

Geoffrey Watson QC

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SLEEPWALKING TOWARD THE CLIFF

1. Many of you will be familiar with the work of the journalist and political commentator Paul Bongiorno. If you have not familiar with his work, you should be. He writes a regular page for the *Saturday Paper* and commonly makes contributions to *The New Daily* and other journals. Sure, he is left-leaning, but he is fair, insightful and – a real rarity in these rancorous age – he is hopeful and he is kind.
2. This week he opened an article in *The New Daily* with an observation of considerable contemporary importance: that trust is the glue which holds a liberal democracy together.
3. That is a typical Bongiorno contribution – thoughtful and perfectly apt. There is a lot embodied in that simple statement. It is pregnant with the idea that the way our “*vibrant liberal democracy*” works is fragile and it can breakdown.
4. Think about the things which at one stage we might have taken for granted, but now can no longer do so. I will list some of the things – they are the ingredients of Bongiorno’s glue:
 - *Honesty* – that most of our politicians – it has never, ever been 100% of politicians – that most of our politicians are decent and honest.
 - *Fairness* – that decision-making at an administrative, parliamentary and executive level, would be based upon facts, not influenced by biases or prejudices. Sure, it must be influenced by policy, but it should never be distorted for personal or political benefits.
 - *Transparency* – that our government’s decision-making would be transparent, so that we could understand why a decision was made and, if necessary, detect biases or prejudices or undue influence.
 - *Accountability* – that our decision-makers were accountable. This is especially so in a system of responsible government where the parliamentarians are responsible to the populace, and the executive is responsible to the parliament.
5. I have been watching and observing Australian politics since a child. Never have I seen these matters compromised like I have in the last ten years, both at a State and federal level. Tonight I am focusing upon the federal government.
6. These matters are for certain:
 - Instead of honest politicians, we seem to be infected with an unusually large group of malignant individuals – perhaps it was ever so, and I am just imaging the glory days.

- Decision-making now seems to be influenced by purely political considerations. The advice of public servants and the assessment by independent bodies has been overturned purely for party or personal political advantage. I will give some examples in a moment.
 - The influence of lobbyists has never been stronger. When politicians leave office they routinely turn up in an executive position often at a commercial interest seeking governmental advantage. We all know about examples of that – but we are far less aware that this also happens with the political staffers. They work for a while for a Minister then move sideways, at much higher pay, into a lobbying role – usually euphemistically disguised by labelling the position as one involving “*communications*”.
 - Transparency is dead. Ever since this government discovered it could push aside all reasonable enquiries with the label “*on water matters*” they have been unable to restrain themselves from keeping matters secret. I will give some examples of that in a moment, too.
 - Accountability is dead. As I will describe there have been disheartening and flagrant instances where the government has failed to act in circumstances where action, in a proper world, should have been taken.
7. I foreshadowed examples of where decisions have been taken which cannot be explained, but they seem to have been swept away and even lost to history:
- In 2017 Home Affairs awarded \$423 million contracts to a company called Paladin for services on Manus Island. Paladin’s head office was a beach shack on Kangaroo Island, and the company had \$50,000 in capital. The process was non-competitive – and still to this day we no nothing more about it.
 - In 2017 a decision was made by the relevant Minister, Barnaby Joyce, to purchase water entitlements from Eastern Australia Agriculture. No-one can understand why that much was paid, but it also as though the water which has been purchased has not been extracted. I will explain shortly, that there was a federal governmental personal connection with this transaction.
 - In 2017 twelve hectares of land known as the Leppington Triangle were purchased for \$30 million, whereas the valuation of that land was \$3 million.
 - In 2017 another company, Webster, was paid \$78 million for water entitlements in the Lower Darling. Not only was that more than twice the value of the water, the purchaser – us – apparently got no water.

- In 2018 \$440 million were awarded to the Great Barrier Reef Foundation. There was no tender process and no plan as to what would be done with the money. The Foundation is supported by companies with strong connections with the federal Liberal Party. Members of the Board were members of the Liberal Party. It is not clear how that money was spent, if it was spent.
8. I will wager that many of you will recall some of these now that I have raised them. But over time they slip from the front of your mind.
 9. I mentioned that there were decisions which seemed to have been influenced by political or personal factors and in defiance of the purpose behind the various schemes and in defiance of the advice of independent bureaucrats. I will be brief with this and mention only two:
 - “*Sports rorts*” – money was taken from where it was needed most and allocated to Coalition seats, or marginal seats.
 - The “*Safer Community Scheme*” – set up with money recovered from proceeds of crime and to be allocated to reduce crime. Instead, the carefully weighted allocation was varied by Peter Dutton and reallocated where he thought it was needed most – ie to two local councils in a marginal, but winnable, seat held by Labor. It was telling that Mr Dutton attended the announcement of the grants with the Coalition candidate, not with the local Member.
 10. There have been other instances of this, too many to list now. By the way, can we from now on dispense with the expression “*pork barrelling*” and call this what it really is – a misuse of public funds.
 11. I also said that I would give some examples regarding the death of transparency. In the absence of a national integrity commission there are few ways and means of bringing matters to light – and the government has repeatedly foiled even these few means:
 - We work federally under the *Freedom of Information Act 1982* – itself an outdated piece of legislation which urgently requires renewal. Requests under the *Freedom of Information Act* are now routinely rejected, often by Ministerial staffers, upon unsound bases. The applicant for the documents will then give up, or might take the matter to the federal Information Commissioner – a body set up with the objective of speeding up the process. But because the federal government refuses so many applications the number of these applications has exploded in recent years, and the Office of the Information Commissioner is overwhelmed and under resourced. The simplest matter would now take no less than 18 months to progress from the refusal to a result. By that time the issue has lost its sting.

