



Australian Government
**Australian Public Service
Commission**

Merit and Transparency

Merit-based selection of APS agency heads and APS statutory office holders

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October 2012

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Introduction

In 2008, the Australian Government introduced a policy implementing transparent and merit-based assessment in the selection of most Australian Public Service (APS) agency heads and other statutory office holders working in, or in conjunction with, APS agencies.

Positions and types of positions which are excluded from the requirements of this policy are set out at part 1.2 of the policy (Exclusions) and in more detail **here**. All other current and future APS agency head roles, full time APS statutory offices and APS statutory offices where there are both full-time and part time offices with the same title, are covered by the policy.

The policy also ensures that existing office holders are given sufficient notice as to whether or not they will be reappointed and that vacancies will be advertised well in advance of them falling due.

The merit selection processes outlined in this policy and guidelines became fully effective on 1 July 2008 having been progressively implemented since 5 February 2008.

Policy

1.1 Summary

The policy applies to APS agency heads—other than departmental Secretaries and their equivalents—and other statutory offices working in, or in conjunction with, APS agencies, unless specifically excluded (see section 1.2). The policy is summarised as follows:

1. The Minister will advise incumbents, in writing, at least four months before the expiry of their appointment whether it is intended to reappoint them, not reappoint them, or to advertise the position to test the field.
2. A merit-based and transparent process will apply for filling vacancies, with the following features:
 - (a) oversight of the advertising process and assessment of applicants' claims are to be undertaken by the Secretary and the Public Service Commissioner (or their representatives)
 - (b) vacancies will be advertised at a minimum on the APSjobs website and in the national press*
 - (c) selections will be made against a core set of selection criteria, supplemented by additional criteria agreed to by the Minister and Secretary
 - (d) a report, endorsed by the Public Service Commissioner, will be provided by the Secretary to the Minister recommending shortlisted candidates.
3. Where the Minister wishes to appoint someone not recommended by the panel, the Minister will need to write to the Prime Minister setting out reasons.
4. Where legislation provides for specific processes for appointments, those provisions will take precedence to the extent of any inconsistency with this policy.
5. Where the appointment of an agency head is made by a board, the chair of the board will have the responsibilities set out above, in lieu of the Secretary and Minister.
6. All appointments are to be made for a period of five years unless individual appointees advise in writing that they are seeking a shorter period, or the relevant legislation stipulates a different period, or other special circumstances arise justifying a short term.
7. All costs associated with filling the vacancy, such as advertising, will be borne by the agency where the vacancy occurs or as otherwise determined by the Secretary.

*Refer to clause 2.6.2 for further detail on advertising

1.2 Exclusions

Secretary and Secretary-equivalent appointments (namely, the Public Service Commissioner, the Commissioner of Taxation, the Auditor-General, the Chief Executive Officer of the Australian Customs Service and the Australian Statistician) are excluded from this policy.

Part-time statutory offices are also excluded, other than APS agency heads and APS statutory offices where there are both full-time and part-time offices with the same title.

Appointees who are also required to be APS employees (i.e. where legislation requires that a statutory office must be held by an APS employee) are excluded as they are already subject to merit-based selection under the *Public Service Act 1999*. However, the policy does apply to an APS employee who applies for a statutory appointment and would need to resign or be granted leave without pay to take up the appointment if successful.

The following are also excluded from the policy:

- dual appointments where the appointee is already a full-time office holder, as an office holder should only need to be selected once
- appointments to an elected office, as these appointments allow the relevant community an opportunity to have a say in the selection of the office holder (for example, the Chairperson of the Torres Strait Regional Authority)
- appointments to the Australian Defence Force
- the Registrars of the Administrative Appeals Tribunal and National Native Title Tribunal (NNTT), the chief executive officers of the federal courts, Federal Court of Australia assessors, and the President of the NNTT
- the Administrators of the Northern Territory, Christmas and Cocos (Keeling) Islands, and Norfolk Island
- other offices where the Prime Minister (or the Minister authorised to act on his or her behalf) grants an exemption for:
 - (a) a particular appointee in special circumstances, or
 - (b) an office, on an ongoing basis, where it is inappropriate for the process to apply.

