit analysis found the move would cost \$25.6 million and up to \$193 million in costs to the agriculture sector. The report concluded there was ‘no material economic benefit’ to the move: EY (2016) and Barbour (2016).

29. Terrill (2022).

spending is not a grant program (it is not open to applicants, for example) and should not be dressed up as such. It is not likely to be the best use of public money, but by virtue of being an election commitment, it is at least out in the open. By contrast, grant programs can offer cover for misuse of public funds, and it is this problem that this report tackles.³⁰

Political interests are not the only corrupting influence: public money can also be misused (knowingly or unknowingly) to benefit vested interests, rather than the public interest. This sort of influence is beyond the scope of this report, but is tackled in Grattan’s *Who’s in the room* report.³¹ While our recommendations here focus on preventing pork-barrelling, they would also help to reduce vested-interest influence over public money, and improve value-for-money in grant giving more generally.

1.3 Structure of this report

The remainder of this report focuses on the problem of pork-barrelling and what can be done to prevent politicisation of government grants.

Chapter 2 shows that both federal and state governments engage in pork-barrelling.

Chapter 3 explains why the current rules on pork-barrelling fall short of protecting the public interest.

Chapter 4 makes recommendations to improve decision-making and strengthen oversight of grant spending in Australia.

30. Any election commitments delivered via grants are subject to the same rules as other grants (see Chapter 3), but shoe-horning election commitments into existing grant programs may divert programs away from their core purpose, and new programs designed to fund election commitments run the risk of putting political considerations above proper use of public funds. See Department of Finance (2018).

31. Wood et al (2018b).

This report is the second in Grattan Institute's *New politics* series, examining misuse of public office for political gain. A previous report recommended a better process for public appointments³² and a subsequent report will investigate politicisation of taxpayer-funded advertising.

32. Wood et al (2022).

2 Pork-barrelling is common

Our analysis of government grant programs shows federal and state governments – and both sides of politics – engage in pork-barrelling.

For some programs, pork-barrelling has been blatant. Among these programs, more grant money is received by seats held by the government of the day. And marginal seats targeted by the government also receive disproportionate funding.

Governments have also become more shameless in defending the use of taxpayer's money for political ends.

But politicisation of grants is not inevitable. Program design matters. Grant programs with guardrails around ministerial discretion show no signs of politicisation in their overall spending.

2.1 Federal and state governments use grant programs for political ends

Federal and state governments on both sides of politics engage in pork-barrelling. Pork-barrelling often appears to 'reward' government seats and 'buy votes' in marginal seats.

Analysis by *The Sydney Morning Herald* and *The Age* of 19,000 federal grants allocated under 11 grant programs between 2017 and 2021 found that Coalition electorates received \$1.9 billion while Labor electorates received just \$530 million.³³

Regional grant programs were particularly skewed. For example, under the Building Better Regions Fund, Coalition-held regional seats were

allocated more than four times as much as Labor-held regional seats between 2018 and 2021.³⁴ Of the 15 regional electorates that got funding under the Regional Growth Fund, only one was a Labor seat.

This is not just a problem of one side of politics. When Labor previously held federal office, the Auditor-General found that the federal government approved funding worth \$90.6 million for regional development projects specifically *not* recommended by the relevant panel (40 per cent of total grants awarded under the program).³⁵ Recommended projects that missed out on funding were overwhelmingly in Coalition electorates.³⁶

But even when regional grant programs are excluded, government-held seats tend to receive substantially more funds.

Across seven discretionary grant programs, collectively worth \$1.9 billion, the previous federal government allocated more than twice as much per seat on average to government seats compared to opposition seats (Figure 2.1). For some state government grant programs it was more than three times as much (Figure 2.1).

Some grant programs have greater disparity than others (Figure 2.2). The worst offender in our analysis was the second round of the NSW Stronger Communities Fund. Of the \$252 million in total funding, the NSW Audit Office found that \$242 million went to government seats.³⁷

33. Curtis and Wright (2021a). This accounts for one in five grants allocated over this period. The grants chosen for the analysis were either those that offered a set amount to each electorate (to be allocated by the local MP) or where government ministers decided on the allocation.

34. See Appendix for details.

35. 41 recommended projects collectively worth \$93 million missed out on funding: ANAO (2014).

36. 80 per cent of ministerial decisions to not approve funding recommended by the advisory panel were in Coalition-held electorates: ANAO (ibid).

37. Audit Office of NSW (2022, p. 44).

Based on our estimates, Coalition seats got \$4 million on average, and Labor seats got \$700,000 on average.³⁸

Governments also appear to target marginal electorates. Our analysis of seven federal grant programs (excluding regional programs) from 2017 to 2021 found that marginal government seats were much more likely to receive funding than safe government seats (Figure 2.3).³⁹

Seven out of the 10 electorates with the most discretionary grant funding were marginal seats (Figure 2.4). Overall, only about a third of federal seats are marginal. But again, disparity in funding outcomes varies by grant program. The \$1 billion federal Community Development Grants program funded marginal seats at nearly four times the rate it funded the major parties' safe seats.⁴⁰

2.2 Some politicians are now trying to normalise pork-barrelling

While pork-barrelling itself is not a new practice, there's been a worrying trend towards normalising it. Instead of apologies and resignations, some politicians have ramped up their excuses and are now openly defending pork-barrelling.

Excuses include that it is what ministerial discretion is for, that it is OK because everyone does it, and even that it is what the government was elected to do (see Box 3).

A genuine apology might require ministers to resign and governments to implement reforms that make it harder to pork-barrel next time. But governments have been resisting this – perhaps with short-term political interests in mind, or because they don't understand or respect the rules and norms on spending public money.

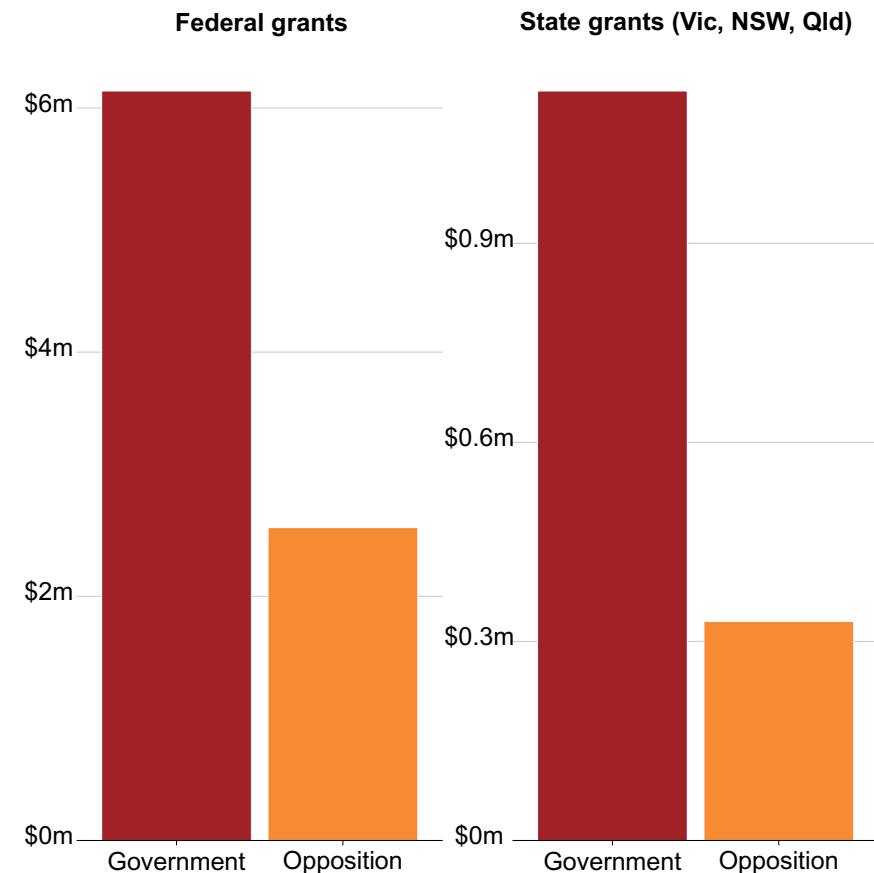
38. See Appendix for details.

39. At the state level, there was no identifiable trend in funding for marginal seats across the programs.

40. Grattan analysis, see Appendix for details.

Figure 2.1: Government seats receive more grant funding than opposition seats

Money awarded per electorate on average across seven federal and four state grant programs



Notes: Independent seats and regional grant programs have been excluded. Grants awarded between 2017 and 2021. The average awarded per electorate is the average over an electoral cycle. For the federal grant programs it is 2017 to 2019, and 2019 to 2021. See Appendix for details.

Source: Grattan analysis collated from publicly reported data, January 2022.

Either way, politicians have drawn attention to the ineffectiveness of Australia's current rules on pork-barrelling (Chapter 3). And they have created a longer-term political problem for themselves by eroding public trust.

2.3 Program design matters: some grant programs are at much more risk of pork-barrelling

Pork-barrelling is not a given. Some grant programs appear explicitly politicised, while others do not (see Figure 2.2).

Our analysis suggests three main risk factors in program design: a high degree of ministerial discretion; closed, non-competitive processes; and grants awarded in the lead up to elections.

