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## **Interrogating Political Interference – The Pursuit of Transparency and Accountability<sup>1</sup>**

It's an interesting title isn't it?

But a bit threatening. I wasn't sure when I read it who was to be interrogated.

I had visions of the Spanish Inquisition. Monty Python version preferred.

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At the Productivity Commission (PC), we spend our working lives investigating problems that are variously described as wicked or dire or just plain intractable.

This month, we will offer views on the Australia superannuation system, 25 years on - and the GST distribution amongst the States. Both are serious political hot potatoes.

A month later, we will complete our work on competition in the financial sector, where we have already in draft form offended banks, brokers and the official family of regulators - all in the interest (we hope) of consumers.

In doing these tricky tasks, we are greatly assisted by our statutory independence.

Independence allows us to publish what we can discover, regardless of whether it is convenient or not to the political interest. As a constraint against poor exercise of such a power, we expose all of our thinking and assessment work to public scrutiny. And we do so in draft form at a time we think will be of most value to encouraging public engagement, even if the issue is politically hot.

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<sup>1</sup> Speech to the CFO Forum on 16 May 2018 in Sydney.

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Once tasked with an Inquiry, we do not seek or receive any guidance from the political level.

From the point we receive a Terms of Reference, the Government is never in control of our product and generally not even aware until a few days in advance of publication where a draft report is heading.

This arm's length structure is in a net sense immensely valuable to the quality of the work; and to the public debate on the matter under review. We can be and are trusted with information that is not available to government. We have a choice to make, when this happens, over how to use it publicly, since all our work is published. But at least we obtain that information.

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Independence is apparently a very easy thing to exercise, but a hard thing to exercise well. It requires a strong mental commitment to resist the temptation to become an insider. And more judgment than might be evident at first glance.

To illustrate, let me observe that if you are the High Court, you can choose to publish a decision in the middle of Budget week. The separation of powers should be well understood; and if not, it does no harm at all to see it being reinforced amongst Ministerial advisers, journalists and bloggers.

But if you are the Productivity Commission, can you publish with the same complete indifference, as the Judiciary may?

Our objective is to see our work given as much opportunity to be considered by as many as possible.

We might look at Budget week and say the likelihood of our work being given attention is much diminished by the competition for share of voice. If so, we choose another date.

But the choice remains ours.

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Our work rarely comes to us without a back-story. The pressure and politics of how we get the gig can affect how we are able to do the task. There is no evading this.

Sometimes, tasks are bounced to us after everyone else has had a say and yet the problem remains unresolved.

This means we are often left with a badly bruised environment in which to attempt to gain enough trust and co-operation (and data... don't forget data) in order to break through the accumulated angst from those under review.

The investigation we currently have into Competition in the Australia Financial System is a good example. The first reaction of banks was to tell us how many inquiries they had recently faced and how much these had cost.

This was a legitimate gripe in one important sense: there have been limited outcomes achieved, for all the inquiry effort to date.

Our inquiry was not, however, into the more lurid aspects of behaviour or advice or greed or compliance. It was into competition. David Murray's 2014 successor to the Wallis Inquiry of 1997 found itself unable in the time allowed to do an analysis that could demonstrate the sector was competitive across all of its major product lines.

Murray was right to be uncertain, in our view.

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We are at other times tossed the ball when governments hope to make a matter go away.

This is generally a mistake. There have been PC inquiries that have sunk quickly, with no trace of their passing. But not enough to make this a wise strategy.

In my time, a couple of the tasks we were given immediately after the election of the Abbott government were of that ilk - matters that from Opposition might have looked like excellent candidates for exposure and reform but, once in government, might no longer look so attractive.

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Natural Disaster Funding Arrangements might be such an example. Not much of a result came from our recommendations about eliminating stamp duty as a burden on already-expensive policies; and on the wisdom of spending less after the event by spending more before it on prevention and mitigation of risk. Particularly in areas where the events are likely to recur more often, with climate change.

Still, the report doesn't go away. The insurance industry from time to time revives interest in it, generally after every major disaster.

But government remains impervious. There is, it seems, no political cost to spending whatever it takes after a major disaster.