Where short term acting appointments are to be made (for example pending the commencement of a full term appointee or during the absence of the usual office holder), the processes prescribed in the relevant legislation should be followed. Full term appointments will still need to comply with the merit selection processes outlined in this policy and guidelines.

The policy and guidelines do not cover non-APS agencies — they apply to agencies that operate under the *Public Service Act 1999*.

Guidelines

2.1 Expiry of existing appointments

Each Secretary is responsible for keeping a record of all statutory appointments in his or her portfolio. The Secretary will notify the relevant Minister or Ministers, in writing, of an upcoming expiry of an appointment **six months** before the expiry date¹.

The Secretary will seek the Minister's advice on whether:

- the incumbent is to be offered reappointment (if allowed by legislation), or
- the incumbent is not to be reappointed, or
- the Minister wishes to test the field through advertising the position (which may or may not result in the incumbent being reappointed).

The Secretary's notification to the Minister must be copied to the Public Service Commissioner (the Commissioner).

Where the Minister decides to advertise the job rather than reappoint the incumbent, an open and merit-based selection process must apply. The Secretary will consult with the Minister on details such as the scope of advertising and selection criteria. However, there are minimum requirements detailed in sections 2.6.1 and 2.6.2 below.

The Minister is responsible for advising the incumbent in writing **at least four months** before the expiry of their appointment that he or she will:

- be reappointed, or
- not be reappointed, or
- not be reappointed because the Minister wishes to test the field of potential candidates but he or she is able to apply (if reappointment is allowed by legislation).

The Secretary must advise the Commissioner of the Minister's decision.

2.2 Reappointments

Where the incumbent is to be reappointed a selection process is not required. Instead, the Minister will need to follow the current appointments process outlined in the Cabinet Handbook², including writing to the Prime Minister seeking his or her, or at his or her discretion, the Cabinet's approval of the appointment. If the reappointment is agreed, appointment documentation should be prepared for the appropriate body with the power to make the appointment (for example, the Governor-General or the agency's board).

¹ FaHCSIA operates the Government Boards Reporting System which monitors, amongst other things, terms of appointments and the method by which people are appointed. Departments may wish to explore the features of the system with FaHCSIA. The system can be accessed at <https://govboards.facsia.gov.au> or by contacting the Office for Women.

² <http://www.pmc.gov.au/guidelines/index.cfm>

2.3 Secretary's role

The Secretary is responsible for overseeing the selection process for agency heads and statutory office holders. This involves:

- keeping a record of all statutory appointments in their portfolio
- six months before the expiry of each appointment, seeking the Minister's advice, in writing, of their decision whether to reappoint the incumbent or advertise the position
- consulting with the Minister on details such as the scope of advertising and selection criteria
- chairing the assessment panel, or delegating this role if appropriate
- selecting panel members (other than the Commissioner)
- together with the panel, assessing applicants' claims against selection criteria
- providing a selection report for endorsement by the Commissioner prior to it being submitted to the Minister
- providing a report to the Minister recommending a shortlist of suitable candidates.

While the Secretary's report to the Minister must be consistent with the report endorsed by the Commissioner, the Secretary will determine the level of detail required by the Minister.

Secretaries need to advise the Commissioner of the following information relating to the appointment or reappointment:

- upcoming expiry date
- decisions to reappoint the incumbent or advertise upcoming or vacant positions
- date finalised through Cabinet, expected commencement date, or term of any reappointment.

2.4 Public Service Commissioner's role

The primary role of the Commissioner is to ensure that assessment of candidates is based on merit. The Commissioner (or his or her representative) is in all respects a full member of the assessment panel and therefore plays an active role in the process. He or she needs to be involved in all aspects of the selection exercise including shortlisting of applicants, with sufficient time allowed for this to occur.