A high degree of ministerial discretion is the key enabler

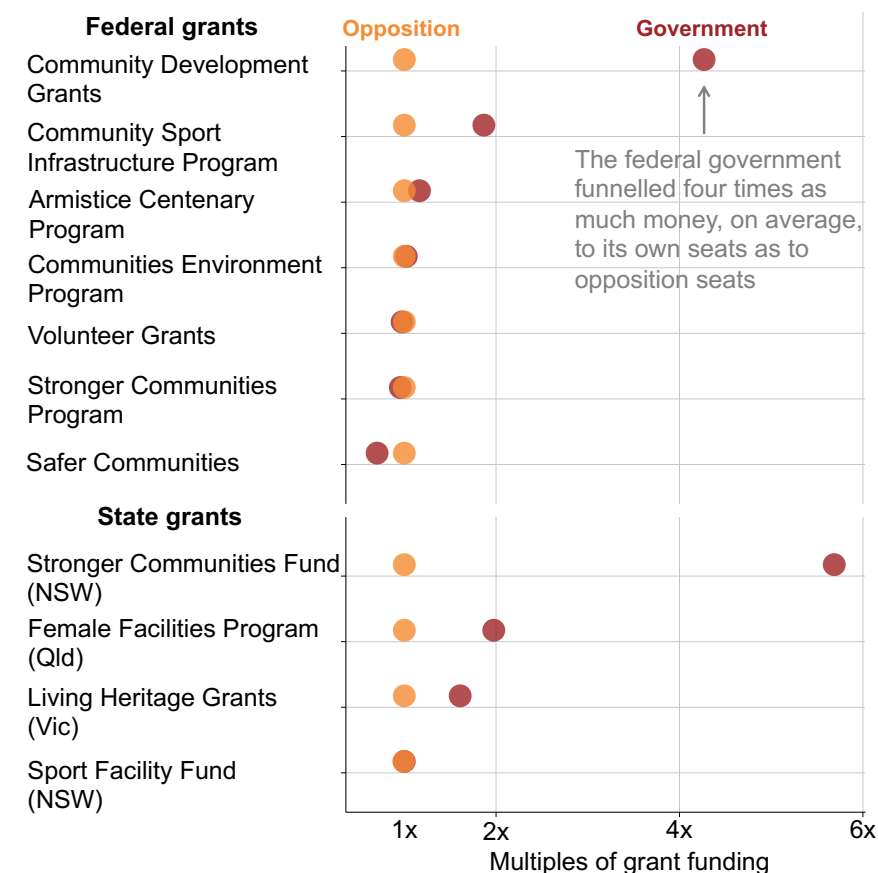
A high degree of ministerial discretion is a consistent feature of grant programs where pork-barrelling occurs. There are many recent examples of federal and state programs where ministers have disregarded advice and over-ruled their departments to award funding for what appears to be political reasons.

In the highest-profile case, the federal Community Sport Infrastructure Program (better known as 'sports rorts'), an Australian National Audit Office audit found that the minister disregarded departmental advice and program guidelines.⁴¹ Government seats received much higher levels of funding under this program (Figure 2.2).

In the \$1.4 billion Building Better Regions Fund, a ministerial panel chose 49 grant recipients that were not recommended by the department. In attempting to justify this intervention, the responsible

Figure 2.2: Some programs are more prone to pork-barrelling

Money awarded per government seat on average, compared to opposition seats on average



Notes: Independent seats and regional grant programs have been excluded. Grants awarded between 2017 and 2021. The average awarded per electorate is the average over an electoral cycle. For the federal grant programs it is 2017 to 2019, and 2019 to 2021. The NSW Stronger Communities Fund covers round two (tied grants round) from 2017-18 to 2018-19. See Appendix for details.

Source: Grattan analysis of data collated from GrantConnect by The Age / Sydney Morning Herald (2021).

41. ANAO (2020).

Box 3: Some politicians now brazenly defend pork-barrelling

'It's not unique to our government' and 'I don't think it would be a surprise to anybody that we throw money at seats to keep them'

– Former NSW Coalition premier Gladys Berejiklian (2021)

'You want to call that pork-barrelling, you want to call that buying votes? It's what the elections are for'

– Former NSW Coalition deputy premier John Barilaro on bushfire recovery grants (2021)

'The Australian people had their chance and voted the Government back in at the last election'

– Former federal Coalition minister (now shadow minister) Simon Birmingham on the Commuter Car Park fund (2021)

'I simply made sure that the successful applicants were aligned to the Government's policy intent'

– Queensland Labor Minister Mick de Brenni on the Female Facilities Program (2020)

'I make no apology for exercising ministerial discretion. To do so was my prerogative, but more importantly, it was my responsibility'

– Former federal Coalition minister (now shadow minister) Bridget McKenzie on the Community Sport Infrastructure program (2020)

'A feature of Australian democracy'

– WA Labor Premier Mark McGowan defending mock cheques with the names and faces of Labor MPs who handed out taxpayers' money under the Local Projects, Local Jobs program (2018)

'Government ministers have – and must have – the discretion to step outside bureaucratic recommendations. . . based on their political views, or on their compassion, and it might not subscribe to the purity of a business case'

– Former Coalition deputy prime minister (now shadow minister) Barnaby Joyce in an opinion article opposing a federal anti-corruption commission (2022).

minister tabled vague reasons,⁴² followed by eight pages of blacked-out documents.

In the Queensland Female Facilities Program in 2018, the minister made 32 changes to department recommendations,⁴³ which resulted in an increased share of grants awarded to Labor government electorates (from 44 per cent to 68 per cent) largely at the expense of opposition electorates.⁴⁴

In the federal \$660 million Commuter Car Park scheme, the Prime Minister's department shut down a proposal from Treasury to run a competitive, merit-based process.⁴⁵ Instead, the recipients were largely chosen by agreement between ministers and the Prime Minister, and the decisions appear to have been politically driven. For example, the Labor-held seat of Isaacs got no funding, while the two Coalition-held seats on either side, and along the same railway line, got funding for nine car parks between them.⁴⁶ Overall, 77 per cent of successful sites were in government-held electorates.⁴⁷

42. The ministerial panel differed from the department's recommendations because of the 'regional impact' of projects; because projects had been 'significantly impacted by drought and demonstrated value for the broader region'; and because of 'considerations made for spread of projects and funding across projects': letter from minister Michael McCormack to minister Mathias Cormann, 16 August 2020, tabled in the Senate under Senate Order 23E.

43. The minister approved 18 eligible grants that were not recommended by the department and rejected 14 eligible grants that the department had recommended. There was no documentation of the reasons for the changes. But a month after the federal 'sports rorts' were revealed, the department changed its processes for allocating sports grants. Decisions are now made by the department director-general and only noted by the minister: Queensland Audit Office (2020).

44. Liberal National Party electorates' share of awarded grants decreased from 43 per cent to 28 per cent: Queensland Audit Office (ibid).

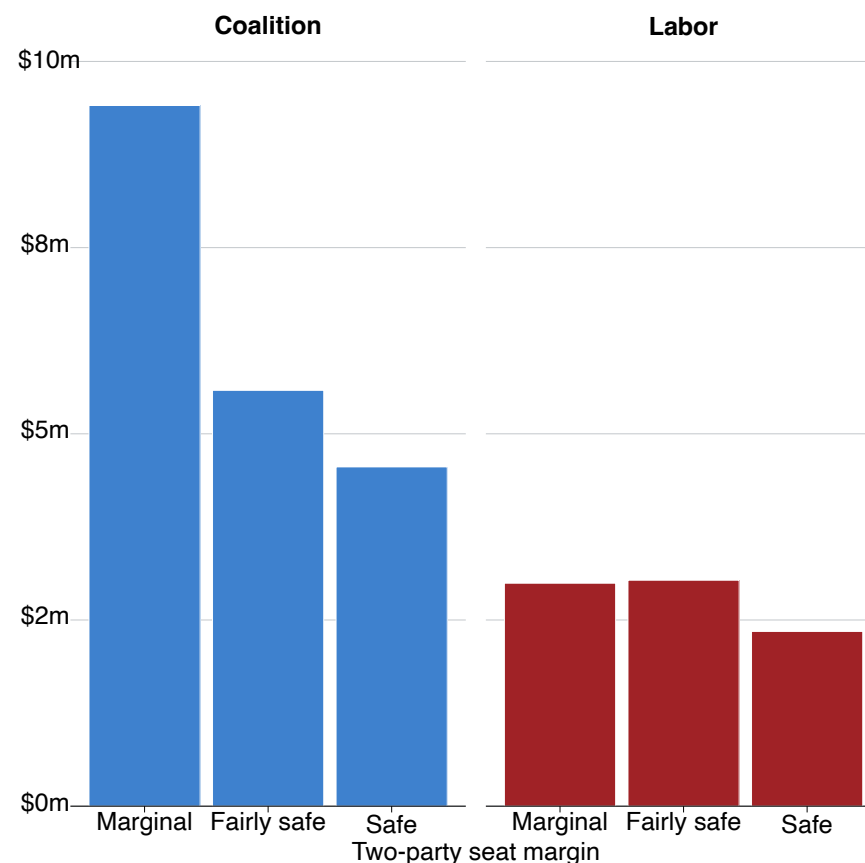
45. The Age (2021).

46. Ibid.

47. ANAO (2021a); and Terrill (2022).

Figure 2.3: Marginal government seats received more funding

Money awarded per federal electorate on average across seven discretionary grant programs



Notes: 'Marginal' refers to a margin of less than 6 per cent. 'Fairly safe' refers to 6-to-10 per cent. Independent seats were assigned to the major party with the closest margin. The average awarded per electorate is the average over an electoral cycle: 2017 to 2019, and 2019 to 2021. This is because seats and margins changed at the 2019 election. This analysis does not include regional grant programs. See Appendix for details.

Source: Grattan analysis of data collated from GrantConnect by The Age / Sydney Morning Herald (2021).

Checks on ministerial discretion have been imposed successfully in some programs. For example, in the NSW Greater Cities and Regional Sport Facility Fund, the minister retained the power to make the final decision, but a panel assessed applications against program criteria and made recommendations to the minister. An independent probity advisor oversaw this process, including attending panel meetings.⁴⁸ The funding decisions show no evidence of systematic politicisation (Figure 2.2).

