

# Restoring Good Governance Must Be Our Top Priority

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Poor governance is costing \$billions in infrastructure projects that deliver questionable benefits to the community. Whilst there is an obvious need for major reform in the way projects are approved by government, there is concern that this is a reflection of declining standards of governance more generally. It is no coincidence that Transparency International's Corruption Perception index shows Australia's score has fallen further reflecting growing scepticism about the integrity of the nation's institutions.

## **Governance defined**

Governance, a critical issue in State transport planning, was the catalyst for a forum held at the Richmond Town Hall on 27<sup>th</sup> October 2017. This forum was prompted by concerns that poor governance was at the heart of deficient decision-making on transport and that unless it was addressed \$billions would continue to be at risk on projects that deliver little value to Melburnians and Victorians. The West Gate Tunnel Project as a case study highlighted recent trends in declining standards of governance at the Victorian State level but there is growing concern among analysts that governance standards are declining more generally in Australia, a concern that extends to many areas with implications for all tiers of government. The cost to the community of poor or corrupt governance is profound. Murray and Frijters "Game of Mates – how favours bleed the nation", demonstrate the influence of privilege and rent-seeking across the Australian economy.

How democratic institutions 'govern' defines a society. We call 'governance' the activities and processes that governments carry out, including their relationships with non-government organisations such as businesses. The quality of governance in Australia ultimately determines our quality of life and capacity to deal with growing challenges in years ahead.

## **Changing operation across all levels of government**

The problems with governance are entrenched and appears at times at all levels of government. These can be defined as: too close a relationship between public officials and private corporations, unaddressed conflicts of interest, too little transparency, lazy analysis that grasps at instant solutions imbued with 'optimism bias', manipulated supporting data, enfeebled public scrutiny. Even outright corruption is evident both at the political level (e.g. campaign donations by beneficiaries of government decisions) and within what used to be trusted departments of the public service (e.g. procurement fraud exposed by IBAC).

Many of the problems we face today have their roots in a revolution in political thinking about governance in the early 1990's. The intervening role of government to achieve public benefits was replaced by a new function of government to facilitate private sector decision making. Many of the

checks and balances became referred to as, “red tape” and removed. This process was accompanied by major institutional change. Many public institutions were abolished or substantially restructured with a managerial style that resembled the corporate world of the private sector and much of the work that used to be carried out within government departments became outsourced. In the process, key competencies and expertise within these departments were progressively lost or transferred to the corporate sector reducing the ability of the public service to provide frank and fearless independent advice.

### **The challenge of policy development and the public trust principle**

Laura Tingle quotes Ken Henry, former Secretary of the Treasury, as saying “I think many departments have lost the capacity to develop policy; but not just that, they have lost their memory. I seriously doubt there is any serious policy development going on in most government departments”. But governance problems we are facing today are not confined to policy advice and strategic planning; they apply to all aspects of government administration.

Perhaps more fundamental however is the diminished understanding by politicians themselves of their responsibilities as elected officials in public office, that the purpose of democracy is to serve the interests of the community, and to apply the public trust principle, or public trust doctrine as it is known in USA (Coghill 2017). This doctrine is still fundamental to the rule of law in our political system and is designed to provide checks and balances in the exercise of political power. The public trust principle applies to all levels of government and is enshrined in the Victorian Local Government Act which requires councils and councilors to act in the best interests of the community as a whole. In a parliamentary system of government, that accountability is to the parliament in the first instance and is an important part of the checks and balances that constrain the risks of wasteful, unethical or corrupt misuse of political power and public resources.

According to this public trust principle in our common law, all holders of public office are under a public trust. Holders of public office – public officers - are those elected or appointed to exercise state sector functions. In terms of better governance, the public trust principle should be rigorously applied at every level, from members of parliament to throughout the public sector and its contractors. Those contractors include consultants engaged to advise Government and public sector agencies. Breaches of this common law can lead to prosecution for misconduct in public office.

### **What actions can the community take?**

Whilst there is no single solution to poor governance standards or malfeasance, many actions can be taken in response. In the short or immediate term, the only options are to apply political pressure by protesting and campaigning against poorly conceived or improper actions and to vote accordingly at election time. Other options include enforcing political integrity through anti-corruption commissions and banning parliamentarians from holding private sector positions for five years after leaving office. Also required is support from other members of civil society, media and relevant institutions to “keep the bastards” honest.

For the longer term, action is required to restore the kinds of institutional checks and balances that have been lost over recent decades. Key is to restore the capacity of government departments to provide expert high quality independent advice without fear or favour, to be able to plan and administer the delivery of services they are ultimately responsible for, and to provide the necessary support mechanisms. Many actions will be required to achieve administrations with such enhanced capacity, and these actions will need a fundamental change in the political mindset. Politicians who seek to control administrations without heeding fundamental principles of checks and balances of power are unlikely to change the dominant governance model without substantial pressure for change. This pressure must come from civil society and advocacy groups. Institutions that have been set up to administer the law and its compliance by governments and other bodies can be persuasive because of their moral or professional standing. Institutions set up to act as checks on legal compliance by governments can also be used to challenge decision making which contravenes proper processes.

More fundamental changes will ultimately be required to the mindset of politicians themselves if they are to respect their responsibilities under the public trust principle in common law. This imperative applies to members of the Executive, their staff and public servants, all elected officials and others empowered to act in accordance with the law. As noted above the public trust principle needs to be supported by organisations such as IBAC that oversee and monitor governance compliance at every level.

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