Governance and Decision Making

In the Public Interest

27th October 2017

Forum Proceedings

Transport for Melbourne

Contents

1. Governance Forum – Convenor's introduction

I would like, on behalf of Transport for Melbourne to thank Yarra City council for making this hall available for this forum on governance. You might ask why have a forum on this – after all we get the government(s) we deserve and there doesn't seem to be a lot we can do about.

Perhaps.

But perhaps that sense of helplessness and apathy may be one of the reasons that is contributing to our problem. Perhaps the community is not aware of the extent to which poor or indifferent governance affects all of us and the huge cost we pay for poorly developed policy or wasted money on poorly conceived projects that deliver little value to the community as a whole.

- We can see it in poor service delivery of public transport and the roll out of the NBN
- unnecessarily high cost of medicines and private health insurance
- poor planning outcomes for city development,
- increasingly unaffordable housing and rents
- unresolved energy issues,
- inappropriate exploitation of natural resources and many more.

It also is reflected in weaknesses in legislation and government controls which enable minority interests to exploit common goods for private or minority benefit – so called "grey gifts" described by Murray and Fritjers in their recent book "Game of Mates – how favours bleed the nation", how a small but powerful group of insiders have their noses in the public trough in a range of industries and dealings are often hidden from public scrutiny under the guise of "commercial in confidence".

There are no single causes of poor governance, It may reflect government incompetence or naivity at an individual or collective level, failure to adopt accepted world best practice world,

poor advice received from departmental or from other sources that have a vested interest in securing certain outcome whether it be commercial or political, poor implementation or oversight from institutions that don't know their core business and are not up to the job, or it may simply be outright corrupt behavior.

More often the problem is systemic and there will certainly be no single magic fixes. What we do know is that poor governance is costing us dearly. Murray and Frijters estimate that in the areas they have examined, minority interests (which they call James and his mates) robs their Bruce (the everyday man or women) of nearly half of their wealth and siphons off nearly 30% of the income that should normally reach "Bruce".

The question might be asked – is this situation unique to Australia and should we expect anything better. It is certainly true that in the vast majority of countries in the world today much of the above is the norm or worse but there are countries that do much better and it is these we should aspire to emulate. Some of these are first world countries such as Singapore, but not all. Some of the poorest countries such as Bhutan perform exceptionally well in this respect. Some countries perform very well in some areas but not so well in others, but there are lessons to be learnt from all of these – from their successes and failures that can be applied in Australia.

We know there are no magic fixes but we think the quality of governance in this county has got to a stage where it needs to be raised as an agenda item for open forum. Our governments are in many respects well and truly on the nose these days – scarcely a day passes when we are reminded of this. So they need to lift their game and that applies to all levels of government.

Whilst a lack of enlightened leadership is certainly an issue, the problem is also a reflection of the state of our institutions, many of which were highly respected, have been neglected or changed in such a way that they no longer perform the functions that was once expected of them. But the problem also needs to be owned by the broader community – to expect better and demand change.

I spent much of my professional life in public transport and towards the end of my time there I started asking the question – surely there are cities that are doing this far better than Melbourne. And there are -- in almost every continent we can see them, many much poorer than Melbourne and invariably they do it with far less infrastructure than we have here.

Whilst all cities are different, our transport problems are not unique – many cities have been confronted with similar problems but resolved them more successfully. Is it that they are smarter than us? Were they forced to be so because they had far less money to spend on it than we have? We could have and should have had a world class transport system here in Melbourne decades ago so we need to ask ourselves why we haven't.

And the problem is not confined to transport. I see it in other areas of government services - we could ask the same question about education, health, housing, energy and other essential utility services and many other government portfolios.

We don't need to invent any new wheels. We should look at how some countries and cities do so much better, and why, and apply their lessons here. We should also look critically at ourselves –the political leaders we elect who need to lift their game and areas of governance where we used to do much better and ask the question where and how we have gone wrong and what needs to change to restore the situation.

