

**Essential Linkages – Situating Political Governance Transparency  
and Accountability in the Broader Reform Agenda**

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Australia & New Zealand School of Government  
Ian Hangar Recital Hall Queensland Conservatorium of Music  
16 Russell Street South Bank Brisbane

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Check against delivery

I<sup>1</sup> was pleased to accept the commission by the School of Government to give a public lecture on *Essential Linkages – Situating Political Governance Transparency and Accountability in the Broader Reform Agenda*. The lecture will be available electronically.

I shall take the broader reform agenda as a given. It would be a strangely uninformed Australian who wasn't aware of the intense focus on infrastructure, climate change, education, the extensive COAG agenda, and so on, all set in the current maelstrom of financial, fiscal, and economic troubles.

The economic social and environmental reform contemplated is very large. The reform is intended to make Australia more productive, more efficient, more competitive; a better society, and to better safeguard the future. Noble plans which embrace nearly every sector in Australia, but leave the political sector largely untouched, as if only the political class at the

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<sup>1</sup> Former Senator Andrew Murray has direct experience of complex and difficult environments, including those affected by war, economic sanctions, and major political social environmental and economic problems. Pre-Senate his business career included that of an executive and director in large public and private corporations, and owning and managing his own businesses. He has also been in the armed forces, a consultant, occasional media writer, and occasional academic, and is a published author. He is best known in politics for his work on finance, economic, business, industrial relations and tax issues; on accountability and electoral reform; and for his work on institutionalised children.

apex do not need to be more able, a higher calibre, more productive, more competitive, professionally more suited for the future.

In times of trouble it is as important to stay true to the integrity and principles that will make reform lasting and sustainable. Money is scarcer than in good times. My thesis is that better political governance more transparency and greater accountability will materially assist in troubled times and will add to the effectiveness of reform. It will assist the realistic measurement of reform achievements.

This point should not be lost in an atmosphere of crisis. A succinct slightly crude business saying is apt: *Even when you are up to your arse in crocodiles it is important to remember that your objective is to drain the swamp.*

These are times of reform opportunity. In times of trouble the populace give governments and parliaments greater latitude to act. These are good times to bed in major long-term reforms that would otherwise attract greater resistance, especially from vested interests.

My brief was to promote debate about how public sector performance and efficiency improvement can help meet the higher expectations of Australians. Debate is good, but persuasion is my aim; if you are persuaded of the merits of my arguments I hope you have the determination to make change happen.

Australians are demanding much more of their Governments. They want peace prosperity and a good life. They want respect internationally and growth domestically. They want jobs and opportunities. They want their governments proactive, responsive, professional, far-seeing, productive, and performance driven. They want their needs met. The push for higher standards and better performance is strong. The cry for economic, social, and environmental reform is loud. Governments have said they will respond with a broad reform agenda. Expectations have been created. Success in meeting those expectations needs achievable plans, an accepted timeline, constant credible reporting, and measureable results – through key performance indicators, targets, benchmarks, review and analysis.

The gap between expectation and performance has to be addressed.

The major theme of this lecture is the essential linkage between the need to reform political governance; the need to improve accountability regimes – financial and informational; and the democratic and managerial case for transparency and accountability resulting in more efficient, effective, responsive and sustainable business government and not-for-profit<sup>2</sup> organisations delivering public services.

It is almost 20 years since the Fitzgerald Inquiry reported. The 'moonlight' state took a leap into the sunlight and there have been quantum improvements in politics and public administration in Queensland since. In terms of my broad argument, Queensland is living proof that there is a clear link between transparency and openness, better governance and improved outcomes in terms of economic performance, status, competitiveness and national influence. So the system works and major accountability reform really does help - it's scary and at times painful, but the long term benefits can be quickly realised.

The problem is it took a horrible period and a remarkable judicial inquiry<sup>3</sup> to get such real change. We don't want that repeated to get more change. The benefits can be forecast and foreseen; more transparency and accountability will materially help Queensland and other Australian governments. The Australian people want more transparency and accountability – that is why each election campaign sees renewed promises, too often followed by later backsliding.

Essential Linkages. I was educated in the doctrine of the political economy, a holistic approach to the functioning of the state and society that respects specialisation ('silos' in modern parlance), but believes the virtue of specialisation is to provide depth and understanding to overarching integrated objectives and programmes. Such an approach

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<sup>2</sup> For analytical purposes the scholarly literature often divides society into four sectors: Business (First Sector); Government (Second Sector); Not-For-Profit, non-government, voluntary, intermediary (Third Sector); Family (Fourth Sector): Senate Economics Standing Committee *Disclosure regimes for charities and not-for-profit organisations* report, Canberra, December 2008 page 11.