As the head of the Department charged with containing and suppressing the tragic Black Saturday bushfires in Victoria in 2009, I feel very frustrated every time a government announces with not much thought but a lot of media headlines, 'We will rebuild'.

In some places, we should not rebuild. And as time passes, we see that people themselves choose not to rebuild.

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On the more uplifting side, sometimes at the PC we are given a task when governments genuinely want system design that will change an impossible situation for the better.

The National Disability Insurance Scheme (NDIS) is substantially based on a design we put together in 2011. This is the classic wicked policy problem. It is a highly desirable social response to an episode long filed away in the too hard basket, or put down to just bad luck. But it is incredibly expensive.

The effort to create it will directly improve the lives of about half a million Australians, plus their carers.

The scale is hard to grasp. At more than \$20 billion once operating in full, it will cost about two thirds as much per annum as the Australian Defence Forces.

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It will also – on our projections in 2011 and subsequently shown to be pretty accurate – create one in five of all new jobs in Australia in the latter part of this decade.

So when we hear of the latest claim for a government subsidy to support a coal mine or create a space agency, as CFOs you will know how easily exaggerated and misused the numbers are that suggest tens of thousands of new jobs, or some such.

In the case of the NDIS, the opposite is true. If the scheme achieves its objectives by the time of full operation, it will necessarily have been one of – if not the – major contributor by government to the persistent growth in employment in the second half of this decade. And those jobs will persist. And they skew in distribution towards regional centres as well as capital cities.

We did a review of the NDIS transition last year, five years after our first Report. It was pretty quickly shuffled out of the news cycle. But it will come back, and soon.

The political feedback to us after that Report was mainly along the lines of wishing it was simpler and less costly.

There's no solution in wishful thinking, and more attention should be paid instead to what is going awry with the transition from various State-based schemes to a fully operational national scheme.

We show pretty clearly that the early start before planning was complete means that the task will take longer than expected; and that the additions that were made to basic design as originally proposed have opened up some further risks.

Denial is a common response to unwelcome advice. And perhaps we should make allowances given the sheer immensity of the undertaking.

But in this case, unless a conscious decision is taken to slow the rate of transition, improve the resources for individual plans and ensure States stay active for longer than they might have planned, there will be serious consequences for some of the most exposed members of our community.

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Despite these negatives, if common sense prevails - as it should - we could then also reaffirm that despite its cost the program will offer more in economic and social benefits than that large annual number.

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Finally there are pieces of work we ask the government of the day to authorise us to do. We do this even though we can initiate our own work.

We do this because one of the limiting factors in own-motion research is that the Government is not morally obliged to do anything with that work.

We could still exercise our independence of thought and feel good about that. But the taxpayer may not get much for the investment of our expert time.

This is one of things that separates us from academics - we need to do our utmost to deliver not just the right answer but to the right audience, and at the right time.

And since all our work is published, even if a Report is initially ignored, the advice will persist as long as the data and evidence behind it remains accurate and relevant. Some reports, like our work on problem gambling, remain the extant benchmark for work in the area even globally, 8 years after completion.

Most recently, we sought and were granted the right to do an inquiry into the impact of the digital economy and specifically about the huge growth in the value and use of data.

That report was completed 12 months ago.

In a very quick turn-around, the Government announced in the Budget last week its willingness to implement one of the key recommendations - to give consumers a legislated Right to control their data, where it has been collected and stored by a company or public authority.

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This is a joint Right, such that the data collector also retains its ability to use the data. One of the great beauties of data is that many parties can simultaneously benefit from it.

The rapid development of digital data and its use to identify better the interests of consumers is in principle a very desirable innovation.

As the digital revolution has unfolded, data in a public policy sense has remained in the analogue age. Viewed primarily as a cost, and as a threat (to privacy). And so it is, of course.

But focusing on that alone has allowed the great beneficial possibilities of this new resource to pass us by.

From our Report's analysis, the efficiency gains that a joint right to control your data offers - via better targeted investment in marketing, scope for improving customer loyalty, rapid expansion by new entrants to markets, pressure on high margin businesses - are going to be important to lifting the poor rate of productivity growth in the modern Australia economy.