2. **William MacDougall - Planning in Australia – where has it gone**

    attached

3. **Jackie Fristacky – Governance and Decision Making in the Public Interest, a local government perspective**

    attached

4. **Governance of the Melbourne City State**

    attached

5. Preliminary Summary – Convenor

It is appropriate now to give a brief summary of the key issues raised by our speakers before we invite questions from our panel.

Firstly William's presentation – in which he asks the fundamental question about planning in Australia – where has it gone?. But it is much deeper than a planning problem. We can see this in the WestGate Tunnel Project which we have used as a case study because it embodies almost every aspect of poor governance imaginable. It is not just a case of poor value for money but it is the process by which it has been progressed that is most alarming.
William has talked about the lack of integrity in the modelling and business case – it is more than that ofcourse – many would call it outright dishonest, but he has reflected on a number of governance limitations including
- Excessive corruption (is there a tolerable limit to this?) in which politicians are exposed to undue influence
- Lack of accountability
- Absence of a long term context
- Lack of leadership and vision by decision makers constrained by their own ideology or self-interest

One of the most alarming aspects of this project is that it will be Victoria's first mega project in which the State has surrendered its governance role to Transurban whose priority is creating a toll road that captures private profits.

Even more concerning is that this project appears to have become a template for other megaprojects.

William also talks about the need for institutional changes – and there are many. Where are the relevant Government departments and other institutions and what roles have they played in this? ***Or should have*** , providing expert and frank and fearless independent advice. And if the government is not listening to their departments who is the government listening to? And who is calling the government to account? - lots of questions which we should explore in this forum.

That is enough about this project – obviously there is a lot more that can be said about it and is readily available in the numerous submissions that have been made as part of the EES process – some of which are on the TfM web site.

Jackie's presentation is a reminder that the impact of government malfeasance effects all of us. Local governments have to pick up the pieces when the impacts of failed or poor State or Federal policies/ strategies or projects hit their back yard, and this can manifest itself in many ways. The severity of the impacts will vary ofcourse but ultimately in extreme situations we may see it reflected in adverse economic outcomes, social and community isolation, stress and breakdown of civil society, environmental exploitation and degradation. Jackie has outlined the vital checks and balances on power and how institutional changes and capture by sectional interests have undermined capacity to govern in the public interest.

Local governments have governance problems of their own ofcourse. Local government is probably the most variable tier of government with enormous variations in resources, professional expertise and quality of governance. Some are well run, some are or have been corrupt or dysfunctional and there have been occasions when the state government has had to step in by sacking the council and appoint an administrator or commissioner. Some like Boroondara are extraordinarily wealthy and seem to have little difficulty squandering money on pretentious projects whilst others, particularly rural shires are struggling to provide and maintain basic services – some are almost insolvent. So it is difficult to generalize but clearly there are governance issues in local governments as well as State and Federal government and they manifest themselves in different ways.

Ken had provided us with a brief but comprehensive analysis of governance in the context of the Melbourne City State and in some respects a more positive response to our concerns but with a reminder that we are not alone on this issue. Australia in now one of 75 national government members of the Open Government Partnership and with it comes a commitment to the four principles which Ken outlined together with a system to which these principles are applied, together with steps towards better governance. One of the critical factors in this is the role of civil society and the extent to which the public trust principle is rigorously applied at every level, from members of parliament to throughout the public sector and its contractors which include consultants engaged to advise government and the public sector agencies.

As Ken said, breaches of trust can lead to prosecution for misconduct in public office but this rarely invoked. However there is a second way in which governance outcomes can be enhanced – that is through public participation.

TfM and others have made a number of recommendations to improve transport outcomes. The actions we have proposed are not difficult to implement, will provide far superior community benefits and will not be costly – in fact they will end up saving the government and the community generally a lot of money. Whilst there have been some piecemeal gains there has been no change in government policy or priorities. Clearly this government is not listening. Worse it appears to be more concerned to drown out public discussion with media spin promoting its projects.