Any costs associated with the role of the Commissioner or his or her representative, such as travel, accommodation etc, will generally be borne by the relevant agency.

The Commissioner will be involved during the following steps of the process:

- participating in the assessment panel or nominating a representative to participate in his or her place³
- where the Commissioner did not participate as an assessment panel member, the Commissioner's endorsement of the report must be obtained prior to the Secretary reporting to the Minister.
- where the Commissioner did participate as an assessment panel member, the Commissioner's signing of the report serves as the endorsement.

The Commissioner may update the core selection criteria, from time to time, in consultation with Secretaries—see section 2.6.1 below.

³ The Commissioner may, on occasion, request the Secretary to nominate an APS employee to serve as the Commissioner's representative — such nominations would require the Commissioner's approval.

2.5 Minister's role

The Minister remains responsible for making the final recommendation to the Prime Minister. The Minister is responsible for:

- advising the Secretary of whether it is intended to reappoint incumbents or advertise the position
- advising the incumbent, in writing, at least four months before the expiry of their appointment whether it is intended to reappoint them, not reappoint them, or to advertise the position
- advising the Secretary of his or her views on the scope of advertising and any additional selection criteria
- contacting and encouraging particular candidates to apply if he or she wishes
- considering the recommendations of the Secretary following the completion of a selection exercise
- meeting with one or more of the recommended candidates, or consulting more widely with colleagues, the assessment panel or others, prior to making a final decision, if he or she wishes.

Once the Minister has made a decision, the Minister will need to follow the normal appointment processes outlined in the Cabinet Handbook, including writing to the Prime Minister recommending the appointment. The usual process for appointments, including the Governor-General's approval where specified in legislation, should be followed.

If the Minister considers special circumstances exist where a full selection process is inappropriate (see section 2.6.6), he or she must write to the Prime Minister seeking approval to fill the position without conducting a full selection process. This letter should be copied to the Commissioner.

Where the Minister decides not to appoint a candidate recommended by the assessment panel, the Minister must write to the Prime Minister outlining the reasons for this decision. These reasons will be included in Cabinet documentation where the Minister's proposed appointment requires Cabinet approval.

For agency heads and statutory offices in the Prime Minister and Cabinet portfolio, the Minister's role as described in this section may be undertaken by the Cabinet Secretary or Parliamentary Secretary.

2.6 Merit-based selection

For the purpose of these guidelines, merit-based selection is as follows, based on that applying to APS promotions and engagements:

- an assessment is made of the relative suitability of the candidates for the duties, using a competitive selection process, and
- the assessment is based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required for the duties, and
- the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the duties, and
- the assessment is the primary consideration in making the decision.

Examples of work-related qualities that may be taken into account in making an assessment include:

- skills and abilities
- qualifications, training and competencies
- standard of work performance
- capacity to produce outcomes from effective performance at the level required
- relevant personal qualities
- demonstrated potential for further development
- ability to contribute to team performance.

2.6.1 Selection criteria

Selection for agency heads and statutory office holders should be made against a set of selection criteria, which are outlined below. As particular vacancies may have job-specific elements not covered within a standard set of criteria, additional criteria may be agreed by the Secretary and the Minister. A small number of positions may need quite different criteria, which may be approved by the Secretary following consultation with the Minister.

Agency head selection criteria

The core criteria for agency head positions are as follows (the italicised points are capabilities that illustrate how the criteria relate to on-the-job performance⁴):

- Demonstrates high level leadership and vision
 - *sets a strategic vision and inspires others to achieve this*
 - *innovative in dealing with issues*
 - *articulates a clear direction for their organisation*
- Manages large and/or complex operations
 - *achieves results within the context of organisational and/or Government policy*
 - *strong people management skills*
 - *strong financial management, ensuring efficient, effective and ethical use of resources*
 - *understanding of and commitment to quality organisational governance*
- Works with others to meet objectives
 - *operates collaboratively with others to meet organisational objectives*
 - *cultivates productive relationships*
 - *listens to people and values different perspectives*
- High level of judgement
- Demonstrates a high standard of professional and personal integrity and capacity to promote these in an organisation.