<sup>3</sup> A judicial inquiry into Queensland police corruption, political corruption and the abuse of power was presided over by Tony Fitzgerald QC: 1987-1989 the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct.

requires linkage analysis; not just what will make the parts work better as a whole, but what linkages are essential to make it work well.

There are intangible links like ethics and culture, but usually the links dictating consistent performance are tangible, bedrocked in statute, regulation, codes, guidelines, procedures and the like. The continuity and maintenance of standards requires such tangibles, but without the intangibles standards will decline. So the personal calibre quality and character of political and public service leaders in government matter greatly in holding ethics and culture together, as well as in delivering performance.

In that context a recent federal whole-of-government survey that says 45% of employees agreed their agency was well-managed and 46% agreed that their agency's leadership was of a high quality, implies that over 50% did not;<sup>4</sup> a worrying way to go therefore, on that front.

And the poor opinion the community has of politicians in general, with exceptions for some individuals, creates a large gap between expectation and performance.

Which leads me on to political governance; I have been anxious about the state of political governance for years.<sup>5</sup>

Governance through law regulation and process makes power subject to performance and accountability and leads to better outcomes and conduct; which is why so much effort was put into better governance in the bureaucratic<sup>6</sup> union and corporate sectors, with great improvements resulting.

Political governance matters because political parties are fundamental to the Australian democracy, society and economy. They wield enormous influence over the lives of all

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<sup>4</sup> Australian Public Service Commission State of the Service Report, State of the Service series 2007-08 Canberra November 2008.

<sup>5</sup> Recent work on political governance includes two public submissions: by Andrew Murray February 2009 in response to the Australian Government's December 2008 Electoral Reform Green Paper DONATIONS FUNDING AND EXPENDITURE; and by Senator Andrew Murray to JSCEM's inquiry into the conduct of the 2007 federal election April 2008.

<sup>6</sup> For instance see definition in page 13 of ANAO and PM&C 2006 *Implementation of Programme and Policy Initiatives: Making Implementation Matter*, Better Practice Guide Commonwealth of Australia, Canberra.

Australians. They decide the policies that determine our future, the programmes our taxes fund, the Ministers that government agencies respond to and the representatives in parliaments they are accountable to.

Political parties must be accountable in the public interest because of the public funding and resources they enjoy and because of their powerful public role.

Conflict of interest and self-interest has meant minimal statutory regulation of political parties. It is limited and relatively perfunctory, in marked contrast to the much better and stronger regulation for corporations or unions.

We have law and governance in the public interest for corporations and unions because it makes a real difference to their integrity and functioning. When I last looked, there were 2,262 pages of laws to regulate the conduct of companies, 1,440 pages to regulate unions but few rules regulating political parties.<sup>7</sup>

The successful functioning and integrity of an organisation rests on solid and honest constitutional foundations. Corporations and Workplace Relations laws provide models for organisational regulation. Political parties do not operate on the same foundational constructs.

Political governance includes how a political party operates, how it is managed, its corporate and other structures, the provisions of its constitution, how it resolves disputes and conflicts of interest, its ethical culture and its level of transparency and accountability.

Increased regulation of political parties is not inconsistent with protecting the essential freedoms of expression and from unjustified state interference, influence or control.

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<sup>7</sup> As entities political parties sit within the Third Sector – see - Senate Economics Standing Committee *Disclosure regimes for charities and not-for-profit organisations* report, Canberra, December 2008; ONE REGULATOR ONE SYSTEM ONE LAW, The Case for Introducing a New Regulatory System for the Not for Profit Sector, Senator Andrew Murray, Canberra, July 2006, available from the Parliamentary Library Canberra; Public submission by Andrew Murray February 2009 in response to the Australian Government's December 2008 Electoral Reform Green Paper DONATIONS FUNDING AND EXPENDITURE.

Greater regulation offers political parties protection from internal malpractice and corruption, and the public better protection from its consequences. It will reduce the opportunity for public and private funds being used for improper purposes. The federal electoral committee has previously agreed with many of these points, but nothing has been done.<sup>8</sup>

I haven't time to go into other areas of political governance that could help materially via constitutional and electoral law change, and better remuneration and career opportunities.