Closed, non-competitive grants are at higher risk of politicisation

Closed and non-competitive grant processes make it easier for ministers to politicise funding. By their very nature such processes lack transparency. They often allow ministers to choose the pool of candidate projects,⁴⁹ as well as allowing for greater discretion in the final selection. When processes are run behind closed doors, it makes it easier for ministers to choose projects without considering merit, and sometimes without justification.

The two programs in Figure 2.2 with the highest levels of funding for government seats compared to opposition seats were closed, non-competitive programs. Under the \$1 billion federal Community Development Grants program, ministers wrote to organisations confirming funding even before the department had assessed applications.⁵⁰ Under the \$250 million NSW Stronger Communities Fund, the NSW Auditor-General found that ministers' selections lacked integrity, and that ministers provided no basis for decisions.⁵¹

48. NSW Office of Sport (2021a).

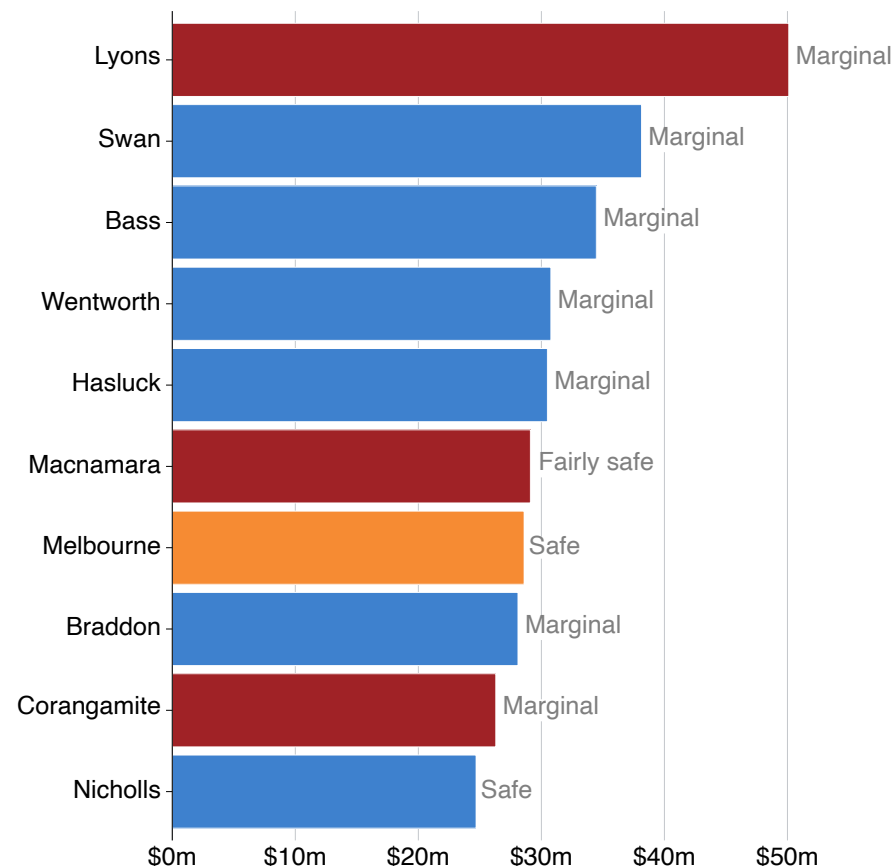
49. Under these programs, grant recipients are invited to make applications, rather than programs being open to anyone eligible, and applicants are not assessed against each other.

50. ANAO (2018).

51. Audit Office of NSW (2022).

Figure 2.4: Seven of the top 10 federal electorates with the most discretionary grant funding were marginal seats

Total funding awarded per electorate across seven federal discretionary grant programs, top 10 electorates



Notes: Grants awarded between 2019 and 2021. 'Marginal' refers to a margin of less than 6 per cent. 'Fairly safe' refers to 6-to-10 per cent. This analysis does not include regional grant programs. See Appendix for details.

Source: Grattan analysis of data collated from GrantConnect by The Age / Sydney Morning Herald (2021).

Stage one of the NSW Bushfire Local Economic Recovery Fund was also closed and non-competitive. A parliamentary inquiry found that the allocation of \$108 million ‘was politically driven, based on changing and opaque criteria, without clear approval processes, and without any formal public notification process’. Several communities in opposition electorates hit hard by fire missed out on stage one funding.⁵²

In the case of the federal Safer Communities program, when the process changed the funding became less politicised. The first funding round was closed and non-competitive, with eligibility restricted to specific organisations to fund election commitments.⁵³ As a result, most of the funding went to government or marginal electorates in that round.⁵⁴ But most subsequent funding rounds have been open and competitive, leading to a more equal distribution of funds overall (Figure 2.2).

Some closed, non-competitive programs have other design features that reduce the opportunity for politicisation. For example, the Communities Environment Program and the Volunteer Grants resulted in federal government and opposition seats getting similar funding (see Figure 2.2).⁵⁵ Under these programs, all federal electorates were eligible for the same amount of funding.

Spending before elections is more likely to be politicised

The lead-up to an election is a vulnerable time for public money. In the months before an election, ministers make more grant funding promises than usual.

52. Public Accountability Committee NSW (2022).

53. The first round of the program was open to only 71 organisations identified in an appendix: ANAO (2022a, paragraph 2.12).

54. Ibid (paragraph 4.35).

55. Note that when the program was announced, the government was criticised for not providing enough information to enable non-government MPs to advertise in their electorates: Hasham (2019).

For example, almost all grants under the Building Better Regions Fund in 2018 and 2019 were approved just before key federal elections – Super Saturday in 2018 (which involved five by-elections following the dual citizenship crisis) and then the general election in 2019 (Figure 2.5). And almost three-quarters of funding from the Regional Growth Fund was approved in the month before the 2019 federal election was called (Figure 2.5).

The \$150 million Female Facilities and Water Safety Stream program was announced just two months before the 2019 federal election. The program did not accept applications and all projects were directly selected as election commitments, with funding predominantly going to government and marginal seats.⁵⁶

In a similar vein, WA Labor opposition candidates made local election commitments under a scheme Labor called ‘Local Projects, Local Jobs’, in the lead up to the 2017 state election.⁵⁷ The scheme was rolled out after Labor won and funding was overwhelmingly skewed towards safe Labor seats and marginal seats that it won at the election.⁵⁸

Using grant programs to fund election commitments is a common practice, but there is a big difference between committing to fund particular *types* of projects and committing funds to specific projects. Funding for pre-committed projects should not be dressed up as a grant program. Federal governments and oppositions in particular should stick to their national role and steer clear of promising funding for specific local projects.⁵⁹

56. Martin (2020).

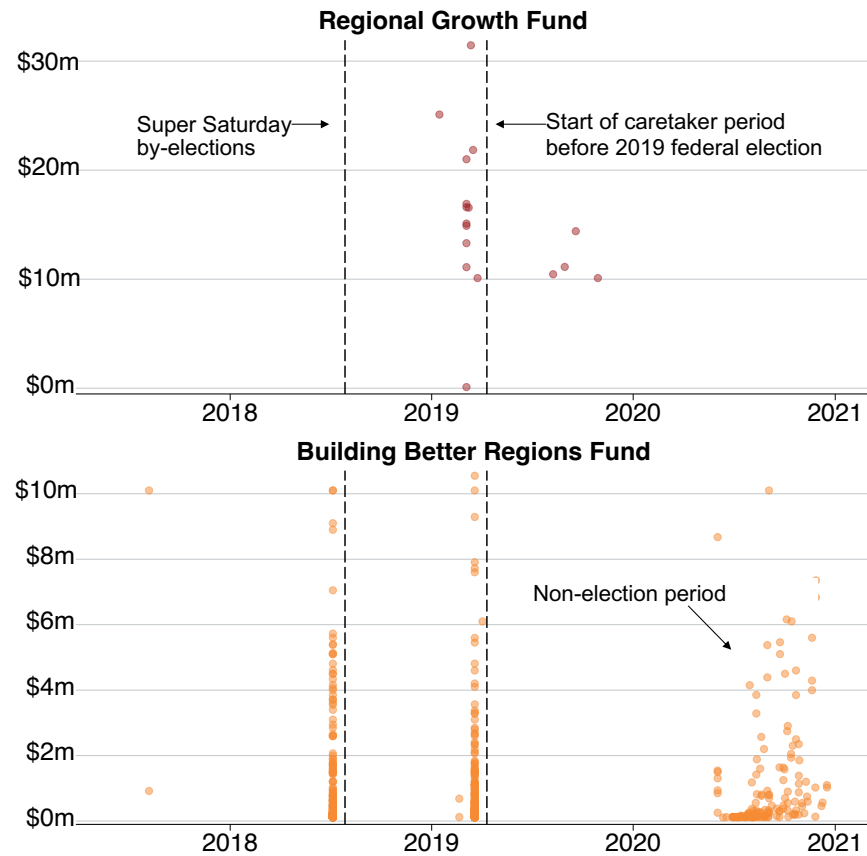
57. WA Standing Committee on Estimates and Financial Operations (2020).

58. Emerson (2018); and Carmody (2018).

59. Terrill (2022).

Figure 2.5: Grants fly out the door in the lead up to federal elections

Money awarded per grant recipient by grant approval date



Notes: See Appendix.

Source: Grattan analysis of data collated from GrantConnect by The Age / Sydney Morning Herald (2021).

3 The current rules don't prevent pork-barrelling

Australia has a wide range of laws, guidelines, and norms, at state and federal levels, that are meant to deter pork-barrelling. But most of these rules are not enforced or are unenforceable.