It seems to me that if we are to have any prospect of achieving better governance outcomes (particularly as far as transport is concerned) public participation is really the only option left for us. The question then becomes – How can we use it to encourage or apply pressure for the government to listen and implement the fundamental changes in policy and strategic direction we are asking of it?

Our speakers have provided us with some practical measures that could be taken to improve governance, which we will discuss during question time. Our initial thought at this stage is to increase community awareness of this matter by recording this event and putting it on the TfM web site together with the written presentations, summary etc. We also intend to write a position paper on this which we would like to present to other institutions and ultimately to our State government as a way of getting community support for change. These are just two proposals – there will be more but what seems very clear is that civil society and that includes us may need to change our thinking and approaches if we are to have any success in securing better transport outcomes here in Melbourne or Victoria generally.

6. Discussion Notes

The following is a brief record of the discussion that followed the presentations by the three speakers. It includes questions, comments and ideas many of which are noted below. Discussion focused on three main subjects ie

- politicians/political leadership
- institutions including government departments
- mechanisms for making governments accountable.

Politicians and leadership

The extent to which politicians are aware of the governance principles outlined in Ken's presentation. Ken believes the public trust principle is almost unknown (but is being promoted by the Accountability Round Table) and most politicians are probably poorly prepared to govern in the public interest. Recommendations could include

a. Much better induction program for political candidates that is ongoing throughout each politician's political career
b. Need constant reminder of this issue
c. Better screening of political candidates in the first place (problem of loyalty to party rather than the public interest
d. Specific training/education for specific portfolios – training should start whilst in Opposition to ensure the shadow minister is already up to speed by the time he/she ultimately becomes minister
e. Role of mentors important
f. Politicians need to listen and learn from others and need to distinguish independent expert advice based on the public interest (ie typically provided by the politician's relevant department) from advice given by people/organisations with a narrow vested interest.
g. Noted the problem of the small "gene pool" from which politicians are drawn – not helped by the low esteem in which politicians and politics in general is seen by the community
h. The above needs to apply to all levels of government – recognizing that local governments probably do this better than the state of federal governments.

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Institutions and government departments – need for improved quality of performance by government departments etc

    i.   The cost of slashing government staff over recent decades in terms of

        i.   Loss of corporate memory, knowledge and expertise

        ii.   Loss of willingness by civil servants to provide advice without fear or favour (linked to poor/insecure work environment a/c loss of permanency/ staff contracts, organization restructuring and downsizing etc

        iii.   Need to constantly look to examples of world best practice and apply them or adapt them where ever possible and create a culture which aspires to continual improvement

        iv.   Need recruitment policies and practices that ensure people with the best qualifications, skills and expertise are recruited, and to create an environment (and organization structure) in which people can do their job properly and excel/thrive/develop in it

        v.   That department/institution organization structures are appropriate and designed to achieve best outcomes ie in the overall community interest etc

        vi.   Departmental (and political) leadership and culture with appropriate values, principles etc in the public interest that are promoted and nurtured, and the treatment of civil servants as people who are a valuable resource is very important (governments often very poor employers in this sense)

        vii.   Need for institutional (government and department) responsibility and accountability – honesty is key

        viii.   Improved decision making

- More flexible processes which engage more people who are directly involved in the "problem" at hand
- Alternative models and appropriate process for their establishment and implementation (probably no single solution to this – what works best for each situation probably the best guide). Some suggestions include Citizen Juries, internal round table and other models for sourcing community

knowledge and expertise ie treating the community as a valuable and valued resource

- Use/creation of alliances and greater collaboration to share scarce knowledge/expertise/resources (examples noted in Netherlands)
- Role of ministerial advisors needs to be confined to providing ministerial assistance on organizational matters etc – should not be involved in development of policy etc– that is the role of the relevant department
- Noted that in the end local alliances may still need access to top level professional advice and best practice that should be available from the relevant government department, and that the relevant department will in most cases still remain responsible and accountable for the public interest outcomes, and that the process needs to be open/transparent etc, that recommendations arising from the decision making process still need to be tested, monitored and reviewed.