Improved political governance will over time lift the overall calibre of the political class by requiring greater professionalism, better pre-selection recruitment and training, a sustainable career path for professional parliamentarians as well as those that aspire to an executive ministerial career, and by reducing the opportunity for patronage, sinecures and dynastic factionalism. Australia is fortunate in having many very able politicians, but the overall quality and ability of politicians and ministers – local, state, territory, and federal – needs to be lifted.

A trained professional experienced political class that is subject to the rigours of regulation, due process, and organisational integrity will always perform better than one that is not.

If you are still resistant to the idea of political governance ask why the best talent is attracted to business, the professions, or the public sector – all of which have strong governance - but not (with exceptions) to politics, which has little. Ask yourself if you are satisfied with the overall quality of political candidates, representatives and ministers; or with the branch-stacking in political parties, their murky processes, the donations system, their standards.

Transparency. Transparency is usually bracketed with accountability, but it is not the same thing. Transparency means easily discerned, seen, open. Accountable connotes formal reporting and being 'responsible for' and 'to'.

The democratic case for transparency is that the public's right to know are essential principles and protections in a democracy. It is a right, like voting, or a fair trial. It aids efficiency.

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<sup>8</sup> See Chapter 4 Joint Standing Committee on Electoral Matters (JCEM) report into the 2004 federal election: September 2005.

Why is transparency often resisted? In essence, transparency means giving up power and freedom of action in the political market. In another context Joseph Stiglitz recently alluded to this: *“Those working in markets see information as power and money, so they depend on a lack of transparency for success.”*<sup>9</sup>

The managerial case is that transparency means activities and processes are easily seen; automatically providing an efficiency incentive and less opportunity for corruption, waste, mismanagement, incompetence, or any other potential sins of public administration. Inefficiency mismanagement and corruption can thrive in the absence of transparency.

As the saying goes – sunlight is the best disinfectant.

Right at the heart of my thinking is this: more transparency, clearer accounting, continuous disclosure will actually mean less need for scrutiny, because close and detailed scrutiny will not be necessary – and therefore more focus on what is relevant.

Sunlight does not need torchlight.<sup>10</sup>

There are many good examples of improved transparency: legislation and forms that are in plain English; websites that are user-friendly informative easy-to-navigate and with analytical aids; public access to information that is provided helpfully and promptly.

Then there are the impediments: freedom-of-information systems that are nothing of the sort, whistleblower laws that are instruments of suppression, budget papers that are deliberately obtuse; and appropriations whose design permits licence and impropriety.

Fundamental is the minimal use of secrecy by government. Secrecy is necessary for genuine reasons of security and privacy, but too much secrecy is unacceptable if parliament is to fulfil its oversight function and if government is to remain open and accountable to the people.<sup>11</sup>

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<sup>9</sup> Joseph Stiglitz Columbia University USA economist and Nobel Prize winner, quoted in the Australian Financial Review Thursday 29 January 2009, page 14.

<sup>10</sup> Report to the Australian Government: Review of Operation Sunlight: Overhauling Budgetary Transparency Senator Andrew Murray June 2008, Canberra, Chapter 3 page 17.

When information is blocked it must genuinely be in the public interest, not in the political interest or in the private interest of those who would otherwise be exposed for mismanagement waste or impropriety.

Freedom of Information is vital. Alan Rose, former President of the Australian Law Reform Commission, made the point succinctly: *“In a society in which citizens have little or very limited access to governmental information, the balance of power is heavily weighted in favour of the government. It is doubtful that an effective representative democracy can exist in such circumstances.”*

The New Zealand Court of Appeal once described New Zealand's FOI legislation as of *“such permeating importance”* that *“it is entitled to be ranked as a constitutional measure.”* The 1996 Constitution of the Republic of South Africa provides for a constitutional right of access to information held by the State. British Columbia's FOI regime requires the government to disclose, among other things, *“information which is clearly in the public interest.”* This is a mandatory duty to disclose which arises even where no particular individual has specifically requested the information.

In contrast, Australia's commitment to freedom of information has been disappointing.

The provision of information is a public duty. The FOI Act should be the final resort for obtaining information, not the only means of doing so. Many agencies refuse to provide information without sound reason, forcing recourse to the Act.

I have had a bit to do with freedom of information issues over the years, including producing my own bill in 2003.<sup>12</sup> At that time our FOI laws were in serious need of reform; and the Howard Government had no intention of delivering that reform.

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<sup>11</sup> There are useful chapters on government and cabinet secrecy that remain relevant today, in Report No 1 Commission on Government Western Australia August 1995, Perth.

