

Democracy in Australia – An independent appointment system to public offices

Appointments to public offices

Individuals appointed to public office wield significant power and influence; only the best qualified should be appointed. Yet Australia currently lacks formal procedures to ensure appropriate and unbiased appointments to all public offices.

Privileged relationships can lead to inappropriate or politically motivated public office appointments. In late 2005, for example, businessman Robert Gerard resigned from the Reserve Bank board after it was revealed that he had been involved in an eleven year dispute with the Australian Taxation Office over the use of tax havens. Gerard's appointment to the Reserve Bank in 2003 raised questions about the adequacy of the selection process for public office. At the time, then Prime Minister, John Howard said he was reluctant "to introduce yet another layer of regulation and inspection" for appointments, arguing that this would "end up dissuading people from being interested in appointments to public positions" (Wood). This is not, however, the view of other western democracies or the current government. Yet, legislation to ensure merit-based and transparent appointments to public office remains outstanding.

International comparisons

Many other countries have introduced formal measures to improve the quality and political neutrality of appointees to significant public offices. Under the so-called Nolan system in the UK, an independent Commissioner for Public Appointments regulates, monitors, reports and advises on appointments made by Ministers to the boards of over a thousand national and regional public bodies. Government departments are required to follow the Commissioner's principles and code of practice when making these public appointments.

In Canada, all appointments for chief executives, directors and chairs of Crown corporations are subject to a

merit-based system. Ministers make recommendations that are then subject to review by a parliamentary committee prior to the final appointment (Edwards).

The situation in Australia

In Australia, a lack of transparency in public sector appointments represents a threat to a strong democracy. To avoid undue ministerial influence in the appointment of individuals to public office, a merit-based, transparent appointment process should be the case for all public sector boards and heads of agencies. In 2008, the Rudd Government introduced a broad statement of policy supporting merit-based selection processes, however, no comprehensive legislation was put forward.

In the area of broadcasting, since 2012, Australia's broadcasting boards (ABC and SBS) both have had an independent appointment procedure following the passage of the *National Broadcasting Legislation Amendment Bill*. The Bill establishes a merit-based appointment process that relies on an independent, merit-based appointment selection committee and published selection criteria, a model that should be considered for extension to other Australian public offices.

In the judicial area, when it comes to choosing High Court judges who interpret constitutional limits within which the federal and state governments must operate, there are certain understandings as to the type of candidates. For example, eligibility includes having been a judge of another court, or having been in legal practice for more than five years with merit being the over-riding criteria for appointment – but, other criteria may be considered. Moreover, there is a statutory requirement for the federal attorney-general to consult their state counterparts. However, the federal attorney-general does not have to act in accordance with any advice he/she may receive and historically the government has had a free hand with its appointments.

Government's discretion over appointments means that there is the opportunity for politics to infiltrate appointments. In the United States, Supreme Court justices are nominated by the executive and confirmed by the Senate, giving both elected branches of government a hand in the system, but nonetheless, has become in the current political climate highly polarised.

In 2008, following the lead of a number of states, then-Attorney-General Robert McClelland introduced a more transparent, merit-based process for federal court appointments. The new system included a commitment to broader consultations, publishing selection criteria, advertising appointments and the creation of "advisory panels" to consider nominations and expressions of interest and develop a shortlist from which the Attorney-General could make the final selection. All appointments were to be "based on merit". However, the government said it was also seeking to increase diversity in relation to gender, residential location, professional background, experience and cultural background. This new process, however, did not apply to the High Court. At this level, McClelland committed only to consulting with a wider pool than the statutorily mandated state Attorneys-General. He indicated he would also consult with current High Court Justices and the state and territory Chief Justices.

McClelland's system represented a small step towards judicial appointments reform. But unlike similar reform implemented in the UK, they were never formalised through legislation. On coming to office in 2013, the Abbott Government has been accused of making a wide range of appointments that some commentators argue demonstrate a distinctive ideological bias that distinguishes this Government from previous administrations. Moreover, current Attorney-General, George Brandis, is accused of returning to the earlier un-transparent, government-dominated model.

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