Mechanisms for making governments (all levels of government) accountable
1. Calling out of government – need for constant vigilance and frequent reminders when government policies or processes abused/inappropriate
   a. Government safeguards/watchdogs/whistle blowers/role of civil society, its capacity to become involved, the strength and funding of community based organisations that can/should assist in the community engagement and problem discussion etc
   b. Use of institutional arrangements/mechanisms – as safeguards that are effective after vs before the event (ie to learn from afterwards vs to intervene and stop in the first place)
   c. Use of legal measures ie injunctions in response to failure to apply due/proper process – administrative requirements or legislative requirements – may be the only option for the WGTP but this should not be the case

d. Role of civil society is critical – noted decline in accessability to government and its departments/institutions has made this more difficult – several factors such as
    i. Cost of information in terms of time (red tape etc) money (foi requests etc) or reduced access to politicians (replacement of informal contact arrangements with strictly enforced formal arrangements)
    ii. Loss of patronage or funding support for community based organisations (often under the guise of cost cutting but could be a deliberate attempt to reduce the role of the community in participating in the decision making process etc). This has occurred in local government (MCC for example), as well as State government and federal government
    iii. Replacement of genuine community engagement/consultation processes with sham processes or window dressing in a way that limits opportunities for engagement (WGTP is a good example but similar approach is being adopted by the State government for the North Eastern freeway link as well as the level crossing program)
e. Civil society influence should not be confined to election time – needs to be ongoing but ways need to be found to enable this role become more influential and effective and needs to be the subject of serious discussion. Suggested that transport advocacy groups may need to broaden their network of alliances to include other parties with related concerns such as public health, livability etc, both local and interstate.
f. Ways forward – to be included in a position paper and other initiatives and perhaps progressed in a follow up forum(s).

7. Closing Remarks by Convenor

Our governments, collectively are not coping well with the need to adapt to the changing world around us. If they can't address the relatively simple challenges that face us now we will have little chance of coping with the bigger challenges that are evolving now and in the future. How will we cope when we regularly have temperatures around 50 degrees centigrade, when most of our food bowls including the Murray Darling Basin have disappeared?

There is an overwhelming consensus by our scientists that what humans have done to this planet over the last 200 years to the 8-9 major inter-related systems has tipped our planet into an incredibly dangerous state – we are currently in the 6th greatest extinction event with extinctions more than 1000 times the normal background rate, we have de-stablised our land and water systems and the nitrogen and phosphorous cycles (as well as the carbon cycle) – all human made with the inevitable prospect of a tipping point that will result in a very inhospitable planet that will support only a fraction of the life it supports today and it will be a point of no return for a long time. And we are approaching that tipping point very quickly.

So we need to find a way that encourages our politicians and decision makers to lift their game. We are encouraged that people like Ken Coghill are already working on this – that we are not alone and that provides a base to build on but if there is to be significant change it will require pressure in many areas from us– the civil society to force it.
We hope this forum will encourage more people to start thinking about the need to change and ways to apply pressure to change – to improve the standard and quality of governance in all levels of government to get better outcomes – not just transport. If we don't we will be in real trouble.
We hope this forum will be the start of this process.

References

The following are provided in addition to those provided by William MacDougal and Ken Coghill in their papers.

1. Political Amnesia*, How We Forgot How To Govern, Laura Tingle Quarterly Essay 60*
2, Business, Law and Integrity *Ken Coghill. paper presented at a seminar at the Graduate School of Business & Law, RMIT   University, Thursday 24th August 2017.)*
4. Governance Principles for Boards of Public sector Entities in Australia*, Governance Institute of Australia 2016*
5. *"*Democracy at the Crossroads?*" Tim Smith, Cairns Tropical Writers Festival*
6. *"* Game of Mates How favours Bleed the Nation*" 2017 Cameron Murray and Paul Frijters*
7. *Several EES sumissions on the WestGateTunnel Project are available on the TfM web site.*