Centre for International Corporate Governance Research
VICTORIA UNIVERSITY
Sponsor:
Victorian Department of the Premier and Cabinet

Beyond Fragmented Government: Governance in the Public Sector

15-17 August, 2005

Victoria University City Campus,

12th Floor, 300 Flinders Street. Melbourne, Australia
Monday, 15 August 2005

Session 1: “Integration and Integrity: What are the standards and values in our public sector?”

PETER JOHNSTONE

“Public Sector Governance – Whose responsibility?”

Abstract

This paper accepts that Australian Government is of its nature fragmented, but argues that the effects of fragmentation must be limited by more effective approaches to corporate governance. To achieve better integration of government will require a more sophisticated understanding of the nature of corporate governance in the public sector, improvements to structures, clarification of roles and responsibilities, and in particular the development of a culture based on sound understanding of the strengths and weaknesses of the democratic system, and an informed understanding of the importance of process. Such a culture must be founded on a commitment to democracy supported by standards and values firmly based on the highest standards of integrity. Public sector executives must accept responsibility for stewardship and leadership in matters of governance ensuring a commitment to continuous improvement in the processes and culture of corporate governance.

Introduction

A couple of weeks ago I happened to be in Darwin for a meeting of local government Chief Executive Officers and one of the speakers turned out to be a former lecturer of mine, of some thirty years ago when I was studying administration at Canberra University. He lectured me in public administration and government authorities, and I spent a lot of time talking with him in those days. And we got together over a few beers in Darwin as well and I was particularly interested to learn that his title now is Professor of ‘Governance’, a term that has emerged in the interim to describe the matters that we discussed both then and now. It seems to me that it’s timely to ask the question as to what ‘governance’ really means, the term having only been around in the sense in which we’re using it at this conference for say ten years.

Governance to my mind is a still developing notion that goes to the very heart of organisational performance. And the current societal focus on governance and the awareness of the centrality of governance practices to recent failures in high profile public and private organisations, presents an opportunity for us to look to better systems of governance. I refer to cases that would be familiar to everybody here, whether it’s Enron, Harris Scarfe, HIH, FAI, NAB and then of course in the public sector.
’children overboard’, the Palmer Report on the Rau affair, and even last week the Glen Eira Council dismissal.

Governance isn’t just a new name. The responsibility has been there all along, but it certainly is, to my mind, a new and important focus over the last decade.

It seems to me in thinking about this subject that in the public sector over some three decades, we’ve seen a movement from very much input processing through managerialism and an outputs focus, - and that output focus, in my mind, often was at the expense of good governance: the so-called Nike factor, ‘just do it’, the can-do public servant - through a focus on process, structure and human relations, to now, a focus on outcomes informed by better processes, structure and culture.

We’ve moved, if you like, from organisations operating very separately from their directors, to a better understanding of respective roles and responsibilities in achieving organisational outcomes: governance as the foundation of organisational performance.

The Vice-Chancellor, Liz Harman, quoted Terry Moran (Secretary, Victoria’s Department of Premier and Cabinet) this morning in referring to the development of ‘network governance’. Local government is perhaps the ultimate example of network governance, to the stage where the community shareholders actually elect their directors, Councillors, to govern their local community. There are many challenges inherent in this first level of government, but it works and is working increasingly better to my mind despite occasional, usually ill-informed, adverse publicity.

I’ve checked for the term ‘governance’ in the indexes of a lot of major books on administration and organisational performance published over the last few decades, and it’s only in the last decade that the term has appeared. There are now increasing public expectations of the quality of governance in the private and public sectors. I believe there’s also a more sophisticated understanding of public sector evaluation and a realisation that the adequacy of process is critical to the quality of outcomes.

I suspect there are still many people in the public sector who don’t accept the importance of good process. If however we fail to ensure that the necessary and appropriate process applies to the development of outcomes, we’ll have continuing corporate governance failures in the public sector as well as the private sector.

Governance in the public sector also requires, I’d suggest, an improved understanding of modern democracy, and I’ll come back to that.