<sup>12</sup> Senator Andrew Murray Private Senator's Bill: FREEDOM OF INFORMATION AMENDMENT (OPEN GOVERNMENT) BILL 2003.

Recently Queensland led the way on FOI with the impressive Dr David Solomon having 116 of his 141 recommendations supported by the Queensland Government in full (and either partially or in principle supporting another 23 recommendations).<sup>13</sup>

Solomon<sup>14</sup> attacks the costly, legalistic and adversarial FOI culture and attends to such vital issues as having an independent FOI Commissioner to oversee and monitor the Act; broadening the scope of information that can be accessed under the Act; creating a fairer, more reasonable fee structure; reducing the time limits for the processing of FOI requests to 25 days; limiting the right of refusal to essential public interest grounds, and so on.

The Queensland Government has issued two draft bills for simultaneous public consultation – the *Right to Information Bill 2009*, and the *Information Privacy Bill 2009* – for the very good reason that privacy is the flip side to public disclosure, and one should not be considered in isolation of the principles and practices of the other.

I won't deal with it here, but elsewhere I have had much to say about the misuse of privacy rules to prevent adults institutionalised as children from finding out their past or their identity.<sup>15</sup>

FOI laws exist to help achieve open and accountable Government, to allow access to certain personal information held by government departments, and to provide a general right of access to government information.

Former Prime Minister Malcolm Fraser said that *'too much secrecy inhibits people's capacity to judge the government's performance'*, neatly encapsulating the very reason later

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<sup>13</sup> Right to Information: Explanatory Guide: *Right to Information Bill 2009 [&] Information Privacy Bill 2009*. Queensland Government Brisbane December 2008 page 4.

<sup>14</sup> See the report by the FOI Independent Review Panel, *The Right to Information: Reviewing Queensland's Freedom of Information Act* Brisbane June 2008.

<sup>15</sup> See for instance *The Forgotten Australians: Identity, records and their search for the past* Andrew Murray: Public lecture for *The Fourth International Conference on the History of Records and Archives (ICHORA 4)* a conference organised in conjunction with the Institute of Advanced Studies, University of Western Australia Perth August 2008.

governments and bureaucracies were to conspire to limit FOI, aided in some cases by executive-minded court decisions.<sup>16</sup>

In 1983, former Prime Minister Bob Hawke put the case bluntly: “*Information about Government operations is not, after all, some kind of `favour' to be bestowed by a benevolent government or to be extorted from a reluctant bureaucracy. It is, quite simply, a public right*”. It is a public right, it is in the public interest, and the principle of popular sovereignty demands that people have access to relevant information.

The power to access and independently scrutinise government information makes for a genuinely deliberative and participatory democracy. FOI opens government up to the people. It allows people to participate in policy, accountability and decision making processes. It opens government activities to scrutiny, discussion, comment and review from the individual and from the media on behalf of society.

In our massive government sector it is hard for watchdogs like auditors general or even management to keep abreast of everything. The military will tell you that troops and equipment are insufficient without good ground intelligence. That is what whistleblowers can provide.

Whistleblowers are people who by reason of their employment come across information that reveals waste, mismanagement, corruption, dishonesty or improper conduct in government or in private organisations. They play a vital role in ensuring the accountability of government.

The expert Dr AJ Brown of Griffith University Law School has said: “*The willingness of public officials to voice concerns on matters of public interest is increasingly recognised as fundamental to democratic accountability and public integrity. At the same time, ‘whistle blowing’ is one of the most complex, conflict-ridden areas of public policy and legislative practice.*”

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<sup>16</sup> The minority of judges in *McKinnon v Secretary, Department of Treasury* said that, ‘*The declared object of the FOI Act is to extend as far as possible the right of the Australian community to access information in the possession of the Commonwealth Government.*’ The majority judges did not see it that way and that decision further limited access to information for the community.

When whistleblowers reveal waste, corruption, dishonesty or improper conduct in an organisation they deserve protection. If a person is bullied, defamed demoted or sacked because they made a genuine and warranted disclosure, there must be processes that allow for investigation, and restitution or damages.

Public administration and public accountability can ever only be as good as the frameworks which support them. Openness, rigour and the need for constant revision is required within public bodies to ensure they live up to the vision for which they were created: serving the Australian people.