3.1 Existing checks and balances are insufficient

At a federal level, ministers' spending decisions are regulated by both legislation and policies. While these rules look good on paper, they lack teeth to deter ministers from dipping into public funds for political purposes.

Electoral bribery laws

Electoral bribery is an offence under federal and state electoral acts that can void the election of a candidate.⁶⁰

A person shall not provide or receive, or offer to provide or receive, any kind of benefit with the intention of influencing the vote or candidature of a person at a federal election.⁶¹

While this offence might appear to cover pork-barrelling, there is an exemption for 'a declaration of public policy'. Governments tend to claim that funding for specific projects was within the party's policy platform, and these sorts of claims have rarely been tested in court.⁶²

60. For example, *Commonwealth Electoral Act 1918* (section 326); *NSW Electoral Act 2017 No 66* (section 209); *Victorian Electoral Act 2002* (section 151).

61. *Commonwealth Electoral Act 1918* (section 326).

62. In 1988, after winning a seat at the NSW state election, a Labor MP was found by the NSW Supreme Court to have committed electoral bribery due to pork-barrelling during the election campaign. The offence did not have a public policy exemption at the time. The Labor MP was unseated, but subsequently won the by-election. No other cases of pork-barrelling have been successfully challenged in Australia under electoral bribery laws: see Connolly (2020).

As a result, electoral bribery laws play little to no role in preventing pork-barrelling in Australia.⁶³

Constitutional powers and legal authority for spending

At a federal level, many of the types of grants used for pork-barrelling fall outside the federal government's constitutional spending powers.⁶⁴ Professor of Constitutional Law Anne Twomey states:

Unsurprisingly, the Constitution was not drafted in a way that permitted federal politicians to make grants to resurface a local playing field or build change-rooms at a local sporting club. Such matters fall within the jurisdiction of state and local governments.⁶⁵

The constitutionally valid way for the federal government to fund local projects is through making grants to state governments,⁶⁶ but of course this means relinquishing the local credit.

Even when grant decisions lack a constitutional basis, it is unlikely these decisions would be struck down because those that received the grants are unlikely to challenge them, and other parties lack standing to challenge.⁶⁷ Professor Twomey refers to this as 'breaching the Constitution because we are confident we can get away with it'.⁶⁸

63. Although Orr argues the obvious resemblance of pork-barrelling to electoral bribery remains powerful as a rhetorical device even if it's not a formal legal offence: Orr (2003).

64. The landmark High Court 'School Chaplains' cases found that the Commonwealth requires the authority under a constitutional head of power to spend money: *Williams v Commonwealth* (2012) 248 CLR 156; and *Williams v Commonwealth* (No 2) (2014) 252 CLR 416; and Twomey (2021a).

65. Ibid.

66. Twomey (2021b).

67. Twomey (2021a).

68. Twomey (2021b).

In addition to the question of constitutional validity, there must also be legal authority to spend.

In an audit of the federal Community Sport Infrastructure Program, handed down in 2020, the Auditor-General found that the minister, the Nationals' Bridget McKenzie, did not have a clear legal authority to make grant decisions under the program.⁶⁹ The government subsequently claimed to a Senate Select Committee that it had legal advice that supported the legal authority of the minister, but was not prepared to table the advice in parliament. Other legal experts also provided evidence that the minister lacked legal authority to make the decisions.⁷⁰ Even so, there were no legal consequences, and while the minister in question ultimately resigned, it was for other reasons,⁷¹ and she returned to cabinet 17 months later.

Financial legislation

All public expenditure must also comply with financial legislation.

At the federal level, there is legislation that defines appropriate use of public funds. The *Public Governance and Performance Accountability Act 2013* requires that ministers must not approve expenditure unless the minister is satisfied that expenditure would be 'a proper use of relevant money'.⁷² Proper is defined as the 'efficient, effective, economical, and ethical' use or management of public resources.⁷³

69. Sport Australia, as a corporate Commonwealth entity, did not need ministerial input to decide the awarding of the grants: ANAO (2020, p. 8).

70. Joint Committee of Public Accounts and Audit (2020a).

71. An investigation by the Department of Prime Minister and Cabinet found that the minister had breached the ministerial standards, not for maladministration, but by failing to disclose membership of a gun club that received a grant under the program: ABC News (2020).

72. *Public Governance and Performance Accountability Act 2013*, section 71(1).

73. *Public Governance and Performance Accountability Act 2013*, section 8. The *Public Governance, Performance and Accountability Rule 2014* and other legislative instruments give effect to the Act.

If a public servant were to breach these rules, they could lose their job and may be subject to further investigations. But there are no penalties under the act for ministers who breach the law.⁷⁴ Pork-barrelling could be subject to judicial review, but only where there is a private plaintiff (with funds to bring the case) who can prove that they were wronged.⁷⁵

At the state level, there is similar legislation defining appropriate use of government resources. For example, in NSW the *Government Sector Finance Act 2018* expects (but does not *require*) 'the efficient, effective, and economical use and management of government resources'.⁷⁶

Federal grant rules

The Commonwealth Grants Rules set out a framework for proper use and management of grant programs and for clear decision-making processes.⁷⁷ They were introduced in 2009 after a review of the administration of Australian Government grant programs.⁷⁸

74. *Public Governance and Performance Accountability Act 2013*, sections 13(4), 15, 59, 67, 27, and 30.

75. Connolly (2020): 'The strict legal role of judicial review in the regulation of pork-barrelling is uncertain, but likely limited.' A recent case in the Federal Court was the first to demonstrate that grant decisions can be reviewed under section 71 of the *Public Governance and Performance Accountability Act 2013*: The Environment Centre NT Inc v Minister for Resources and Water (No 2) [2021] FCA 1635.

76. This is guidance for public servants, rather than a formal legal requirement: *Government Sector Finance Act 2018*, No 55.

77. The Commonwealth Grants Rules and Guidelines are made by the Finance Minister under the *Public Governance, Performance, and Accountability, Act 2013*, section 105C(1): Department of Finance (2017, p. 3) and Connolly (2020). The Department of Finance administers the rules, and there is a whole-of-government suite of templates to implement the guidelines: Department of Finance (2022a) and Department of Finance (2022b).

78. The review was in response to a 'dramatic' increase in grants expenditure over the previous decade 'while the quality of administration waned'. The review was to form part of 'the Rudd Government's agenda to restore transparency and accountability to not just the administration of Commonwealth grants but to public

The rules include several provisions that ought to limit the opportunity for pork-barrelling, for example:

- Ministers must not approve grants without first receiving written advice from officials on the merits of the proposed grant.⁷⁹ The advice must include the merits of the proposed grant relative to the assessment criteria established for the grant scheme. Ministers are also required to record the basis for their approval.⁸⁰
- Ministers must write to the finance minister if they approve a grant in their own electorate or they approve a grant that was rejected by the relevant officials.⁸¹ Until 2020, this reporting was not made public, but a Senate Order now requires the finance minister to table all reports and correspondence received under the rules.⁸²

Although these rules have been in place for more than a decade, the Auditor-General continues to find ministers and public officials failing to adhere to the rules (see Figure 3.1). Ultimately though there are little to no consequences for ministers who breach the rules.⁸³

Open and competitive grant processes reduce the opportunity for ministers to politicise spending (Chapter 2).⁸⁴ The grant rules encourage but don't require this.⁸⁵ And again the rules appear to be

expenditure more broadly': Parliament of Australia (2009) and Department of Finance and Deregulation (2009).

79. Department of Finance (2017, paragraphs 4.6 and 4.10).

80. Ibid (paragraph 4.6).

81. Ibid (paragraphs 4.11 and 4.12).

82. Parliament of Australia (2022); and Finance and Public Administration Legislation Committee (2021).

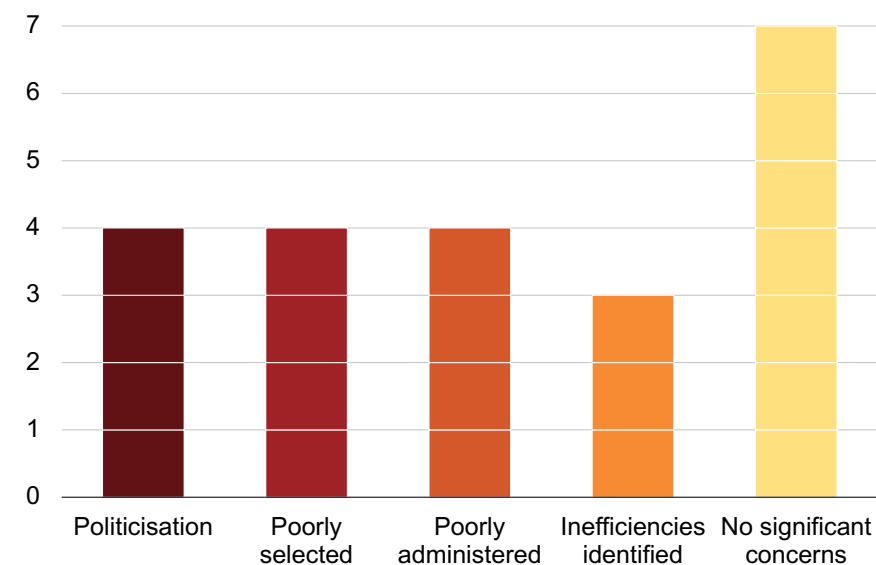
83. Ng (2021).

84. 'Competitive, merit-based selection processes constrain ministerial discretion and reduce the opportunity of partisan purposes to influence the selection process': Connolly (2020).