The scope for the practical applications are very much larger than the obvious Amazon or Deliveroo or Uber impacts in marketplaces we see today.

Once they have the right to do so, data trading by consumers would provide the ability to direct a current data holder (a bank, an insurance company, a telco, a health service) to transfer the individual's data, safely, to multiple potential suppliers of services where a consumer thinks it will benefit them.

Thus an ability to get a better offer from a new bank, energy company, or insurer; or to get a second opinion from a specialist without having to get another referral or repeat a series of tests.

And the public sector is a big opportunity for data-based reforms. *My Health Record*, in which governments have spent heavily to create a digital data system, is still a misnomer - it isn't your health record. By law, it's the doctor's property. This new Right should change that.

Around the world, people are becoming aware how valuable their data is. While some countries are ramping up the right to be forgotten - relying on

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the supposed destruction of data – we have proposed to emphasise the opportunities rather than the threats.

Via this we are more likely to find the truly transformative activity that extends consumer benefit from unpriced activities like social media to actual price shifts across multiple mainstream markets.

It took many years to find the truly transformative uses of electricity, refrigeration and IT. If productivity is to lift again after a poor decade or so, the opportunities in digital data cannot be ignored.

And so there will be sector-by-sector negotiations to be undertaken.

Open banking is the leading edge of the new policy.

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The common factor in all of these pathways to the kind of rigorous public inquiry process we run is that the results – and all the supporting information, modelling etc. – will be our assessment, completely independent of a government perspective.

We have been successful in recent inquiries – the GST distribution, Access to Data and the Financial System – in getting Departments of State to contribute formal submissions in more depth than just a recitation of government policy.

Thus if a Minister wants to have a view, we strongly encourage hearing about it via a public submission. Fully transparent, and covered in the media to the extent that it is of public interest.

Ministers do ask for briefings at times about where we are at; but we do not accede to such requests.

Our preferred way of handling matters that may concern Ministers – such as when there is public contention about what the Commission is doing during an Inquiry - is that a Commissioner or I will make a speech. Bring the matter out into the open. And no negotiation takes place. The Treasurer is made aware we will be speaking publicly, but has no say in what is said.



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This illustrates another of those judgments that go with independence. The public expectation that independence means no exchange or negotiation is demonstrated by the shock that pervaded the Royal Commission process when the independent report of Clayton Utz turned out to have gone through 25 iterative exchanges with the board and senior management at AMP.

The definition of independence is being constantly stretched. The damage to that lies in the strain it puts on the credibility of the report.

We are very sensitive to this.

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What we do ourselves, we also see as desirable in others.

The Productivity Commission has long advocated for greater transparency in how key government decisions are made.

Our *Shifting the Dial* Report put together a 5 Year process to lift productivity and national income growth in Australia. In its chapter on government, it proposed transparency improvements in both Budget process and forecasts. We outlined the constantly shifting fiscal strategies of the Commonwealth over the last ten years, and set out ideas drawn from practice elsewhere that would improve the credibility of government planning.

In major infrastructure projects and bilateral trade agreements, transparency of decision-making and credibility of assessments also remains weak.

Infrastructure at least is alive to the credibility problem it has, after failed projects and the need – if it is ever to attract the kind of superannuation investment much loved by boosters of urban development – for credible data and publicly-acceptable processes.

Infrastructure Australia, Infrastructure NSW and Infrastructure Victoria are positive forces for better advanced planning.

Trade policy remains unreconstructed and conducted without transparency.

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We are often accused of naiveté in this advocacy, as if no one in this organisation has ever encountered claims for commercial confidentiality or the sensitivity of negotiations. We are not as unworldly as our critics like to think.

But we have seen the evidence: transparency is the very best antidote to ignorant, biased or corrupted decision-making. And also the sole pathway back to credibility, when absurd forecasts of immense benefit prove to be illusory.

For a start, an obligation to publish the assessments before the final commitment – to a treaty or project – prevents a lot of poor decisions being made.

Trade agreements remain mired in hidden processes, and analysis is less than independent, even that which is published after the event. The only genuinely independent analysis of the 2004 Australia-US bilateral trade agreement, done by the Australian National University, shows it to be a rank failure from Australia's economic perspective. Our 2010 Inquiry Report made similar observations.