- The claims upon which production of information is resisted are ludicrous. This is my personal experience. Claims are made that correspondence passing between two ministers attract Cabinet confidentiality. That is not the law, and it is false and wrong to assert so. Yet it is commonplace. Even worse, when applications are made to find out how money was spent – our money – the government routinely refuses to produce documents on the basis there is a commercial confidentiality. Absurdly, they tried to utilise this claim to prevent the production of the report of the Auditor-General into the appalling purchase of the Hawkei military personal carriers. By the time a matter gets to the Auditor-General the commerciality aspects are long buried.
 - That reference to the Auditor-General takes me to my next point. The key organisation currently available in Australia to review federal matters of this kind is the National Audit Office. You will recall that it was the good work of the Audit Office that brought to light the Leppington Triangle. The Audit Office was already under resourced, but the government's response was to cut funding with the practical effect that the Audit Office can no longer undertake the necessary number of investigations.
 - Preliminary investigations have shown irregularities in \$39 million of payments made by Australian Border Force in respect of a patrol boat contract. The matter was under investigation by a federal agency, but came to a crashing end when the Attorney-General, Christian Porter, appointed a new head to that agency who terminated the inquiry. Counsel assisting the inquiry complained and their complaints were shut down. Apparently we are now never allowed to know what happened to our \$39 million.
12. The inability to look more deeply into these transactions has had a profound and negative effect upon all of us. It has meant that the opposition, the press and the public have each been denied the opportunity to look at the basis for a series of extraordinary decisions.
 13. When I turn to give you the promised examples I have of the absence of accountability, there are far too many for me to be able to survey the problems at any level other than Ministerial level. But I am confident that will be sufficient to make my point.
 14. Ministerial responsibility – historically, at least – was a critical component of our Westminster system of government. In accordance of the concept of Ministerial responsibility the Minister is not only responsible and accountable for errors and wrongs committed on the political side, it extends to the departmental side. Or it at least it was when I was a boy. There have been celebrated instances where two Coalition Ministers stood aside when it was found that one had been able to escape paying the appropriate duty on a portable colour television set, and a Labor Minister stood aside over an instance involving Paddington Bear. When we look back at the way in which it was applied, it now seems comical.

15. I can understand that many would argue that strict application of Ministerial responsibility can go too far; I can accept that it needed to be relaxed – but only to a degree. The current circumstance appears to be that there is no accountability at all.
16. I list a number of matters now where a cloud hangs over a federal Cabinet Minister in circumstances where no investigation will be undertaken at all – and, sadly, this list is not comprehensive:
- Angus Taylor – in relation to those water purchases I referred to earlier. True, Mr Taylor had transferred his interest before the transaction – but we cannot determine on what basis because no inquiry has been initiated. The sum involved was tens of millions of dollars.
 - Angus Taylor – published information to attack another politician, Clover Moore, on a basis which was quickly shown to be no better than a lie. How did this come about? We will never know because Mr Taylor declined to cooperate with police authorities and there is no investigation.
 - Angus Taylor – when he directly lobbied the relevant Minister – ie Barnaby Joyce, one of his Cabinet colleagues – in respect of law reform which would have conferred a very large financial benefit upon his family regarding preservation of native grasslands.
 - Stuart Robert – if not the architect of Robodebt, its foreman. You will recall that he was sacked from the Ministry in 2016 in relation to a mining deal from which he profited. Mr Robert deserves a special mention because there have been many problems. A company of which he was the founder, GMT Group was awarded lucrative contracts from the federal government while Mr Robert was in Parliament. To be fair to Mr Robert, he was correct to claim that he had transferred his interests in that company before the lucrative transactions – mind you, he appears to have transferred those interests to his mother and father. And, incidentally, Mr Robert's father made a statement that he was unaware that he was a director of the company.
 - Michaelia Cash – her office tipped off the media the police were raiding the Australian Workers' Union. As you would appreciate, information of raids of that kind is top secret and revealing it can constitute a serious offence. The matter was investigated by the Australia Federal Police, but Ms Cash declined to be interviewed – no doubt this was her interpretation of what was required under the "*rule of law*".
 - Michael Sukkar – who was caught up in a Liberal branch-stacking controversy which – at least it appeared – could have involved members of his own taxpayer-funded staff recruiting new party members. I should add that that matter was investigated and Mr

Sukkar was cleared – the investigation was outsourced and undertaken by the law firm for which Mr Sukkar previously worked and which is the current recipient of something in the order \$100 million worth of government work each year.