85. 'Officials should choose methods that will promote open, transparent, and equitable access to grants' (8.5); 'Competitive, merit-based selection processes

Figure 3.1: Auditor-General reports repeatedly identify political and process failings in grants administration

Number of ANAO reports by key findings, 2015-16 to 2021-22



Source: Grattan analysis of all Australian National Audit Office (ANAO) reports on grants and grant programs since 2015-16.

ineffective – federal government grants are rarely open and competitive (Figure 3.2).

State grant rules

The regulation of grants at a state level is patchy. Most states lack a whole-of-government set of rules for grant programs (or they don't publish them).⁸⁶ Some grant programs are directly covered by their own legislation or regulation, while others are subject to cabinet, ministerial, or administrative discretion.

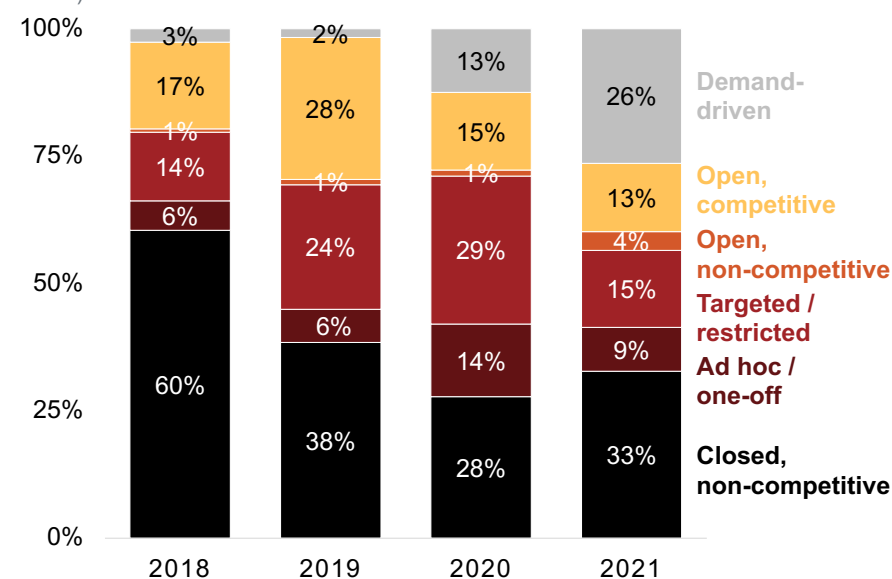
In NSW and Queensland, compliance with whole-of-government grant rules is (or will soon be) a legislative requirement.⁸⁷ But the rules themselves still allow a lot of discretion in the process⁸⁸ and external legal challenges remain unlikely.⁸⁹ This means that it is still largely up to the government of the day to uphold its own rules and principles.

can achieve better outcomes and value with relevant money' (11.5): Department of Finance (2017).

86. Victoria publishes 'investment principles for discretionary grants', and South Australia publishes guidelines for specific grant programs, but neither publish a whole-of-government set of rules. Tasmania publishes a best-practice guide only: Tasmania Department of Treasury and Finance (2013). Western Australia publishes a series of principles rather than firm rules in its Grants Administration Guidelines: Government of Western Australia (2022).
87. NSW is in the process of updating its grants rules after a recent review, and the government has agreed to make compliance a legislative requirement, binding for officials, ministers, and ministerial staff: NSW Department of Premier and Cabinet and NSW Productivity Commission (2022) and Queensland Treasury (2020), legislated under the *Financial and Performance Management Standard 2019*.
88. For example, while open and competitive processes are encouraged, they are not required. But both states ask officials to document their reasons if they choose 'a method other than a competitive, merit-based selection process'.
89. Although both states have anti-corruption commissions that could investigate. See Twomey (2022).

Figure 3.2: Open and competitive grants are rare

Proportion of federal grants awarded according to selection process (by \$ value)



Note: Percentages do not always add to 100 due to rounding.

Source: GrantConnect (2022).

The NSW government's *Grants Administration Guide* is being updated as part of a 2022 review.⁹⁰ The new guide overlaps substantially with the Commonwealth Grants Rules but includes stronger transparency requirements.⁹¹

The Queensland government publishes a *Financial Accountability Handbook*, including a section on grants management, which states that assessment of grant applications 'must be transparent and free from political bias'.⁹²

But a recurrent theme across federal and state rules is that the varied nature and scale of government grants makes a consistent set of requirements challenging, so many simply rest on unenforceable principles.⁹³

Ministerial Standards

In theory, Ministerial Standards should provide the 'teeth' required to prevent misuse of public money.

The federal Ministerial Standards require that ministers exercise their powers lawfully. This suggests that breaches of financial law, and of

Constitutional spending powers, ought to be penalised under these standards. In particular:

Ministers must ensure that they act with integrity – that is, through the lawful and disinterested exercise of the statutory and other powers available to their office, appropriate use of the resources available to their office for public purposes, in a manner which is appropriate to the responsibilities of the Minister.⁹⁴

At state level, ministers are subject to similar expectations, and some state codes go further.⁹⁵

But while pork-barrelling should constitute a breach of the code (for several reasons), enforcement is at the discretion of the prime minister or premier.⁹⁶ This means that political considerations ultimately feed into whether codes are upheld and render them ineffective in deterring pork-barrelling.

Sometimes public outrage, fuelled by media interest, generates enough pressure for a prime minister or premier to act. But media coverage is inconsistent, and this is an area where norms have been allowed to slide. The very different consequences for two ministers, three decades apart, who used sports grants as a vehicle for pork-barrelling shows how far political norms have shifted in recent decades (see Box 4). Yet public concern remains high (see Section 1.1.5).

90. NSW Department of Premier and Cabinet and NSW Productivity Commission (2022).

91. For example, 'officials must ensure all new grants have published guidelines that: include the purpose of the grant, clear selection criteria, and details of the application and assessment process; and are approved by the responsible minister(s) or delegate': NSW Department of Premier and Cabinet and NSW Productivity Commission (ibid, Recommendation 6).

92. Queensland Treasury (2020), legislated under the *Financial and Performance Management Standard 2019*.

93. Western Australia's Grants Administration Guidelines: Government of Western Australia (2022) include some strong principles, such as 'identification and selection of recipients should be clear, transparent, and capable of withstanding public scrutiny, with potential recipients selected on merit against established criteria'. But the guidelines themselves are described as only 'high-level principles for agencies to consider when undertaking grant administration'.

94. Department of the Prime Minister and Cabinet (2022, clause 1.3).

95. For example, under the Queensland code: 'Ministers must ensure that there is a clear delineation between the activities of the Executive Government under their portfolio and that of their political party.' Queensland Department of the Premier and Cabinet (2019).

96. For example, Department of the Prime Minister and Cabinet (2022, clause 15.1) and Queensland Department of the Premier and Cabinet (2019).

3.2 Many existing rules are unenforceable

The current rules look good on paper, but are ineffective in practice because they are largely unenforceable.⁹⁷ There are no consistent sanctions and rarely even an acknowledgment of wrongdoing.⁹⁸

At the federal level, the buck stops with the prime minister, which means the final decision on whether there are consequences for pork-barrelling rests with a politician.

At state level, if the premier fails to take action, an anti-corruption body might investigate – but probably only if the ‘offence’ is seen as a systemic risk, and even then, these investigations can take years.

Many in politics would argue that the final decision ultimately rests with the electorate, but an election once every three or four years is a very blunt mechanism for voters to set their expectations on proper conduct of government.⁹⁹

3.3 Parliamentary oversight has been eroded over time

Under a Westminster-style system of government, it is the parliament that approves spending by government.¹⁰⁰

But legislation can be delegated to allow a government to change laws without parliament having a direct say, so long as those laws link back to a main piece of enabling legislation.¹⁰¹

97. Twomey (2021b).

98. Connolly (2020).

99. Rarely do people vote on just one issue, and rarely do they have full information at the time of voting.

100. Parliament of Australia (2018a) and Parliament of Australia (2018b). The High Court, in the *Pape* and *Williams* cases, reinforced parliament’s responsibility for spending by requiring parliamentary authorisation.

101. Parliament of Australia (2018c).

Box 4: A tale of two sports grants programs

In November 1993, the Auditor-General handed down a report on the Community, Cultural, Recreational, and Sporting Facilities Program, which fell under the responsibility of Labor minister Ros Kelly. The program provided 1,447 grants, totalling \$60.3 million,^a to local government and community organisations for projects such as swimming pools and sports ovals.^b

The Auditor-General found that the minister awarded 66 per cent of the grant money to Labor seats.^c Subsequent analysis found a clear bias in the allocation of grants to government-held marginal electorates rather than disadvantaged groups.^d

Following the Auditor-General report, a parliamentary committee found Kelly’s administration of the program was deficient, and the opposition demanded her resignation. Kelly resigned from the ministry in February 1994 and from parliament 11 months later.

Three decades later, the Auditor-General handed down similarly damning findings on another sports grants program: \$100 million in Community Sport Infrastructure grants were found to have been disproportionately allocated to marginal electorates and more than 40 per cent of funded projects were ineligible.^e

The Coalition minister responsible, Bridget McKenzie, resigned – not for breaching financial legislation, Constitutional powers, or the grant rules, but instead for failing to declare her membership of a shooting club that received one of the grants. She was reinstated to cabinet 17 months later.

a. 1993-94 dollars (equivalent expenditure in 2021 would be \$116 million).

b. Auditor-General (1993).

c. Denmark (2000) and Auditor-General (1993, p. x).

d. Gaunt (1999).

e. ANAO (2020). See also Leigh and McAllister (2021).