Remaining accountable for the wide array of services provided by government and ensuring the public service remains productive and efficient needs good people, supported by competitive entry standards and competitive wages and conditions. Requiring employees to keep official secrets in the public interest or requiring security clearances for certain tasks to ensure that people are trustworthy is necessary.

You also need safeguards to ensure that proper procedures are followed and that maladministration is uncovered. This underdevelopment of effective whistle blowing procedures is bad for public administration, bad for the Australian people and bad for public officials who are twice betrayed – first by the failures these officials see within the public service and second when they are punished for reporting the problems they see.

While all the States and Territories have reasonably comprehensive if inadequate legislation for public officials making disclosures, Commonwealth public sector whistleblowers are afforded little protection. There is no specific legislation and the *Public Service Act s16* provisions are very limited and problematic.

In federal law secrecy prevails over the public interest. So a leak to the media resulting in a review and major upgrade of Australia's airport security resulted in a conviction for the

official accused of the leak.<sup>17</sup> Such outcomes are perverse and mean that the active disclosure of corruption and wrongdoing is inhibited.

The Rudd government has accepted the view that genuine whistleblowers perform a valuable and essential public service. They have asked a federal parliamentary committee to come up with a better approach. This is another accountability area that I have my own bill.<sup>18</sup> This bill was used as a submission to the parliamentary inquiry.<sup>19</sup>

Whistleblower legislation must be carefully crafted to ensure that unworthy causes cannot be pursued in the name of good public administration and that there are sufficient safeguards to weed out the inappropriate use of complaints procedures.

Any public interest disclosures regime should incorporate three principles: create a framework to facilitate the disclosure of information in the public interest; create a framework that ensures such disclosures are properly dealt with; and provide – including relief from legal liability and workplace victimisation – practical protection for people who disclose information in the public interest.

Whistleblower legislation must create an effective and transparent framework through which genuine public interest disclosures are managed from initial reporting to appropriate people, through the life of the investigation and ultimately to the appropriate resolution of the issue.

It is important that the focus should be on the disclosure itself. This shift is designed to place primacy on addressing the issue raised rather than the person who raised it. This does not imply a lack of protection for those who raise the issue – quite the reverse.

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<sup>17</sup> Allan Robert Kessing was convicted under the *Commonwealth Crimes Act* of leaking Customs reports on drug offences and security breaches at Sydney Airport. Prior to the leak the reports had not been acted upon - one had been buried for two years and was never even seen by Ministers or senior bureaucrats. Following the leak the Australian Government appointed Sir John Wheeler to conduct a review on airport security operations which resulted in an exposure of serious problems, and an extra \$200m expenditure to improve aviation security. Despite exposing a real and immediate danger to Australians at large Allan Kessing was made a criminal.

<sup>18</sup> Senator Andrew Murray Private Senator's Bill: *Public Interest Disclosures Bill 2007*.

<sup>19</sup> This House of Representatives Committee's report is due to be tabled late February 2009:  
<http://www.aph.gov.au/house/committee/laca/whistleblowing/index.htm>

A unique element of my bill is that it supports the role of parliamentarians and journalists in the whistle blowing process. After other options have been exhausted, a disclosure may be made to a senator or member if under all the circumstances it is reasonable for the official to do so and the disclosure has already been made to a proper authority but to the knowledge of the official has not been acted upon within 6 months; or the disclosure was acted upon by the proper authority but it was not adequate or appropriate; or the disclosure concerns especially serious conduct, and exceptional circumstances exist to justify the making of the disclosure.

After the disclosure to a parliamentarian, a public official may make a public interest disclosure to a journalist if they do not make the disclosure for the purposes of personal gain, whether economic or otherwise; and under all the circumstances it is reasonable for the public official to make the disclosure; or the disclosure has already been made to the senator or member but to the knowledge of the public official the response was not adequate or appropriate; or the disclosure concerns especially serious conduct, and exceptional circumstances exist to justify the public official making the disclosure.

A culture of secrecy is damaging to the integrity of public administration and expenditure.<sup>20</sup>

Two examples of how apparently small transparency measures can bring about big changes. The Senate was constantly frustrated by the lack of a systematic filing and record keeping system, abetting secrecy and hindering accountability and freedom of information requests.

The Senate continuing order (the Harradine motion) of May 1996 required that an indexed list of all files from each agency be tabled in the Senate annually.

The result was the entire government had to get its filing and record keeping system into a rational accessible order, and those file titles were now on the record. If my memory serves me correctly, Defence reviewed its entire secret classification, and halved the number of matters formerly designated secret.