The title of the conference is ‘Beyond Fragmented Government’. That seems to me to be a bit of a stretch target. Arguably, given the nature of the beast, Australian government will always be fragmented, but there is no doubt that the level of fragmentation is excessive and this can and should be addressed.
But some fragmentation is inherent and even desirable in seeking democratic responsiveness. The three levels of government in Australia are a major contributor to that fragmentation but in my view also contribute significantly to more integrated democratic government of a country as large as Australia with a very dispersed population. Similarly, an adversarial political system and the challenging mix of political direction with complex administration inevitably involve a degree of fragmentation but balanced by a number of benefits.

Fragmentation is a particular challenge for local governments whose functions cover multiple services and where elected representatives often come to government with very limited knowledge of organisational governance or processes and lack the guidance of political parties.

Public sector governance practices must be able to manage this inherent fragmentation. The culture in the public sector needs to reflect a sophisticated understanding of the nature of corporate governance in the public sector. And, importantly - and this might be controversial for some - public sector executives in leadership positions are the stewards of corporate governance, and their role in this regard needs to be better articulated.

**Defining Corporate Governance**

A few words on defining corporate governance. Most definitions concentrate on the system of structures of authority, accountability, control and reporting through which organisations ensure proper pursuit of their mission.

Corporate governance has also been defined as the means of direction and control by owners of entities to ensure accountability and performance, and good decision-making.

The Australian Standards Association governance standards emphasise those key features of corporate governance relevant to high performance and full accountability to owners, properly constrained by the behavioural standards of our society.

**Public Sector Governance**

I would like to address the issue of public sector governance in a little more detail. The mission of the public sector is, of course, extraordinarily complex and the work of the public sector is as diverse as society itself. And it’s very difficult to measure for evaluation purposes; public sector managers have been struggling with this challenge for many years.

The nature of democratic government has considerable impact on decision-making processes. The politics of democratic governance changes the nature of the organisations that we manage. The fact that governments have the capacity to tax as the primary means of generating revenue certainly lessens the pressure on the financial bottom line. Indeed, the bottom line for governments is inherently a triple bottom line affected by
political judgements, with all the subjectivity attached to that, reflecting the broad political expectations of the community beyond good financial management.

The outcomes, processes and culture of the public sector must however meet the demands of public accountability which go far beyond any sense of accountability in the private sector. In government, the process is often as important as the product, not just in the area of service provision, but in policy analysis and development, research, communication, law enforcement, education, record keeping, land management, et cetera.

The corporate governance debate in recent years has generated a public debate in both the public and private sectors regarding conformance versus performance, at times implying incompatibility between the two, and the need for trade-offs. Concerns are expressed about conformance with regulatory requirements compromising high performance through a lack of empowerment and a resultant culture unsupportive of innovation and initiative.

I’d suggest that this debate has been somewhat simplistic but nonetheless has addressed a real concern about an excessive tendency to rely on regulations and compliance as means of improving corporate governance. There is a need for a balance between conformance and performance if we are to achieve adequate standards of corporate governance. High performance is unlikely in an environment of excessive compliance requirements.

The conformance or regulatory approach is also inadequate to address the many different corporate governance requirements of diverse and complex organisations. This issue is particularly relevant in the public sector where the challenges of corporate governance encompass diverse public sector entities: departments, local government administrations, public authorities, government business enterprises, and a range of contractual arrangements, covering virtually the full gamut of society, from schools to hospitals to agriculture, police, road construction, child protection, defence forces and social security and urban planning, to name a few.

Public sector corporate governance, in carrying out all of these responsibilities, refers to those systems and practices that ensure consistency with the directions of the elected government, with their priorities and their responsibilities, and also with society’s values and ethical standards.

An apolitical public sector has traditionally been an essential feature of corporate governance for Australian governments. We talk about it a lot and, in keeping with the practices of the Westminster system, it requires of its officers a strong culture of responsiveness to the government of the day, balanced by a commitment to “frank and fearless” advice. This is in contrast to the American system, where political appointments to senior positions in the administration are the gift of the government.
of the day and are seen as a legitimate means of ensuring a responsive culture. It’s generally accepted that the culture of the Australian public sector has moved over several decades from almost separate corporate governance within the administration to integration of the administration with the government of the day.

It’s been argued that this has led to cases of so-called politicisation where the public service has lost the ability to distinguish those cases where integrity and public accountability may require conscientious resistance to government directions.