The Commissioner may update the core selection criteria, from time to time, in consultation with Secretaries.

⁴ The capabilities outlined under each of the main headings are not in themselves additional criteria and it is not intended that applications and assessments should address each and every capability. Rather, the capabilities assist in explaining why the criteria are important, by giving details of what will be expected on the job.

Statutory office holder selection criteria

For most non-agency head office holders, the Senior Executive Service (SES) core criteria may suffice. These criteria are:

- Shapes strategic thinking
- Achieves results
- Exemplifies personal drive and integrity
- Cultivates productive working relationships
- Communicates with influence.

These criteria, with a range of capabilities relevant to them, are set out on the Commission's website at www.apsc.gov.au/selc.

2.6.2 Advertising

Vacancies must be notified at a minimum on the APSjobs website at www.apsjobs.gov.au and externally.

The Merit and Transparency policy as made in 2008 indicates that for an agency head or statutory office holder vacancy where an open selection process is to be undertaken, the vacancy must be advertised in APS jobs and in the national media. Such advertising must also be made in accordance with Non-Campaign Recruitment Advertising Policy which applies to all *Financial Management and Accountability Act 1997* (FMA) Agencies.

If the Secretary decides not to approve an exemption from the NCRA Policy authorising the vacancy being advertised in major daily newspapers, then the vacancy must still be advertised externally, for instance on an appropriate recruitment website or websites. Advice about internet recruitment advertising strategies is available from Adcorp Australia Limited, the Commonwealth's Master Media Agency for Placement of Non-Campaign Advertising.

The Secretary may wish to engage an executive search firm to ensure the field of applicants is as strong as possible, although the Secretary, Commissioner and Minister still retain their responsibilities as outlined in these guidelines. Where search firms are used, all assessment panel members must be kept informed of all aspects of the process.

2.6.3 Assessment panel

An assessment panel will consider the claims of all applicants against the selection criteria. At a minimum, the assessment panel will consist of:

- the Secretary, and
- the Commissioner.

Both the Secretary and Commissioner may choose representatives to participate in the panel. The Secretary, however, is still responsible for overseeing the process and providing recommendations to the Minister, and the Commissioner must still endorse the process.

The Secretary, having regard to any legislative provisions, will decide if one or more additional panel members are required to:

- maintain gender balance
- provide specialist expertise
- represent the relevant advisory board, state/territory government, etc.

Just as Ministers' staff cannot participate in the selection process for APS positions (including SES positions), they cannot sit on these panels.

Where legislation contains specific processes for appointments, those processes will take precedence to the extent of any inconsistency with this policy (see section 2.10).

All members of the assessment panel, including the Secretary and Commissioner (or their representatives) need to participate in the shortlisting of applicants.

2.6.4 Methods of assessment

Secretaries, in their role overseeing the assessment process, are responsible for establishing the means used to assess applicants. This would typically involve assessing written applications, conducting formal interviews and obtaining referee reports.

It may be appropriate to consult other people, for example, colleagues, board members, state or territory ministers or officials, or the Secretary of the Department of the Prime Minister and Cabinet, on a confidential basis.

Additional or alternative means of assessment are also available, including assessment centre methodologies, structured application forms, self-selection tools and occupational testing. All assessment processes must be overseen by the assessment panel.

The Secretary will also need to decide the level of pre-appointment checks to be undertaken (for example, declarations of private interests or security clearances).

2.6.5 Selection report

At the conclusion of the selection process, a report is to be prepared containing an assessment of the relative suitability of candidates and provided by the Secretary to the Commissioner for endorsement.

If neither the Commissioner nor Deputy Commissioner participated on the assessment panel directly, the Commissioner's representative on the panel will provide separate certification to the Commissioner confirming that the selection process has been based on merit, and that advertising and panel composition requirements have been met.

Regardless of who chairs the assessment panel, the Secretary provides a final report to the Minister at the conclusion of the assessment recommending a shortlist of suitable candidates for the Minister's consideration.