There has been a growing reliance on regulation to provide authority for grants spending over the past decade, reducing parliamentary oversight.¹⁰² Legislation passed in 2012 authorised more than 400 grant schemes and allowed future authorisation of grant schemes without parliamentary approval.¹⁰³ In the lead-up to the 2019 federal election almost \$2 billion in grants across 20 programs were allocated via delegated legislation.¹⁰⁴

Delegated legislation gives individual ministers, rather than cabinet and parliament, the power to make funding decisions, and this increases the risk of pork-barrelling.

3.4 Auditors-general play a critical role but are under-resourced

Auditors-general are ‘arguably [Australia’s] most integral deterrent against gross pork-barrelling’.¹⁰⁵

Auditor-general reports on specific grant programs often provide the basis for media and parliamentary scrutiny, which in turn can build pressure on ministers to resign and governments to avoid another scandal. Auditor-general reports also help to identify systemic issues with the administration of grants, and make recommendations to improve the rules.¹⁰⁶

Auditors-general need sufficient powers and resources (including legal resources) to be able to investigate pork-barrelling and other forms of misuse of public money. But they survive on budgets granted by the

government of the day – the very governments whose programs they are set up to monitor.¹⁰⁷

At the federal level, funding for the Australian National Audit Office (ANAO) has been shrinking as a share of government expenditure for most of the past 20 years (Figure 3.3), meaning it has more government spending to monitor, but fewer resources to do it.¹⁰⁸ The ANAO has had to cut back on its performance reporting to fulfil its other responsibilities.¹⁰⁹

Auditor-general expenditure has been shrinking as a share of total government expenditure in several states too, particularly Victoria and Queensland, although it remains higher than at the federal level.¹¹⁰

102. Feik (2021); and Middleton (2020).

103. The *Financial Framework Legislation Amendment Bill (No 3) 2012* gives legislative authority to the executive to spend public money on any grant or program that comes under its (very broad) objectives. This means new grant programs can be authorised by way of an executive act that alters a schedule. See Twomey (2014) for a full discussion.

104. Middleton (2020).

105. Connolly (2020).

106. Ibid.

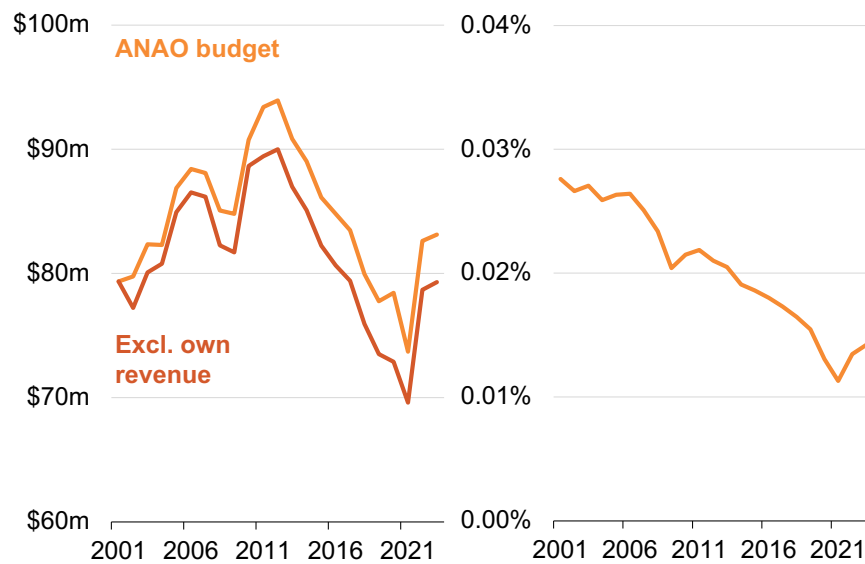
107. Griffiths and Wood (2020).

108. Ibid.

109. Elmas (2020).

110. Brown et al (2020).

Figure 3.3: The Australian National Audit Office's budget has been shrinking for a long time, but was boosted a little in last year's budget
ANAO resourcing, in 2021 dollars (LHS) and the ANAO budget as a share of government expenses (RHS)



Source: Grattan analysis of federal budget papers.

4 A better grants process

Substantive changes to grants processes and oversight are needed to deter politically motivated spending of public money.

Grant programs should be open, competitive, and merit-based. Expected public policy outcomes and linked assessment criteria should be defined and published in advance. The shortlisting process should be documented and made available to parliament if requested. Decision-making authority should be established in advance, have a clear legal basis, and in most cases be delegated to a senior department or agency official.

Ministers should be able to establish grant programs and define the selection criteria but should not be involved in choosing grant recipients.

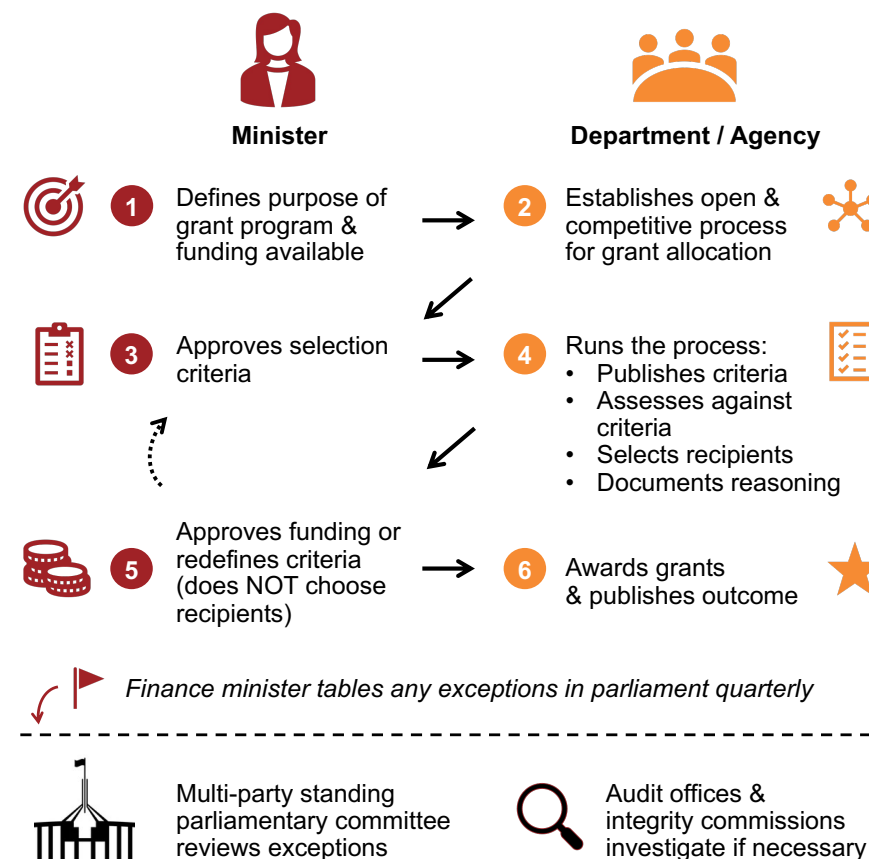
The administration of grants should be made more transparent. Any ministerial intervention in the choice of grant recipients should be reported to the finance minister and parliament.

A multi-party standing parliamentary committee should oversee compliance and interrogate any minister or public official who deviates from the rules. And funding for Auditors-General should be increased to enable wider and more frequent auditing of grant programs.

4.1 Reform the grants process

Australian governments should adopt an open, competitive, and more transparent process for allocating grants, with clear guardrails around ministerial discretion (see Figure 4.1).

Figure 4.1: A better grants process



4.1.1 Make grant programs open and competitive

All grants should be allocated through an open, competitive, merit-based assessment process. Expected public policy outcomes should be clearly defined and linked to the selection criteria. This would ensure taxpayers get better value for money,¹¹¹ and it would reduce the opportunity for pork-barrelling.¹¹²

When grant programs are intended to be targeted, this should be achieved through the design of eligibility and selection criteria rather than through closed and/or non-competitive processes. Departments could still encourage target groups to apply (particularly groups with fewer resources that might otherwise struggle to apply).

Switching to a better process won't happen overnight. New grant programs should be set up with open and competitive processes, while existing programs could transition to a better process for future funding rounds over, say, three years. Departments may also need to allow a longer lead time to set up a new program or funding round.

Administration of grants programs needs to be properly resourced. Public officials may need specific training to manage the process well and ensure all steps are fully documented. Funding for this should form part of any proposal to establish a new grant program or expand an existing one.

Exemptions should be limited and transparent

The Commonwealth Grants Rules recognise that competitive, merit-based selection processes are preferable, but the rules currently allow so much flexibility that closed, non-competitive processes actually

dominate (Figure 3.2).¹¹³ The rules should be amended to instead define limited circumstances in which a non-competitive process may be used.

An exemption for emergencies, such as grants to support communities after natural disasters, is reasonable.

But 'urgency' alone is not a good enough reason to subvert good process. The single highest-value grant allocated by the federal government since grant publishing began¹¹⁴ was a \$488 million grant to the Great Barrier Reef Foundation in 2018.¹¹⁵ The grant was allocated through a non-competitive process, because the department 'did not have time' to explore opportunities for a competitive process.¹¹⁶ The Foundation had just 11 staff at the time, and an annual budget of about \$10 million.¹¹⁷

We do *not* recommend making an exception for election commitments. The new rules should apply to whoever wins government. It is appropriate for politicians and candidates to commit to funding certain types of grants, but they should not determine who receives the grants (in line with the principles outlined in Section 4.1.3).

113. The Commonwealth Grants Rules provide that competitive, merit-based selection processes should be used unless otherwise agreed by a minister or an accountable authority or delegate (for example, a senior public servant). This flexibility should be removed and specific exemptions should be defined instead.

114. Compulsory reporting of grants on GrantConnect commenced from 31 December 2017.

115. The 2018 Budget allocated \$443.3 million to the Great Barrier Reef Foundation (to be paid in 2017-18), but GrantConnect lists the final grant value as \$488 million (as at 12 July 2018): GrantConnect (2018).