There have been a number of well documented cases where the more complex responsibilities and failures of public servants in this regard have been starkly illustrated.

The ‘children overboard’ affair provides a compelling example. A Senate committee comprising all parties, found that, contrary to claims by Commonwealth Ministers, no children were thrown overboard from a boat seeking asylum and that factors contributing to the false report included:

- genuine miscommunication and misunderstanding,
- inattention,
- avoidance of responsibility,
- public sector culture, namely a “culture of responsiveness and perhaps over-responsiveness to the political needs of ministers”, and
- “deliberate deception motivated by political expedience”.

Pretty strong words for a Senate Committee report, indicating unambiguously failures in the standards of public sector corporate governance. The Palmer Report on the Cornelia Rau affair is even more worrying in those respects, pointing to a failure to recognise the necessary limitations on public service responsiveness consistent with public accountability.

**Fragmented Governance**

The quality of corporate governance is very dependent on standards and structures. The national structure of governments in Australia is widely seen as fragmented and presenting challenges for corporate governance.

The three levels of government in this country are however extremely valuable in enabling subsidiarity, that is, in enabling decisions to be taken more closely to the people affected by those decisions where appropriate. There’s also overlap and some dysfunctionality associated with the three levels, but those three levels enable decisions to be taken more closely to the community affected and for that community to hold that level of government accountable for their decisions.

Similarly, the adversarial system of politics facilitates debate of issues and ensures that issues can be thoroughly addressed.
It is often argued that the existence of complex structures contributes to one of the most criticised aspects of fragmented governance, namely a focus on the management of silos, to the detriment of 'joined-up government'. The silos argument is in some respects simplistic. Of course, joined up government demands that we not have silos in their extreme form, but there’s another side to silos, that in fact they can be an extreme manifestation of something that’s very good, namely the need for commitment to the management of the many complex and diverse aspects of public administration. That commitment must however be subordinated to the broader aims of government.

Local governments face some quite different challenges with regard to fragmented government due to the predominantly individual nature of elected representatives not sharing common policy positions on election. The Commonwealth and the State level of government have the advantage of an essentially two-party system involving an elected Government and Opposition, but they share problems with regard to integration, complexity, cabinet control, and the silo structures of departments and other authorities.

Local governments are much more integrated in structure. One of the delights of being a Chief Executive Officer in local government is that you don’t have to worry about the second guessing of Premiers’ Departments and Treasury Departments Cabinets taking decisions in camera without the input of officials, et cetera. A Chief Executive Officer in local government seeks to achieve a clear corporate plan and budget approved by the Council and ongoing direct contact with the Council as the ultimate decision maker.

Fragmentation in decision making can be a greater challenge for a local government due to the lack of a Government and Opposition. A governing Council in local government is a form of network governance comprising disparate part-time community representatives directing and accepting responsibility for a complex bureaucracy which actually develops policy and manages many diverse businesses, often on a very small scale. That level of responsibility for Councils is extremely difficult and the tabloid press and others rush to criticise Councils and Councillors. It’s my view however, having worked for ten years with local governments after more than twenty years with Commonwealth and State governments, that Councils do a pretty good job as network governors and as representatives of the community.

Integration

Integration of functions and activities, with the aligning of functions to different levels of government, is central to dealing with the difficulties of fragmentation. I’ve already referred to the subsidiarity principle and it seems to me that subsidiarity forms the foundation for integration and minimising fragmentation. It is a matter of concern that there’s not a better understanding in the public sector in this country of
that principle of subsidiarity, and most of the debates on the different levels of government and the responsibilities, roles and relationships at those levels of government isn’t sufficiently informed by the importance of subsidiarity. Effective democracy requires that decisions be taken, as far as possible, close enough to a community for that community to ensure accountability of the government.

The respective roles and responsibilities of different levels of government need to be spelt out more clearly. The excellent work that’s been done at the Federal level on cost shifting over the last year or so provides some hope in this regard. The present work on healthcare and hospital administration might also lead to some better approaches in that very difficult area.

The nature of relationships is critical for all levels of government, whether inter-governmental or between political and administrative arms within governments. The public reporting of these relationships would indicate that their current state, even within political parties, does not assist an integrated approach to governance. The nature of Councils, usually comprising independent Councillors of diverse backgrounds, poses particular problems.

