

## **Transport for Melbourne, Public Forum, 27 October 2017, Richmond Town Hall Governance and Decision Making in the Public Interest**

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With a background teaching law and public policy, before working in the 3 tiers of government – Commonwealth State and Local, as well as the private sector, I have a keen interest in good governance.

### **Separation and balance of Power**

The origins of our system of Government in Australia were very much influenced by the doctrine of the separation of powers of the key institutions of governance - the Parliament, Executive and Judiciary as 3 separate spheres:

- **Legislature or Parliament:** of elected representatives making laws
- **Executive:** implementing and administering laws and policies determined by the Parliament
- **Judiciary:** independent of these other institutions, adjudicating conflicts over interpretation of laws

We owe this concept to French lawyer and Enlightenment philosopher, Montesquieu. After 21 years of research, studying political systems, revolutions, and writings from Aristotle to John Locke, Montesquieu in 1748 released his radical text “*The Spirit of the Laws*” - initially anonymously. Montesquieu espoused the separation of powers enshrined a Constitution supported by civil liberties, rule with the consent of the people, and the end of slavery. A powerful best seller, *The Spirit* influenced European revolutions, American Independence, and the British Rule of Law and became enshrined in Constitutions across the world including our own.

In Australia, the separation of powers between Parliament and the Executive is diluted because Cabinet Ministers are part of the Executive as well as being Members of Parliament. However, the doctrine of separation of powers is still fundamental to the rule of law in our political system.

The basis of this separation of power is to provide checks and balances in the exercise of political power; if one of the 3 branches of power exceeds its authority or acts against public interest, another can check or restrain that power. Important because as we know, power can be corrupting.

### **Other vital checks on power**

There are, of course, many other vital checks on power – multiple active civil institutions and organisations, a free press, freedom of speech and association, independent academic institutions and think tanks, public inquiries, and assertive citizens including those in transport organisations like Transport for Melbourne, Victorian Transport Action Group, Transforming Transport for Everyone and think tanks like the Rail Futures Institute.

Another political feature in Australia is having separate federal, state and local governments. My own Council has recently twice challenged the State Government in the Supreme Court: in 2010 on clearways sought to be imposed by a Labor Minister without the required statutory consultation: and in 2014, on breaches of

statutory duties by a Liberal Government in relation to the East West Link road tunnel through Yarra. States have regularly taken the Commonwealth to the High Court challenging excesses of power. And vice versa.

### **Quality of Public Administration**

After teaching such governance issues through constitutional, administrative and Industrial law, I was recruited to the Australian Public Service (APS) as its first female industrial advocate. In my induction, I was asked to closely examine the *1854 Northcote-Trevelyan Report* on the organisation of the British civil service with its focus on appointment of civil servants of high capability with promotion on merit. That inquiry and report was a response to growing problems of political patronage and the buying of appointments into the Civil Service; the aim of the inquiry being to ensure the administration was not captured by politicians or vested interests.

We need a similar such inquiry; despite institutions such as IBAC, the Ombudsman/ several Ombudsi, freedom of information laws and the media assisting in questioning examples of patronage, partiality and abuses of power.

Historians have identified the Northcote Trevelyan Report and its implementation as *the greatest single governing gift of the 19<sup>th</sup> century to the 20<sup>th</sup> century of a politically disinterested and permanent Public Service with core values of integrity, propriety, objectivity, appointment on merit, and transferring expertise from one elected government to the next.*

The Report influenced the setting up of Australia's State and Federal Public Services each with a strong central Public Service Board (PSB) responsible for standards of recruitment and the quality, integrity and independence of the public service. The PSBs (Commonwealth then Victorian) which I joined, set merit standards for entry and promotion, common pay and conditions, and controlled establishment numbers in government departments. PSBs were not popular for exercising these controls. And I recall Premier John Cain, commenting on this to senior executives of the Victorian PSB, adding astutely that he recognised unpopularity meant the PSB was doing its job properly!