There is no requirement to rank candidates, although the panel is encouraged to do so where there is a clear order of merit or an outstanding candidate.

Where the Minister endorses an order of merit or a shortlist of candidates, he or she may decide to use the list to recommend appointments to identical vacancies

(for example where there are multiple members of a Tribunal) occurring within a reasonable period during which the field of potential candidates is unlikely to have changed. This does not apply to agency head vacancies.

While the Secretary's report to the Minister must be consistent with the report endorsed by the Commissioner, the Secretary will determine the level of detail required by the Minister.

2.6.6 Circumstances not requiring full selection process

Some circumstances may arise where the Minister does not wish to advertise a vacancy and conduct a full selection process. The most common circumstance where this could arise is where there is another office holder at a similar level that the Prime Minister considers should be appointed to the position. It is common practice for agency heads to be appointed to various positions throughout their career, and this is regarded as a reasonable alternative option.

Special circumstances where a Minister may consider a full selection process is inappropriate may include:

- an urgent requirement to fill a position
- the availability of an eminent person, where there would be little value in conducting a selection process.

The Minister must request the Prime Minister's approval to fill a position without conducting a full selection process.

2.7 Duration of appointment

All appointments are to be made for a period of five years, unless:

- individual appointees advise in writing that a shorter period is sought, or
- the relevant legislation stipulates a different period, or
- other special circumstances arise justifying a short term.

2.8 Appointments by a board

Where the appointment of an agency head or other statutory office holder is made by a board, the chair of the board will have certain responsibilities in lieu of the Secretary and Minister as detailed above.

Where a board wishes to appoint a candidate not recommended by the assessment panel, the chair will need to consult with the responsible Minister, who would then write to the Prime Minister setting out the reasons for the proposed decision.

All aspects of the Commissioner's role as detailed above apply to appointments by a board.

2.9 Commonwealth Authorities and Companies Act 1997 bodies staffed under the Public Service Act 1999

The *Commonwealth Authorities and Companies Act 1997* (CAC Act) provides that the Finance Minister may make a General Policy Order requiring Commonwealth authorities and wholly-owned Commonwealth companies to comply with a general policy of Government.

The Finance Minister must be satisfied that the Ministers responsible for the bodies to which the General Policy Order will apply have consulted those bodies on the application of the policy prior to the making of the order.

At February 2009, a General Policy Order has not been made and Ministerial consultation is at varying stages in those CAC Act bodies that operate under the *Public Service Act 1999*. The Government's intention is for those bodies to comply with this policy unless there are special circumstances. If needed, the policy and guidelines may be modified (see 2.10 below).

2.10 Circumstances requiring modified processes

In some cases there may be legislative requirements, formal agreements with the states and/or territories or perceptions of conflict of interest that may arise which mean that the processes advised in this policy and guidelines need to be modified.

When this is the case, the Secretary, Commissioner and agency head (if relevant) will develop a standing alternative arrangement. Unless it is clearly inappropriate, any alternative arrangement must continue to include advertising, merit-based assessment and inclusion of the Commissioner (or representative) in the process.

2.11 Representation of women

Secretaries and Ministers will continue to seek to increase the representation of women in senior government appointments and include women on candidate lists, for example, by using the Office for Women database, AppointWomen.