Effective strategic planning based on shared visions and goals can assist the development of strong relationships. Given the diversity of Councillors in local government, strategic planning for a Council is essential to ensuring that that Council is able to govern effectively. Under the two party system in State and Federal Government, most of that planning is in fact done through the party political system.

Perhaps the most critical aspect of integration is a need for a strong sense of public accountability at the political and administrative levels. I would argue that this can only be achieved through an informed culture based on integrity, leadership and commitment to democracy.

**Public sector culture and ethical base**

The State Government of Victoria has recently introduced significant new legislation in the fields of ethical standards for the State Public Service. That Act is one of the most significant advances that I’ve seen in recent times in addressing the issue of an appropriate culture for the public service.

Public sector ethics need articulation, and you’ll humour me if I mention an example from the TV satirical series *Grassroots*. Col Dunkley, the fictional Mayor of the local government of Arcadia Waters offered in the book following the series a suggestion on the question of gifts and corruption, namely, "As a rough guide, a bottle of wine is a gift; a case of wine is doubtful; and a share in a vineyard is a bribe."
Whilst Mayor Dunkley’s advice has the advantage of clarity, the reality is that questions of ethics and values don’t lend themselves to simplistic advice. Ethical guidance and values require careful consideration and are not easily applied to the complex world of government decision making, and universal support cannot usually be expected.

Public sector ethics have to be based essentially on public accountability and the responsibility of democratic governments to provide community leadership. Officers have a substantial responsibility in informing that leadership. I would argue that the public service role in such matters is based on the notion of stewardship, a notion that extends to the maintenance of high standards of corporate governance.

Some would argue that the public sector may have lost the notion of stewardship and that in recent times there has been another more subtle privatisation of the public sector whereby a lot of private sector approaches to administration have been wrongly appropriated, and the notion of stewardship for the community in safeguarding the best interests of the community has been lost. In my view, public sector executives have an ongoing stewardship responsibility to ensure the proper understanding of corporate governance in the public sector at the political level, to the point of frank and fearless advice.

That responsibility is more likely to be fulfilled if there are robust relationships between the elected representatives and their appointed administrations. Mutual respect is a starting point for any relationships as the basis of an ethical culture. In this regard, I would stress the importance of trust between the political and administrative level and also between the community and governments. However, trust cannot be demanded, it must always be earned, it must be continuously re-earned, and it is fragile, subject to easy damage. Transparency is a key value for the public service in ensuring trust, a transparency that should extend to government dealings with the community.

Commitment to communities lies at the very heart of corporate governance in the public sector at the administrative as well as the political level. Administrators must be properly informed on the nature and concerns of the communities served by elected governments. Consultation, participation, engagement, and involvement, are increasingly part of democratic leadership in Australia today.

There must be sensitivity at the administrative level to current community thinking and emerging concerns. At the political level this sensitivity should translate to ensuring good decision-making informed by an understanding of matters demanding community leadership. Environmental issues provide an example of such matters.

I’ve mentioned the inherent nature of the triple bottom line in democratic government and public administration. I would go further and suggest that environmental sustainability should be
an essential part of public sector values, that public servants require an understanding of the importance of environmental sustainability, an awareness that must inform virtually all decision-making in government administration. Environmental sustainability provides a salutary example of public service knowledge and values that should inform government decision making under an effective system of corporate governance, always accepting that it is the elected government that is responsible for determining policy, and is publicly accountable for their decisions and directions.

Public accountability

Public accountability is central to the nature of corporate governance in the public sector, and is assured through proper and due process. Process is about respecting the law, thoroughness in matters affecting rights and responsibilities, and recognition of legitimate expectations of those affected by decisions of government. The adequacy of process can be critical to the quality of outcomes and to ensuring public accountability. Process is of course a means, not an end in itself and should not be confused with inefficiency and unjustified delay. Process encompasses issues such as documented policy, proper decision-making and delegations, natural justice, record keeping, reporting standards and practices, risk management, privacy considerations, complaints and review mechanisms, transparency, recognising the legitimate role of the media, the importance of disclosure and the legitimacy of FOI, the importance of sanctions, whether they be counselling, prosecutions, censorship, performance management, the disclosure of conflicts of interest . . . I could go on.