### **Abolition of Key Public Institutions**

This approach to the organisation of public services changed markedly with the abolition of the Commonwealth PSB by Bob Hawke in 1987 and the Victorian PSB by Jeff Kennett in 1993.

The new philosophy for the public sector in the 1980s was to assume characteristics of the private sector through corporatism, managerialism, performance pay, access to motor vehicles, greater flexibility in recruitment, with term appointments rather than permanency.

But these stated philosophies reduced checks and balances in the administration without strong independent Public Service Boards whose role was to ensure standards of service in the public interest and checks on administrative excesses.

Apart from changes in public services, politicians also ended other independent public institutions set up to plan and deliver services – the MMBW, SECV and others abolished by Jeff Kennett in 1992/93. These bodies had maintained specialist

expertise, delivered infrastructure and services irrespective of political cycles, and operated as part of the checks and balances of power. They (with the Victorian Railways and MMTB) were also the main sources of apprenticeships and jobs for young people who were mentored and up-skilled. The MMBW and SECV also paid dividends to the State and, in the case of the MMBW, to local government. Their loss has led to adverse unintended consequences in the State's deficits in planning, and investment in public housing and public transport infrastructure.

### **Undermined capacity to deliver in the public interest**

The loss of these public institutions, I argue, has undermined important checks and balances of public power, as well as more effective infrastructure and service delivery and public sector skills. These changes have also contributed to reduced respect for politicians, and public servants.

- The use of consultants, contract employment, concepts of managerialism, with increased transfers of personnel, has diluted the focus on public service.
- Amalgamations into large mega-departments has reduced accountability.
- Political pressures including a 24/7 news cycle, short term appointments and focus on procurement and technology, have contributed to shorter term thinking, with loss of strategic thinking and longer term planning in the public interest. Even though the obligation to develop a long and medium-term integrated transport planning is mandated in the Victorian Transport Integration Act 2010, governments have failed to deliver this.
- The dilution of commitment to public service and increased links with the corporate sector highlights another problem - that is known as the politics of capture - with governments and their agencies placing higher priority on private sectional interests rather than what is in the broader public interest.

### **Capture by sectional interests**

There are many examples of such capture in energy and industry sectors. For this paper, I particularly highlight the capture of Federal taxation policies to serve sectional interests including by negative gearing. This props up property prices in the interests of property investors, contributing to an increasing affordable housing crisis and to homelessness. Politicians owning multiple properties are compromised through conflict of interest from objective decision making on this issue.

Associated problems are Federal Governments failing to fund expansion of public housing or to invest in public transport commensurate with population growth and public need.

### **Fiscal imbalances**

The balance of power in Australia is further undermined by the problem of fiscal imbalances between its tiers of Government. With State taxation powers having been temporarily ceded to the Federal Government during World War II, the Commonwealth now assumes 80% of tax revenues. It redistributes a diminishing share of the overall tax take to State Governments leaving them with a mere 14% of total tax revenue to provide transport infrastructure, housing and other State services for the people. Federal redistribution to Local Government has reduced from 1.5% to 0.55% currently. Infrastructure funding, grants and GST distributions are applied

selectively and politically contrary to a Constitutional prohibition on discrimination against the States and between peoples in States.

This fiscal imbalance between government tiers in Australia has led to failures of infrastructure investment, escalating demand in the 25-30% of Melbourne well served by trams and trains. This has pushed up demand for housing in central Melbourne driving up house prices and business rents to unaffordable levels.

State Governments squeezed by reduced shares of federal taxation, have contributed to problems in key areas of housing and transport through failure to invest in public transport to match population growth. This too has contributed to high property prices in inner areas well served by public transport.

There is excessive government focus on central Melbourne. This is promoted by Treasury infatuation with the concept of agglomeration economies to disproportionately benefit inner Melbourne where professionals and managers live. Inner Melbourne has inherited good public transport but this is added to by free trams, and new rail services, Melbourne Metro 1 being built, with the prospect of a new Metro 2 and a new tram route to serve Fishermans Bend and the CBD. These investments contrast with the failure to invest in effective public transport infrastructure and services in growth areas, where public transport is largely restricted to infrequent bus services. Melbourne's CBD is self-sustaining. So, the higher priority is to support agglomeration economies in non-CBD activity centres and regional cities. Investment in good cross town public transport links would operate as a major pull factor to enhance private sector investment in key public transport deprived areas to support a more balanced State of metropolitan and regional cities.