116. ANAO (2019, paragraph 9).

117. Chen and Gartry (2018). An ANAO review of this grant found that: 'opportunities to introduce some competition into the grant-giving process were not explored, and reasons for not employing a competitive, merit-based selection process to identify the partner were not documented': ANAO (2019). The grant led to public outcry, including questions about ideological ties between Foundation board members and the Liberal Party: Keane (2018).

111. Department of Finance (2008, p. 42).

112. Connolly (2020, p. 38).

Some types of grants may not be fully competitive (such as demand-driven grants where all applicants who meet the eligibility criteria get the funding), but these grants should still be advertised and assessed transparently against the outcomes they are supposed to deliver.

The use of non-competitive processes should trigger additional reporting to the finance minister and parliament on the reasons for selecting this process (Section 4.1.4).

There may be other circumstances where a competitive grant process isn't suitable, for example, if there are only a very small number of potential applicants. But if this is the case then alternative measures are needed to ensure value for money,¹¹⁸ or other funding mechanisms, such as an open tender, may be more appropriate.¹¹⁹

4.1.2 Publish selection criteria, and document selection processes

Grant programs should be advertised, and selection criteria published in advance, on the relevant department or agency website (or via a central portal such as GrantConnect). If selection criteria change during the granting process, they should be republished.

Grants are a public policy intervention, using taxpayer money, so their intended outcome should be defined and linked to the selection criteria.

Shortlisting processes conducted by the department, agency, or an independent panel should be documented, including scoring of projects and any other reasoning affecting recommendations to the minister. These documents should be readily available if requested by parliament, the Audit Office, or a member of the public under Freedom of Information laws. Neither the minister nor the minister's office should be involved in the shortlisting process.

118. Such as benchmarking and independent evaluation.

119. Department of Finance (2008).

4.1.3 Ministers should decide grant programs but not grant recipients

Ministers establish the purpose of a grant program, the pot of money available, and the selection criteria used to assess applicants. But ministers should not be picking the winners: the process of shortlisting applicants and selecting grant recipients is an administrative function for the relevant department or agency.¹²⁰

Some people have argued that MPs need the power to intervene because they have superior on-the-ground knowledge compared to 'pointy-shoed and faceless bureaucrats'.¹²¹ But the evidence suggests this type of local knowledge only helps elevate projects in government-held seats.

A better way for all MPs to use their local knowledge is to identify potential applicants and projects in their electorate and encourage them to apply.¹²²

Others argue that ministers should be accountable for these decisions, rather than unelected public officials.¹²³ But ministers would still be ultimately accountable for the program, including whether due process was followed.

If a minister is unhappy with the shortlisting process or the recommended recipients, they should redefine and republish the selection

120. This applies to election commitments too: potential funding for a grant program can be announced during an election campaign, but the specific recipients should be determined only after a full and proper process.

121. For example, former Nationals Leader Michael McCormack: Curtis and Wright (2022).

122. See also ICAC NSW (2022, Recommendation 11).

123. Joyce (2022).

criteria, but should not intervene in shortlisting or selection.¹²⁴ The department should then reassess applicants against the new criteria.

Decision-making authority must be clearly defined and should be determined when the grant program is first established, including the legal basis for the authority. Ministers should delegate decision-making authority to the relevant department or agency official (such as the department secretary). Or if a minister chooses to retain decision-making authority, they should sign-off on recommended recipients only.

Queensland's new process for sports grants is a good model (see Box 5).

4.1.4 Give the rules some teeth

The best-practice process outlined above should be written into Part 1 of the Commonwealth Grants Rules (the mandatory requirements). States should also adopt this process in their grants rules, and their grants rules should be legislated.

There should be consequences if the rules are not followed. The grants rules should explicitly trigger immediate reporting to the finance minister, who in turn should report to the relevant parliamentary committee¹²⁵ at least quarterly, if:

- A new grant program is established using a non-competitive process; or

124. This should encourage ministers to be precise about the selection criteria. Vague criteria such as 'other factors' was one of the problems the ANAO identified in its recent audit of the Building Better Regions Fund: ANAO (2022b).

125. See Section 4.2.1.

Box 5: Ministers benched from choosing recipients of Queensland sports grants

In February 2020, in the wake of the federal 'sports rorts' scandal, the Queensland government changed its approval process for sports grants. Previously, the department would make recommendations to the minister, who made the final grant decision. Now, recommendations are made to the director-general who makes the final grant decision, and this is noted by the minister.^a

The Queensland Auditor-General argues that a minister's role in grant programs should be:

'to provide approval to commence a grant program, or give feedback on the design of the grant program, including the establishment of criteria for assessment of the applications. The purpose of the minister's involvement is to ensure the department's operations are aligned with government policy.'^b

The Auditor-General also argues that:

'The minister should rely on departmental processes for the delivery of grant outcomes – similar to good procurement or recruitment practices, which rely on an appointed panel to recommend the successful applicant. The minister may be advised of the outcome of the assessment process and the successful grant applicants, and can provide feedback to the department on the assessment outcomes.'^c

a. Queensland Audit Office (2020).

b. Ibid (p. 5).

c. Ibid (p. 5).

- Ministers intervene in the shortlisting and/or selection of grant recipients.¹²⁶

Reporting via the finance minister reinforces the collective responsibility of the government to ensure all spending is in the public interest and is aligned with the government's fiscal strategy.¹²⁷

Any deviation from the rules should also be published by the relevant department alongside the outcome of the grant round, so that all grant applicants know what occurred. The minister should provide their reasons, including identifying the additional information that they relied upon if they overruled department recommendations.

The Commonwealth Grants Rules should apply to all relevant grants, including grants distributed through states.¹²⁸ For example, the grants rules did not apply to grants made under the Commuter Car Parks program because payments were made to the states.

Codes of conduct for ministers should also be explicit on the limits of ministerial discretion. Ministers should be required to comply with all legislation as well as the grants rules when approving the spending of public money.¹²⁹ This means that a breach of the grants rules would

126. Currently, under the Commonwealth Grants Rules, ministers must write to the finance minister if they approve a grant in their own electorate or they approve a grant that was rejected by the relevant officials (paragraphs 4.11 and 4.12). And a 2020 Senate Order means the finance minister must table this correspondence in parliament (Senate Order 23E). We are recommending an expansion of this requirement so that ministers must report *any* intervention in the shortlisting or selection of grant recipients. This also resolves an existing dispute as to what qualifies as 'rejected', with some claiming that 'not recommended' does not qualify as 'rejected' and therefore does not need to be reported: Finance and Public Administration Legislation Committee (2021).

127. The finance minister is responsible for overseeing grants, and also sits on the expenditure review committee.

128. Ng (2021).

129. Connolly (2020) recommended introducing a requirement in Ministerial Standards that ministers comply with the Commonwealth Grants Rules.

also amount to a clear breach of the standards, and pressure for the responsible minister to lose their position (although the prime minister or premier would still retain the ultimate call).

4.2 Strengthen oversight of public spending

4.2.1 Ensure the parliament can do its job

It is parliament's role to oversee public expenditure, but it needs the information and opportunity to do so.

Regular reporting to parliament on ministerial intervention in grant allocations would give more opportunity for scrutiny of ministerial discretion (Section 4.1.4).

A multi-party standing parliamentary committee should oversee compliance with grants rules and check that any reasons for non-compliance are adequate and published.¹³⁰

Such a committee should be a powerful and public check on conduct of ministers and public officials, because it would require them to answer questions on their compliance with rules and account for any deviations. The committee could also make recommendations to further strengthen grants processes if required.¹³¹

4.2.2 Improve transparency to enable broader oversight

Transparency in grant processes and decision-making enables broader public scrutiny, including by the media and parliament, which in turn

130. As recommended by Twomey (2022). This could be an extension of the Joint Committee of Public Accounts and Audit, or a new committee with similar independence and influence. The committee could censure ministers who fail to meet the required standards.

131. For example, if public servants appear to feel pressured to accommodate political interests, rather than favouring broader public value, the committee could recommend the use of independent probity advisers to supervise adherence to proper process for high-risk grants, as occurs in major procurement.

provides a signal back to governments about what the public wants and expects.

Federal and state finance departments should publish annual reports on grant programs,¹³² with a particular focus on new programs, to enable scrutiny of the legal authority for grant-making, reasons for choosing non-competitive processes, and other risks to effective use of public money.

This additional reporting function would strengthen the role of finance departments as stewards of the grants rules and enable them to take on a more active role in encouraging best practice across the public sector (as they already do for procurement). Stronger rules help, but ultimately public servants still need to implement them, so fostering a culture of best practice in grants administration is critical to preventing pork-barrelling.

To further improve transparency and oversight, there should be consistent reporting of grant decisions, particularly at a state and territory level.

GrantConnect has increased the transparency of Commonwealth grant decisions since its inception on 31 December 2017.¹³³ State governments should follow this model to set up their own central, publicly available, source of grants data.¹³⁴

132. Similar to the ANAO's 2021 information report: ANAO (2021b).

133. GrantConnect is a publicly available central website that publishes data on grant opportunities and awards. Commonwealth departments are required to report information on individual grants within 21 days. The Auditor-General has used the published data to report on the administration of federal government grants as a whole, in addition to its reports on specific grant programs.

134. A 2021 NSW Public Accountability Committee report recommended that the NSW government establish a central grants website similar to GrantConnect which includes details of successful applications and funding allocations: Public Accountability Committee NSW (2022).