This does not bode well for the development of future trade deals in a world of where Trump-style trade policies based on leverage rather than shared benefit may become commonplace. Truth being the first casualty in wars.

We see Regulation Impact Statements that are written only as an after-thought, and often with so little impact on the policy in question that even where a major flaw is discovered, there is no time left to go back and address it.

Possibly the most extraordinary example of this in recent times for my money is the regulation assessment for the VET fee HELP loan scheme, which identified a lack of basic audit or student protection standards, but resulted in no one – not the Parliament, not the Minister, not the Department – being able to insist that these be incorporated into the design. A cool \$3 billion may have been lost in rorted payments as a consequence.

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Too late, perhaps, they saw the problem, they even wrote about it but they couldn't or wouldn't insist on it being addressed. Thus happened all along the chain of decision-making.

So in terms of today's topic, it is never going to be enough to rely on transparency as a full offset to political insistence on an outcome. We have to have a willingness to choose the time when the information will have most public impact.

It's never enough to be right, is something I say to our graduate groups. You need to be right, at the right time and with the right audience.

It would be nice to think that the regulation review system has been better applied since that date. But if anything it just appears to have fallen out of favour.

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It is a common theme amongst public policy leaders in Canberra to bemoan the lack of willingness to take risks and manage change effectively amongst today's public servants.

The reason in my own assessment is that too little attention is paid today, at the outset of a process, to identifying and locking down agreement on that will-of-the-wisp object, the public interest.

Even as Ministerial advisers, lobbyists, friends of the Minister (in one case in my own career, the wife of the Minister) and other assorted hangers-on attempt to shape the final outcome to suit their personal interests.

These interests can't always readily be described as political interference. Sometimes they can be personal prejudice. They may simply be misguided. Some defy any explanation at all.

But the task of resisting them by logic, reason, evidence, persuasion, charm, flattery or all of the above is a significant part of what makes a public servant the effective defender of the public interest.

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It is of course readily possible that what I may see as the public interest is not what you see. Such is the nature of the beast.

The way to avoid getting that wrong – and nothing in public policy-making is any prettier than the processes you go through as CFOs to ensure Boards are acting in the firm’s interests when they make decisions – is to base your assessment on objective information. The more likely you are to face bias or preconceived truths or just wilful ignorance, the more confidence comes from data.

It’s what we specialise in at the Productivity Commission. It’s the reason our reports often go so deeply into detail. We will not adopt - untested - the commonly held wisdom. We must validate it.

Academics in public policy write quite dense papers about the public interest, most of which are not much help to the public servant sitting at his or her desk wrestling, in response to pressure from various self-interested entities, with that great question of why are we doing this? And so increasingly the public servant has learned not to ask.

It’s not a philosophical question. It should lead to a considered judgment on what we are meant to be delivering and to whom, and a genuine attempt to see if we are likely to achieve it.

The authority to wrestle with that problem should be reinvested in our senior policy cohort across the public sector. Authority means the ability to question – perhaps not interrogate - the political directive if inconsistent, and not to be punished for doing so.

Political leaders generally like to think they are elected to make the decisions and most often that is right.

But not in ignorance of the consequences of those decisions.

You don’t have to be a bloody menace in doing so, as one former head of Prime Minister and Cabinet Department so eloquently stated publicly in my time (not to me, not that day anyway). You just have to be sure that the consequences of departure from the public interest objective are well understood.

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I'm not sure I have been really able to do justice to your topic. Perhaps the Spanish Inquisition could have gone further.

The Productivity Commission manages to keep political interference at bay by a mix of strong commitment to follow where the data and evidence suggest policy ought to go; and adhering to a total commitment to publish our analysis and assumptions, such that it would be readily apparent if political bias had crept in.

We are unique, though.

I don't think we could be readily replicated, here or overseas.

It is heartening nevertheless to see State Government now taking up the option of organisations with our name and hopefully our commitment to independence and transparency of process.

As we say in our *Shifting the Dial* report, this is where much of the future opportunity for public policy to lift living standards resides.