### **Housing and Transport crises**

Policy and investment failures by federal and state governments have, I argue, caused the housing and transport crises we face. Both housing and transport costs in Australia are the highest in the world.

The impacts of negative gearing have inflated demand and property prices. Many residents now require 30% or more of their income to cover the costs of their mortgage or rent. Such a level is considered to constitute housing stress. A similar percentage of income is needed to cover transport costs.

The problem of escalating property prices was highlighted this week with MP for Wills, Peter Khalil, publicising how despite his \$200,000 annual salary as an MP, he could not afford to buy a property in Brunswick. In the City of Yarra, prices have been escalating by \$100,000 per annum. A run-down single terrace house that could be bought for \$300,000 in 2002 when I was first elected to serve as a Councillor, is now valued at \$1.7M.

Some blame population growth. However, Australia managed massive post war immigration, and a baby boom without such escalation in housing prices, housing rentals or levels of homelessness now experienced.

Construction of new public housing is at its lowest for 40 years and existing public housing stock is seriously underfunded. The shortage of social housing is forcing greater numbers of low-income and disadvantaged households to rent privately.

Along with property prices, rents, particularly in inner Melbourne have escalated. The Commonwealth shift to funding rent assistance for the needy in lieu of investing in increasing public housing, has added to pressures in the private rental market.

Reliance on private sector provision of affordable housing has not in Victoria, been accompanied by mandating inclusionary zoning to require a proportion of larger scale new developments to include social and affordable housing, as is required in South Australia, Sydney and is common overseas.

Apart from housing policy failure, policy and investment failure in transport by federal and state governments has led to 70% of Melbourne having inadequate public transport. This has created highly car dependent outer suburbs with many households forced to run 2 or more motor vehicles for their transport needs. The high cost for families running several vehicles puts them in transport stress on top of mortgage stress and education costs. High property prices, high mortgages, high transport costs, and power prices, have led to unprecedented levels of household debt which is threatening our economic balance. Federal Treasury and the Reserve Bank have expressed increasing concerns over such high household debt levels, now also said to be the highest in the world!

Added to this is road tolling which can impose supplementary costs of \$70 or more per week, per vehicle. The State through the CityLink contract and toll revenue to Transurban under this contract, has helped to create Transurban from ground up in 1966 to become one of Australia's top 20 ASX listed companies. Melbourne's CityLink toll income has enabled Transurban to extend to operate 6 Tollways in Sydney and 6 in Brisbane.

Toll revenue from Melbourne's citizens is not invested back into public infrastructure in Victoria to help fund public transport, schools, hospitals, social housing or other essential public infrastructure. Instead, it has enabled Transurban to rapidly expand from a small-scale operation not only into other States, but also into the USA to build and run the Washington Beltway and Expressway to Pennsylvania.

Transurban now seeks to expand its *Golden Egg* further in Melbourne with the West Gate Tunnel (WGT) and has its sights on the North East Link (NEL) and East West Link (EWL). You can identify this from maps in Transurban's recent annual report.

## **Impact on Local Government**

What is the link with Local Government?

Councils are required by the State to develop regional affordable housing statements. These are an exercise in futility given Federal and State policies working in the opposite direction. Councils have called this out through resolutions at their State and Federal conferences. Through advocacy, Councils have joined community organisations to argue for greater investment by the other tiers of Government in public and social housing and inclusionary zoning. This is because Councils more directly see and respond to the impacts of poor policy choices on the lives of citizens. Hence inner Councils are currently, with the community sector, challenging the State seeking to sell public housing land for private sector development given the major decline in public housing stock relative to population growth. In Yarra, this

would result in public housing land being bought by investors largely for an investor market with even further decline in public housing stock relative to population.