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<sup>20</sup> The Australian Law Reform Commission (ALRC) has been requested by the Commonwealth Attorney General, the Hon Robert McClelland MP, to review secrecy provisions in federal legislation. The ALRC will provide its final report and recommendations to the Attorney-General by 31 October 2009.

Hundreds of billions of dollars of contracts are let annually by Australian governments. Strong independently audited procurement and tender processes are essential.

Because ‘commercial confidentiality’ clauses in government contracts were often not genuine and were designed to avoid scrutiny, the June 2001 Senate Continuing Order (known as the Murray Motion) required ministers to table letters annually confirming that their departments and agencies have posted on their websites a list of contracts entered into in the preceding 12 months (or before, if not yet completed) worth \$100,000 or more. They have to show, among other things, the name of the contractor, the value and duration of the contract, the subject matter, the commencement date, whether it contains confidentiality provisions and if so, why.

This key accountability measure ensures all Commonwealth contracts are public, prevents the over-use of confidentiality claims, and promotes more efficient competitive and open contract practices.

The Senate Finance and Public Administration Committee noted in 2007: *Two notable achievements are the general decline in the use of confidentiality provisions and the now commonplace inclusion of standard disclosure provisions in government contracts [but] concerns remain about the continued misuse of confidentiality provisions in contracts and the reliability of the reported data in departmental and agency lists.*

Sunlight has helped, through the devices of reporting transparency and regular audit.

All government agencies should conduct a thorough audit as to just how transparent their processes and public interactions are. In my experience this is almost never done in any holistic way, and never in a whole-of-government sense.

Generally speaking accountability is a matter of formal process or of legislation; Senate Estimates being of the first kind, and legislation requiring annual reports by agencies being of the second kind.

Accountability systems need review like anything else. The Productivity Commission and COAG red tape reviews focus on the regulatory burden on the private sector. I have proposed<sup>21</sup> a similar approach to review the burden of over-lapping accountability reports and governance systems in the public sector. Ministers and parliaments often address issues in one portfolio that are isolated from effects across government. It is wise to periodically do some thorough housekeeping to establish whether reports, systems or processes are outdated, irrelevant or ineffective.

Governments and bureaucracies may relish the opportunity to rid themselves of requirements whose primary purpose is to satisfy Parliament, and which they regard as costly, time consuming or onerous, or as limiting their freedom of action. Therefore it is unwise to let the Government do this housekeeping, although obviously they must and should make proposals for periodic reform. It is the task of Parliament itself to periodically conduct a comprehensive review of cross-government accountability devices and measures, to ensure they remain both necessary and relevant to the Parliament.

Accountability is very often dictated by statute, but its force derives from higher law. This is what I had to say in the Murray report on budget transparency:

In important ways budget transparency and financial accountability are part of the rule of law, mechanisms which deliver integrity and a real underpinning to our political economy, and which enable law to operate effectively and affordably.

The Commonwealth's power to tax and spend is arguably its most important power of all. It is fundamental to the Commonwealth's ability to achieve its policy priorities and objectives.

A simple proposition informs my approach to budget transparency and financial accountability. That proposition is that budget transparency and financial accountability are not only ethically, morally, and managerially sound concepts with positive and beneficial consequences; they are not only the natural accompaniment of parliamentary democracy; but they are legal requirements that flow from the higher law of the Australian Constitution, as supplemented by statute.

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<sup>21</sup> Report to the Australian Government: Review of Operation Sunlight: Overhauling Budgetary Transparency Senator Andrew Murray June 2008, Canberra, Chapter 4 pages 60 to 63.

Budgetary transparency is fundamental to Australia's parliamentary democracy. Without it Governments are able to deny the Parliament effective oversight of Government expenditure and effective and efficient administration is able to be subverted. In any true liberal democracy, where the electors are sovereign, transparency is an essential feature.<sup>22</sup>

As we come towards the end of this lecture, are you asking why it is hard to get change, when the benefits are evident? Apart from the obvious - that it is always difficult to get change – what is it that causes resistance to reform, disclosure and openness - what is it that people and institutions fear? I have no academic studies to fall back on but my personal and political experience tells me that many people in positions of power in politics and the bureaucracy like power and don't like giving it up.

Secondly, being asked questions by parliamentarians or the media or the public is an uncomfortable business; especially when such questions have a nasty edge to them and assail your motives or integrity.

Thirdly, many people in politics and the bureaucracy know that if something has been concealed that would be widely criticised if known, it would make life difficult. Just see the resistance to publishing health system misadventures.