There are many balances that must be achieved in the public sector in ensuring proper public accountability as a key to good corporate governance, a key balance being the distinction between personal benefit and public interest. There’s another developing area, I’d suggest, in the use of contractors and the residual accountability of government. There can be many confused roles, particularly in the area of PPPs and outsourcing. Responsibility cannot be delegated and the responsibility of governments for their activities, whether outsourced or in-house, remains ultimately with government. It’s up to governments to put in place the methods that ensure that their contractors will meet their responsibilities.

Leadership

A culture of good corporate governance is a prerequisite to public accountability and high performance. It requires commitment at the political and administrative levels, requires continuous learning, and most importantly, it requires excellent public sectors leaders, leaders who accept a stewardship for ensuring the development and continued applications of high standards of corporate governance.
This area of leadership is critical to effective corporate governance in both the private and the public sectors.

Put simply, the Chief Executive Officer is responsible to the Board, the Minister, or the local government Council for the overall management and performance of the entity. He or she must manage the entity in accordance with the strategy plans and policies approved by the Board, Parliament or Council, to achieve these goals.

The ultimate responsibility of public sector corporate governance standards rests with the Parliament or the Council, who must be in control of what the administration does. There is however a particularly strong duty on the Chief Executive Officer, and executives generally in the public sector, to ensure that Ministers and Councillors can be satisfied that corporate governance standards, practices, and an appropriate culture are in place. Public sector executives have a stewardship role for standards of corporate governance and must be able to provide assurance to the Parliament or Council that corporate governance standards – structures, process, culture – are adequate to meet their public accountability.

A local government CEO colleague recently complained to me that he couldn’t be responsible for the failures of his masters, namely the elected government. I can understand and agree with that view, but in my view, although public sector executives are not responsible for their government’s inadequacies, they certainly must ensure that structures, culture and processes throughout the administration are appropriate, and they must being corporate governance inadequacies to the attention of the government – possible the pinnacle of frank and fearless advice.

Public sector executives must accept responsibility for stewardship and leadership in corporate governance and that means looking at improvements in structures, commitment to public accountability and subsidiarity as principles for decision-making.

**Conclusion**

In conclusion, corporate governance must be a prime focus for public sector leaders. They have a responsibility for ensuring good governance of the public sector entity and that at times may require frank and fearless advice at the extreme.

It’s worth reiterating the importance of culture to good corporate governance. The word ‘culture’ comes from the Latin ‘cultura’, meaning ‘tending’, from the same root as cultivation. Culture of its very nature, must be cultivated. One of the highest responsibilities of executives in any organisation, particularly the public sector, is to cultivate that culture of corporate governance.

This paper accepts that Australian government is of its nature fragmented, but argues that the effects of fragmentation can be integrated by more effective approaches to corporate governance.
This improved integration of government will require:

- a more sophisticated understanding of the nature of corporate governance in the public sector,
- developing systems and structures that ensure consistency with government directions, priorities and responsibilities, and also with society’s values and ethical standards.
- clarification of roles and responsibilities, and in particular development of a culture based on:
  - sound understanding of the strengths and weaknesses of the democratic system, and
  - an informed understanding of the importance of process

The culture must be founded on a commitment to democracy supported by standards and values firmly based on the highest standards of integrity.

I titled this paper *Public Sector Governance: Whose Responsibility?* The ultimate responsibility of elected governments for good governance is fundamental to the democratic system. However, in my view, public sector executives must accept a large share of the responsibility for stewardship and leadership in matters of governance, ensuring a commitment to continuous improvement in the culture of corporate governance.

---

**Bio**

Peter Johnstone – Chief Executive Officer, City of Boroondara

Peter has undertaken many senior roles in Australian national, state and local governments, heading several State departments and as a member of many public and not-for-profit boards. He pursues strong interests in change management, public policy, social justice, youth services, aged care, and corporate governance. He co-edited and contributed to ‘Governing Local Communities – the future begins’ (1996). He wrote the Public Sector chapter for the National Standards Association’s Handbook ‘Applications of Corporate Governance’ (2004).