Exemptions for ad-hoc grants from the requirement to publish details on GrantConnect should be removed.¹³⁵ Only successful grant applicants are published on GrantConnect. To allow for appropriate oversight, details of unsuccessful applicants should be made available to integrity bodies and parliament on request.¹³⁶

4.2.3 Increase funding for auditors-general

State and federal auditors-general play a crucial role scrutinising the use and management of public resources, including investigating potential misuse of public money and exposing pork-barrelling. But auditors-general need adequate funding and resources to be able to fulfil their functions (Section 3.4).

Funding for federal and state audit offices should be increased, and their budgets in future should be determined at arms-length from the government of the day.¹³⁷

The Auditor-General for Australia is an independent officer of the parliament, reporting directly to parliament. State auditors-general should have this independence too.¹³⁸

4.2.4 Integrity commissions provide a last line of defence

A strong and well-resourced integrity commission is the last line of defence against pork-barrelling.

A better grants process and greater parliamentary oversight should significantly reduce the opportunity and incentive for ministers to

135. This was also recommended by the Joint Committee on Public Accounts and Audit inquiry into the Administration of Government Grants: Joint Committee of Public Accounts and Audit (2020b).

136. Public Accountability Committee NSW (2022).

137. See Brown et al (2020) and Centre for Public Integrity (2021) on funding options.

138. See Coaldrake (2022). Some already do.

engage in pork-barrelling. But if pork-barrelling continues, an integrity commission may choose to investigate, particularly if it looks to be a systemic issue. Audit offices may also refer serious cases of pork-barrelling to the relevant integrity commission for further investigation.

The possibility of investigation may itself be a deterrent to a minister or political party considering engaging in pork-barrelling. Commission investigations can make findings of corrupt conduct, and the Director of Public Prosecutions may bring criminal proceedings (see Box 2). Integrity commissions should also be active in education and prevention efforts, to ensure ministers, political advisers, and public officials understand their responsibilities.

Integrity commissions should be able to advocate for new penalties if required. For example, in a recent paper on pork-barrelling for NSW's ICAC, Professor Anne Twomey suggested that where wilful misconduct occurs, the decision-maker could be required to compensate the public for the consequential loss, or a new offence could be established to specifically penalise misuse of public money.¹³⁹ Both these options would mean that ministers who engaged in pork-barrelling could be held personally responsible by the courts, not just politically responsible by the parliament.

All states already have integrity or anti-corruption commissions, and the new federal government has promised to establish a Commonwealth Integrity Commission this year.¹⁴⁰

The new Commonwealth Integrity Commission must have appropriate powers and adequate funding to be effective.¹⁴¹ It should have a budget of at least \$100 million a year.¹⁴²

139. Twomey (2022).

140. Ng (2022).

141. Wood and Griffiths (2021).

142. Brown et al (2020).

Appendix: How we analysed grant data

A.1 Federal data

We used *The Age / Sydney Morning Herald* dataset,¹⁴³ which was compiled from GrantConnect – a government repository.¹⁴⁴ This dataset contained information on 11 federal grant programs (Figure A.1), made up of 19,000 individual grants.¹⁴⁵

The dataset includes grants approved between 2016-17 and 2021-22.¹⁴⁶ The dataset accounts for one in five grants, and 19 per cent of total grant funding, over that period.

The grants were chosen specifically by The Age/SMH because they were awarded under discretionary grant programs. Each program had the minister or local member invite applicants, or in the case of two regional programs, a ministerial panel decided on the allocation.¹⁴⁷

We linked grant funding to electorates by the grant delivery postcode. Where the delivery postcode was not stated, we used the grant recipient's postcode.¹⁴⁸ Where postcodes covered multiple electorates,

143. Curtis and Wright (2021a).

144. GrantConnect (2022).

145. Note that we combined the Safer Communities Fund with the Safer Streets Fund, because the Safer Streets Fund was a precursor to the Safer Communities Fund. Note also that the Community Sport Infrastructure Program includes the Female Facilities and Water Safety Stream program. See: Curtis and Wright (2021b).

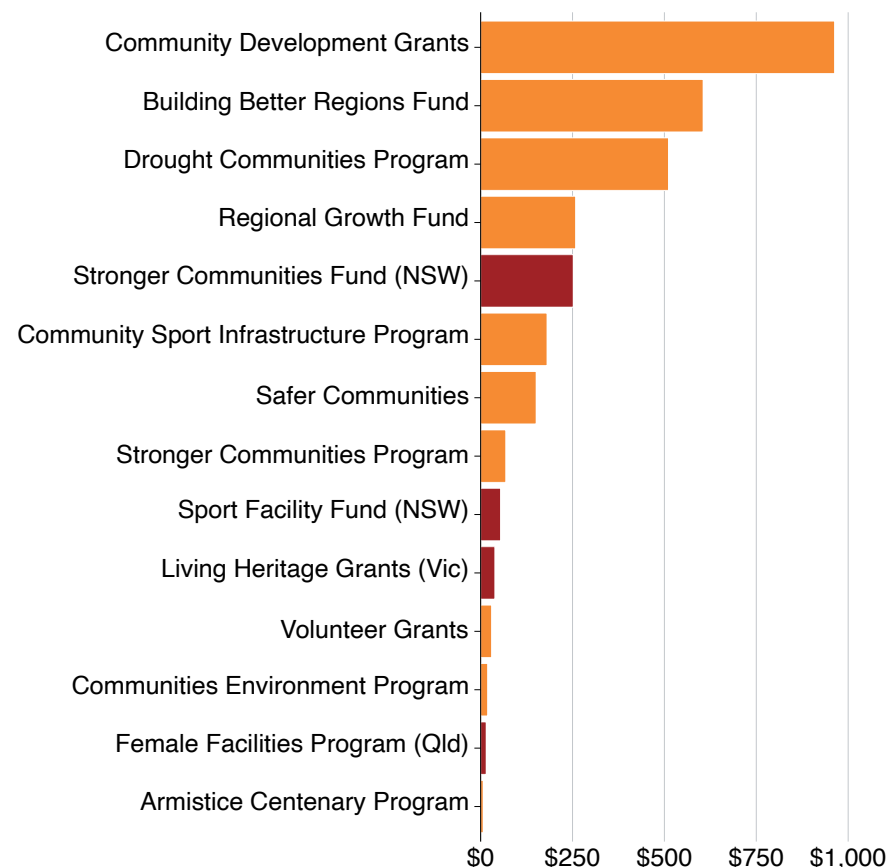
146. The first grant was approved in October 2016, and the last grant was approved in June 2021.

147. Grant programs not included in the analysis were grants for the usual business of government, such as research funding, money for aged care homes, and special grants to keep childcare centres open during COVID-19. See: Curtis and Wright (2021b).

148. Giuliano (2021).

Figure A.1: Discretionary grant programs vary in size

Total grant funding (\$ millions) for each discretionary grant program, both for federal and state programs, 2017 to 2021



Source: Grattan analysis collated from publicly reported data, January 2022.

the specific grant recipients' address was identified, and the correct electorate allocated accordingly.¹⁴⁹

Because the data spanned two federal parliamentary terms, we linked electoral data from the 2016 and 2019 elections to the relevant grants, depending on when they were approved. Some electorates had been renamed, redistributed, or changed hands over this period. We accounted for these factors as best we could,¹⁵⁰ but we did not account for by-elections.

We excluded the three regional grant programs – the Building Better Regions Fund, the Drought Communities Program, and the Regional Growth Fund – from our general analysis, because many regional seats are held by the Coalition, which would distort our findings. These grant programs were analysed separately (see Figure 2.5 for example). We defined 'regional' electorates as those with an area larger than 200 sq km.¹⁵¹

A.1.1 State data

We selected four grant programs across three state governments (see Figure A.1).¹⁵² We linked the grant recipient's address to their relevant state electorate.

149. This was done by *The Age/SMH* when compiling the dataset.

150. There may still be some instances, for example, where grants provided on redistributed electorate boundaries are incorrectly assigned to the neighbouring electorate because redistributions cut through some postcodes.

151. For the 2019 election see Australian Electoral Commission (2019) and for the 2016 election see Australian Electoral Commission (2017).

152. All grants were allocated between 2016-17 and 2021-22. Timing varied by program: NSW Office of Sport (2021b), NSW Office of Sport (2021c), Public Accountability Committee NSW (2022), Queensland Government (2020) and Department of Land, Water, and Planning (2022). The NSW Stronger Communities Fund covered round two (tied grants round) from 2017-18 to 2018-19. The Victorian Living Heritage Grants were allocated between 2016-17 and 2021-22, and include Major Building Project grants.

The NSW Stronger Communities Fund (round 2) was allocated to local councils, but no information was available about the specific location of the grant projects.¹⁵³ Where a council spanned multiple state electorates, we divided the council's funding by the number of electorates it covered. No data were available to account for proportionate geographic coverage.

The Living Heritage Grants spanned two Victorian parliamentary terms, so we broke the grants into two groups to account for seats changing hands, and margins shifting. Grants allocated in 2016-17 and 2017-18 were grouped as pre-2018 election grants, and grants allocated between 2018-19 and 2021-22 were grouped as post-2018 election grants.

A.1.2 Electoral data

We used post-election pendulum data for information about seat margins.¹⁵⁴ Seat margin groupings ('marginal', 'fairly safe', and 'safe') were determined by the Australian Electoral Commission's official classifications.¹⁵⁵ Post-election pendulum data were linked to grant funding provided after the relevant election.

153. Public Accountability Committee NSW (2022).

154. For the 2016 federal election see Green (2016). For the 2019 federal election see Green (2020a). For the 2015 NSW election see Wikipedia (2015). For the 2019 NSW election see Green (2019). For the 2014 Victorian election see The Tally Room (2018). For the 2018 Victorian election see Green (2021). And for the 2017 Queensland election see Green (2020b).

155. Parliamentary Education Office (2022).

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