It is worth acknowledging the human cultural and other barriers to be overcome, because they are formidable. But the consequence of openness is less discomfort, less squirming. Openness requires a rethink of processes and reporting, as a result a better product is created and integrity goes up a notch.

I am sympathetic to the dilemmas public servants face, given the personal and public stakes involved when something embarrassing happens; and for Ministers also, especially in service delivery intensive areas (Health, Education, Transport, Emergency Management - the bread and butter of State governments). And I'm particularly cognisant of the difficulties an officer faces when dealing with ministers and advisers who have no or little professional management training, or who are less than enthusiastic on openness.

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<sup>22</sup> Report to the Australian Government: Review of Operation Sunlight: Overhauling Budgetary Transparency Senator Andrew Murray June 2008, Canberra, Executive Summary pages i and ii.

Having police interviews video-recorded protects the policeman as much as the accused, and leads to more faith in the process. Having hospitals report misadventure and mistakes lessens the extent of those over time. Publishing kids' numeracy and literacy scores results in better schools and teaching. Federal politicians travel used to provide endless copy for journalists, now it is regularly published and open, it is much less so.

When matters are professionally dealt with and managed, media sensationalism and public distrust becomes harder to sustain.

My opinion is that the only way to overcome the human and cultural barriers to openness is through widespread advocacy, such as through an audience such as these, strong campaigns such as the media campaign on FOI, and political and bureaucratic leadership founded on principle and integrity.

There is much more to be said but may I end provocatively with respect to Queensland.

Although I think it matters enormously, in this lecture I have not dealt with aspects of political governance that mean reassessing the constitution, the separation of powers, a republic, whether the federation should stay and if it should in what form, and the powers states and the commonwealth, and the House and Senate should each have. That means reassessing how power is acquired and restrained, who has power over what, how money is raised and spent, and by whom. It means examining the question of imbalances between the people and their rulers, the issues of rights, liberties, obligations, protections, representation and accountability.

You do need to think about what is missing in your battery of protections. If you do not have an independent appointment on merit system, such as in the United Kingdom under the 'Nolan principles',<sup>23</sup> you are always at risk from partisan interference in what would

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<sup>23</sup> The Nolan Committee was appointed by the United Kingdom Parliament in 1995 to examine appointments on merit. It set out principles to guide and inform the making of such appointments. The UK Government fully accepted the Committee's recommendations. The Office of Commissioner for Public Appointments was subsequently created (with a similar level of independence from the Government as the Auditor General) to

otherwise be independent agencies or institutions. External independent oversight bodies, staffed by people of skill, ability and integrity are essential to good government.

Nevertheless, if you do have an Auditor General; Solicitor General; Ombudsman; Equal Opportunity, Human Rights, Privacy, Freedom of Information and Public Disclosure Commissioners; an independent judiciary; an independent police force; and a Crime and Misconduct Commission - and effective laws and adequate resources to empower them and to ensure their integrity – then you are on your way to the protections needed in a civil society against abuse of power, waste, inefficiency, corruption and mismanagement.

Your parliament matters because it represents the sovereign people. If parliament has less talent, integrity or judgement than it should, everyone loses. Law which is the result of a parliamentary tyranny where a political party with half the popular vote gets all the say is not as sustainable or durable as one where there is plural cross-party input and support.

Do not tell me the ballot box cures all, if all it results in is changing one parliamentary take-all majority for another. Your constitution, electoral system and representative system matter in sorting this out.

In Queensland your unicameral system design is bad, because it raises the Executive above all else, and diminishes the checks and balances explicit in the separation of powers. If Queensland wants to remain unicameral it should either go to proportional representation or to having your Premier and Deputy Premier directly elected and letting them appoint Ministers outside of Parliament, so making your unicameral house a non-executive one.

The alternative is a bicameral system. An upper house is necessary for the nobler cause of the public good and public interest, by adding real value, ideally – heightened accountability, a restraint on executive and legislative excess, a repository of parliamentary good governance and standards, and fearless open and extensive consultation inquiry and review.

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provide an effective avenue of external scrutiny. UK Prime Minister Brown later announced that even better scrutiny will be introduced for appointments in particular areas, including involving Parliament's select committees in the appointment of key officials.