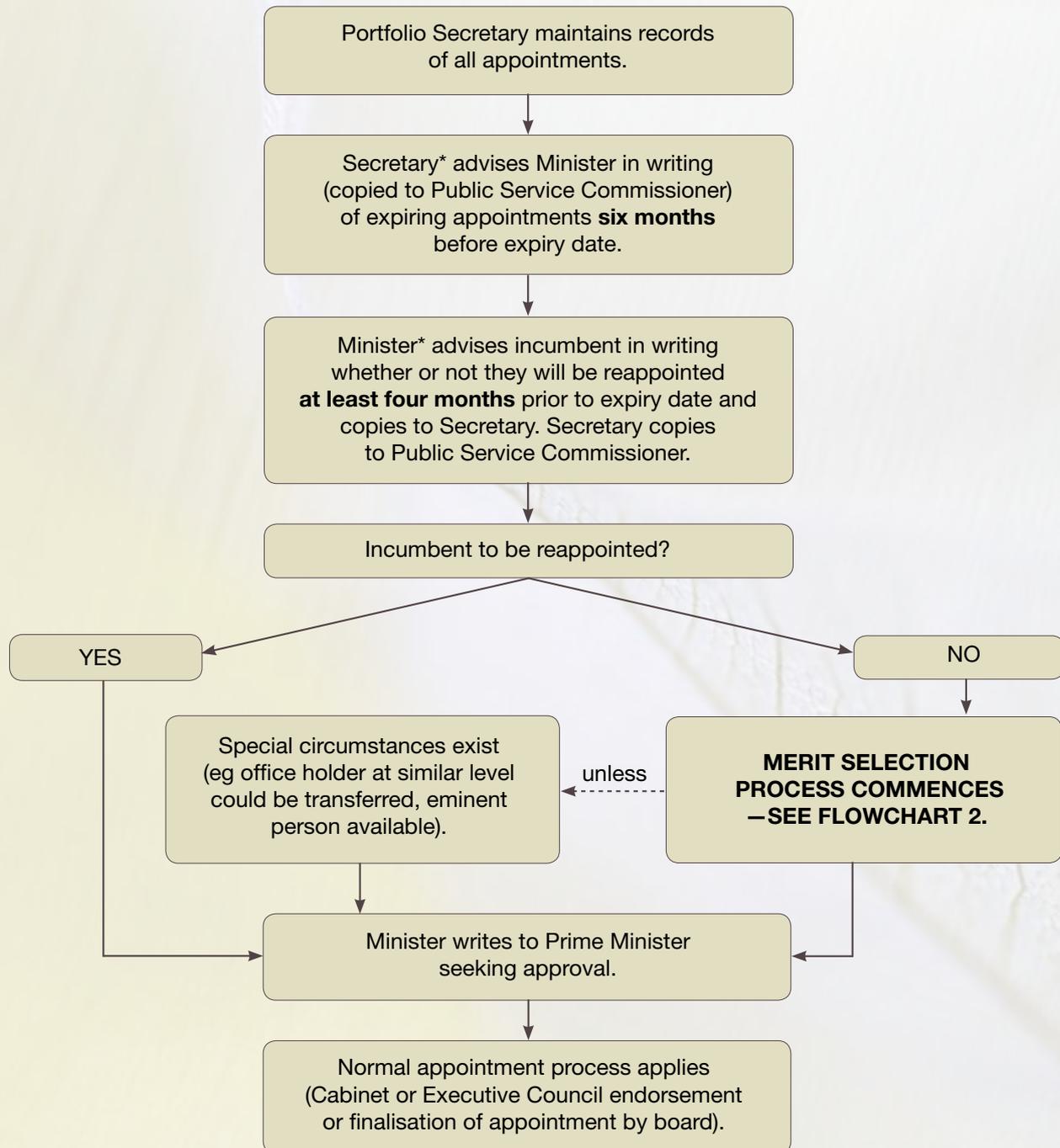
AppointWomen is a database of women who wish to be considered for positions on an Australian Government decision-making body. Agencies may request the résumé of one or a number of women for consideration. AppointWomen can be accessed at www.appointwomen.gov.au.

2.12 Costs

All costs associated with filling an agency head or statutory office holder vacancy, such as advertising and travel costs (including costs for the Commissioner or his or her representative), will be borne by the agency where the vacancy occurs, or as otherwise determined by the Secretary.