- Christian Porter – who was found by the Administrative Appeals Tribunal to have misrepresented legal advice that his own department had received in relation to the operation of Medevac legislation. That, incidentally, was legislation which was principally designed to get psychological health care for the people who needed it, mainly children. I wonder whether Mr Porter, who is on fully paid mental health leave, has taken time to reflect upon his actions.
 - Christian Porter – made the subject of rape allegations, continues in the office of Attorney-General, partly because the complainant died in a suicide, and partly because the government declines to open any independent investigation.
17. Sadly, I could go on for some lengthy period referring to other instances. There is not enough time, but I do want to stay with Mr Porter for a moment because he is important to the central thrust of what has gone wrong in terms of getting a national integrity commission.
18. Twelve months before the last federal election the Australian Labor Party made a properly empowered and independent national integrity commission part of its election platform. It was a popular policy with the prospect of attracting votes. The Coalition knew it had to act.
19. So, in late 2018 the Coalition stated it also supported the creation of a national integrity commission. Details were scant.
20. We waited and waited. Eventually some action was taken, but it was not taken by the government. A Bill, which I have read and which would do the job, was tabled by Helen Haines, the independent Member for the seat of Indi. This caused problems in Canberra, because the inaction by the government was becoming embarrassing. So it was that Mr Porter made an announcement that he was tabling draft legislation with effect of implementing a national integrity commission.
21. The details of the national integrity commission proposed by Mr Porter showed it to be so weak it was laughable. You will already have heard the criticisms of it, but I will list briefly some of the real clangers:
- It divided the work of the Commission into two parts, so the politicians were dealt with separately and more favourably than others.
 - It narrowed the circumstances in which a complaint could be referred to the Commission to circumstances where there was a reasonable suspicion that a crime had been

committed. Anyone who works in this area will tell you that that is unworkable. How can you form a reasonable suspicion before you commence the investigation?

- Any investigation involving a politician had to be kept secret – even an adverse outcome may be kept secret. That is frankly absurd.
22. I do not believe that this was a serious effort at creating a national integrity commission; I say it was put forward as a means of silencing critics. Mr Porter could retreat to the position where he could rightly say that a Bill had been drafted and was still in a consultation period. This means that a lot of time has been allowed to expire since the promise was made. And because Mr Porter's national integrity commission was prohibited from looking at events in the past, it means that many of the scandals that you have heard about in the last ten years – from the Great Barrier Reef Fund to Robodebt – could never be examined by this Commission. Incidentally, the consultation period has now expired and all submissions have been received. Except that two days ago the Assistant Attorney-General, Senator Stoker, announced that the consultation was to be extended.
23. There were many critics of Mr Porter's efforts and, in retaliation, Mr Porter denigrated the critics utilising his absolute immunity of Parliamentary privilege.
24. I want to use this occasion to ask another question – is Mr Porter the right person to be responsible for drafting the legislation and steering a national integrity commission through Parliament? Earlier I mentioned that there is something of a cloud over his personal life, and I am not suggesting that he has done anything wrong – it is only an allegation, no more. But I would like you to think about this when you ask yourself whether Mr Porter should be presiding over the inception of a national integrity commission:
- As an Attorney-General he has been absolutely steadfast in his support of free speech, proposing reforms to remove a clog on free speech. Yet those reforms were not introduced, and, in his defamation action he will use the old law of which he was so critical. Indeed, his lawyers issued a statement on his behalf saying that the commencement of the defamation proceedings should now bring discussion of the matter in the Press to a halt.
 - Mr Porter urged specific reform in the field of defamation law, stating that it struck the wrong balance. Unfortunately, he was unable to introduce those reforms in time so that they might affect his own defamation suit. He will be able to exploit the imbalance in the law to his advantage.
 - Mr Porter was critical of forum shopping in defamation cases, stating that the Federal Court was attracting work largely because there was no jury. He vowed to do something

about that. When he commenced his action he chose to start it in the Federal Court where, incidentally, there will be no jury.

25. I am concerned. You should be concerned. Integrity in government is always important; anything which erodes it must be challenged. The glue to which Paul Bongiorno referred to decaying and its bond is weakening. It needs to be renewed. One means of renewing it will be the creation of an independent, properly empowered, fully-funded national integrity commission.
26. We should act now. We can act now. The Haines' Bill still lies on the table of Parliament. It is time to act.

Geoffrey Watson