Regarding transport, local governments based in suburbs, are more exposed to seeing the impacts of inadequate public transport on their roads and on the wellbeing of communities. Recognising that over 30% of cities is already filled by roads, and that road building is an ineffective strategy to relieve congestion in an expanding city, they have joined in advocacy challenging adverse decision making on major and costly new roadways such as the EWL, WGT and NEL. Councils are also engaged in advocacy to secure public transport services through regional organisations such as the Metropolitan Transport Forum, Eastern Transport Coalition, and Western Transport Alliance.

Particularly effective recently, has been regional Councils working with the Rail Futures Institute (RFI) helping to secure \$1.6 Billion in the May 2017 Federal budget, to upgrade regional rail infrastructure. This is a welcome change.

There are useful tools that can be used by Councils. This includes attaching conditions to planning permit approvals to require developers to contribute to affordable housing and public transport. This technique has led to additional community rental housing, to funding accessible trams stops for the Epworth Hospital redevelopment on Bridge Road, and the new Route 12 tram shuttle to Victoria Gardens/IKEA. While important, these are still piecemeal gains without proper integrated transport planning by the State as required by the Transport Integration Act 2010.

Given what I pointed out earlier, on the Commonwealth assuming 80% of all tax revenues raised, Commonwealth funding is critical to support State investment in rail networks. The Commonwealth Constitution provides for it to do so.

This week has highlighted the \$50 billion cost of the Commonwealth funding the NBN virtual mobility network. The Commonwealth subsidy of the motor vehicle industry in Australia over the years has been assessed at some \$3 Trillion. Such funding by the Commonwealth has been at the expense of investment in actual and sustainable mobility via rail infrastructure for citizens to better and more economically access jobs, education and services and contribute to GSP.

I have described governance problems in Federal and State spheres. These trends apply to a lesser degree in local government. This is not to say there are not examples of too close a relationship with developers, and an association bias. Much of this is unwitting through familiarity of ongoing contacts with repeat business in municipal areas. It also arises because developers provide expert reports which are not always able to be contested by less resourced objectors. But there are more comprehensive codes of conduct and regular reminders of conflict of interest for Councillors and Council staff than apply for federal and state administrations. Because of this and closer relationships, there is greater scrutiny, Nevertheless, vigilance is needed in this sphere as well.

The nature of relationships between Councils and community can result in a community bias. Indeed, the Local Government Act requires Councillors to act in the best interests of the community as a whole. Determining this involves both objective and subjective judgements. That Councillors and officers are more accessible and responsive to the community than other tiers, is important for accountability.

Councillors with constant community engagement, raise issues and ensure Council administrations are more responsive and accountable in meeting community needs and aspirations than they otherwise would be. This is less so in the other spheres of Government based in Canberra or Collins Street more remote from citizens, but accessible by lobby group and Corporate headquarters.

### **New Role for Civil Society**

Securing better public and community interest outcomes, requires redefining the processes of effective government in Federal and State spheres. Many Australians have lost faith in Government processes seeing these as weak in addressing rising inequality, environmental threats, and the failure to deliver public infrastructure.

Our model of democracy, with citizens electing governments every 3-4 years, then stepping back for the Government to deliver on election commitments, needs to change. Because this model is not delivering.

What is needed is civil society to strengthen pressures on Government through organisational and political engagements to hold politicians more accountable to deliver infrastructure and services. Government also need to focus on the role of facilitating civil society supporting the delivery of positive outcomes. Citizens now have much more access to information. This empowers them to challenge politicians' motives and their lack of delivery, to force them to rethink policies and provide more responsive leadership. Citizen power needs to be applied to gain greater government responsiveness.

We need to call out close relationships, between decision makers, and professional lobbyists and commercial interests which result in poor use or misuse of scarce public resources. Decision making must be tested against the wider public interest and the aspirations of citizens for sustainable liveable neighbourhoods, cities and regions.

This forum is designed to seek your ideas on how citizens can better do this.

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