APS Statutory Appointments

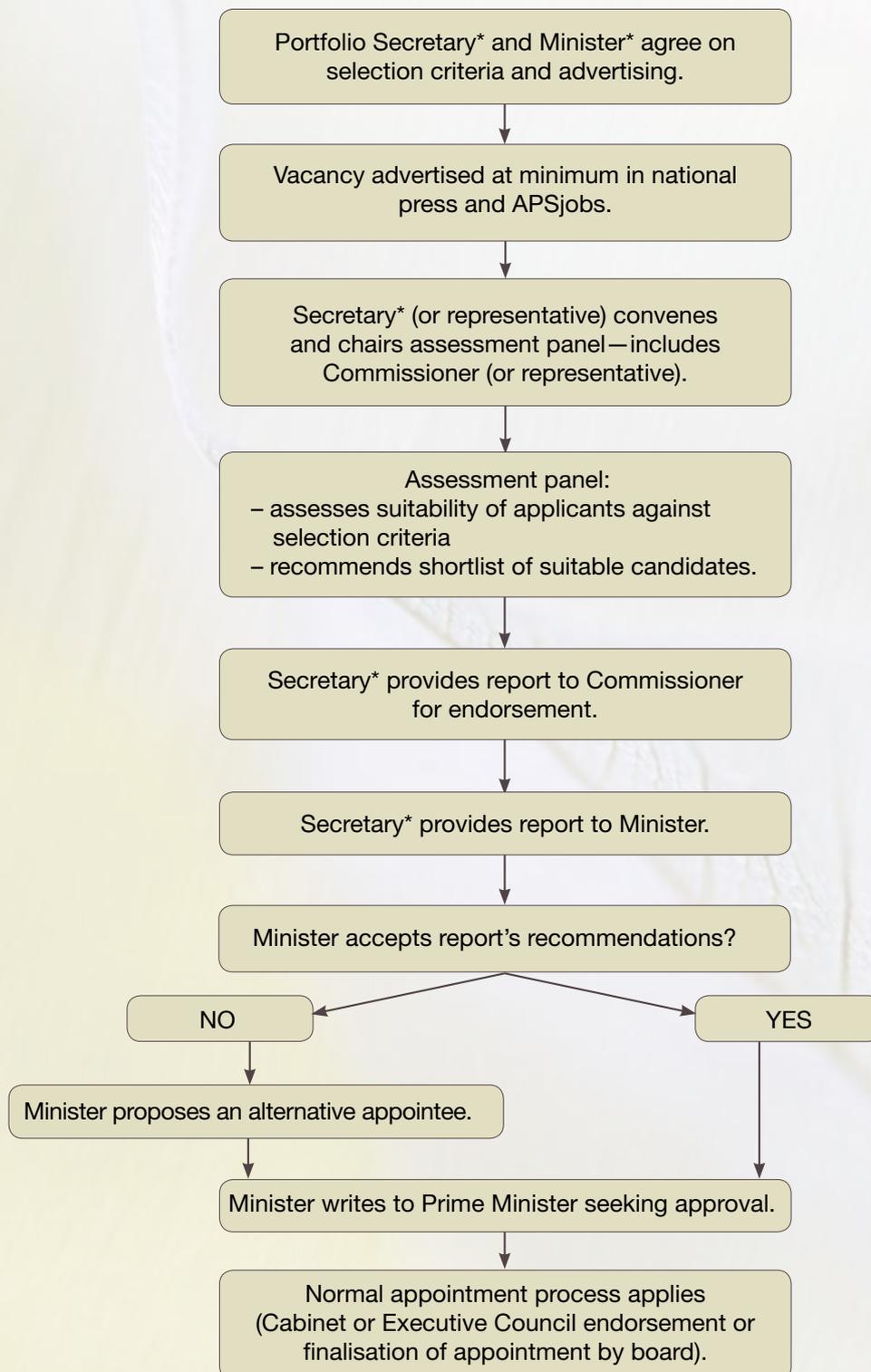
Merit-based and transparent selection process (flowchart 1)



*Chair of board acts in lieu of Secretary and/or Minister where relevant.

APS Statutory Appointments

Merit-based and transparent selection process (flowchart 2)



*Chair of board acts in lieu of Secretary and Minister where relevant.