## **APPENDIX for the electronic version of this Lecture: Expanding on Political Governance**

In the Green Paper the Special Minister of State says<sup>24</sup> *...we rightly value core democratic values: fairness, transparency, political integrity. Australians also want a healthy political system, with impartial umpires and processes underpinning our electoral system, keeping our campaigning fair and transparent and ensuring our systems are free from corruption and improper influences.*

This is an argument for better political governance. Greater fairness transparency and political integrity require improved political governance.

Political governance includes how a political party operates, how it is managed, its corporate and other structures, the provisions of its constitution, how it resolves disputes and conflicts of interest, its ethical culture and its level of transparency and accountability. As the Green Paper implicitly acknowledges electoral reform also requires attention to aspects of political governance like transparency and accountability.

All registered political parties should be obliged to meet minimum standards of accountability and internal democracy. Given the public funding of elections, the immense power of political parties (at least of some parties), and their vital role in our government and our democracy, it is proper to insist that such standards be met.

At present there are two governance areas in politics that are regulated by statute to a degree – the registration of political parties, and funding and disclosure. The statutory registration of political parties is well managed by the Australian Electoral Commission (AEC), as a necessary part of election mechanics, but the regulation of funding and disclosure is weak.

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<sup>24</sup> The Australian Government Electoral Reform Green Paper DONATIONS FUNDING AND EXPENDITURE, Canberra, December 2008, page 1.

Although they are private organisations in terms of their legal form, political parties by their role, function, importance and access to public funding are of great public concern. The courts are catching up to that understanding.<sup>25</sup> Nevertheless, the common law has been of little assistance in providing necessary safeguards. To date the Courts have been largely reluctant to apply common law principles (such as on membership or pre-selections) to political party constitutions, although they have determined that disputes within political parties are justiciable.

The AEC dealt with a number of these issues in Recommendations 13-16 in the AEC Funding and Disclosure Report Election 98. Recommendation 16 asks that the *Commonwealth Electoral Act 1918* (CEA) provide the AEC with the power to set standard, minimum rules which would apply to registered political parties where the parties own constitution is silent or unclear. This was a significant accountability recommendation.

The JSCEM's 1998 Report recommended (No.52) that political parties be required to lodge a constitution with the Australian Electoral Commission (AEC) that must contain certain minimal elements. This recommendation was a significant one, but it did not go far enough. In their report into the 2004 election, in Recommendation 19, to its credit the JSCEM again recommended that political parties be required to lodge a constitution with the AEC that must contain certain minimal elements.

Political parties exercise public power, and the terms on which they do so must be open to public scrutiny. The fact that most party constitutions are secret prevents proper public scrutiny of political parties. Party constitutions should be publicly available documents updated at least once every electoral cycle. (The JSCEM were once told by the AEC that a particular party constitution had not been updated in their records for 16 years.)

To bring political parties under the type of accountability regime that befits their role in our system of government, the following reforms are needed:

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<sup>25</sup> *Baldwin v Everingham* (1993) 1 QLDR 10; *Thornley & Heffernan* CLS 1995 NSWSC EQ 150 and CLS 1995 NSWSC EQ 206; *Sullivan v Della Bosca* [1999] NSWSC 136; *Clarke v Australian Labor Party* (1999) 74 SASR 109 & *Clarke v Australian Labor Party (SA Branch)*, *Hurley & Ors and Brown* [1999] SASC 365 and 415; *Tucker v Herron and others* (2001), Supreme Court QLD 6735 of 2001.

- The *Commonwealth Electoral Act* should be amended to require standard items be set out in a political party's constitution to gain registration, similar to the requirements under Corporations Law for the constitution of companies.
- Party constitutions should specify the conditions and rules of party membership; how office bearers are preselected and selected; how pre-selection of candidates is conducted; the processes for the resolution of disputes and conflicts of interest; the processes for changing the constitution; and processes for administration and management.
- Party constitutions should also provide for the rights of members in specified classes of membership to: take part in the conduct of party affairs, either directly or through freely chosen representatives; to freely express choices about party matters, including the choice of candidates for elections; and to exercise a vote of equal value with the vote of any other members in the same class of membership.
- Party constitutions should be open to public scrutiny and updated on the public register at least once every electoral cycle.
- The AEC should be empowered to oversee all important ballots within political parties. At the very least, the law should permit them to do so at the request of a registered political party.
- The AEC should also be empowered to investigate any allegations of a serious breach of a party constitution, and be able to apply an administrative penalty.

Changes to political governance such as these do not need COAG approval although their support would be welcome. Such reforms to Commonwealth law would inevitably flow onto the conduct of state political participants, since nearly all registered state participants are also registered federal parties.