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# Bonfires of vanity? How the Commonwealth should meddle in big city rail

*To modernise infrastructure policy the Commonwealth should go back to institutional basics. For big city rail it should insist on open public inquiries and lead by example. It should separately set a national rail policy; the first step would be to abolish the failed transport Ministerial Council.*

*Otherwise the Commonwealth risks throwing cash at what might be bonfires of vanity.*

## Background

While the Commonwealth has put $10 billion on the table for urban rail projects, recent articles noted the Prime Minister’s intention to modernise Commonwealth infrastructure policy; so that it does more than just dole out cash.[[1]](#endnote-1)

The articles also pointed out some fears of where this intention might lead; proper Commonwealth purposes rather than parochial pork barrels.

The ‘dole out the cash and leave us alone’ attitude of States has been discredited by experience; Badgerys Creek rail and Melbourne’s East West link come to mind.

With the facts against them the States and some commentators are resorting to ‘principles’ to keep the Commonwealth near enough to throw cash at pet projects but not so close as to see real agendas.

Following recent momentous developments in the relevant field – Constitutional law - most ‘principles’ now doing the rounds are bunk. Nobody should countenance arguments like the Commonwealth must fund State transport projects: to redress vertical fiscal imbalance; because taxpayers live in States; since it has a bigger ‘balance sheet’; because some ‘economics expert’ says the projects should be on a list.[[2]](#endnote-2)

It also is clear that Commonwealth ‘overreach’ into State affairs is a problem relating to its Government rather than the Parliament.[[3]](#endnote-3)

## Urbane policy

Luke Fraser and I argued there should be a new, urbane, approach to Commonwealth involvement in urban transport. One that is principled and follows the law rather than being hidden in vague extra-legal notions about ‘national significance’ or fashions like ‘city deals’.[[4]](#endnote-4)

We are not the only ones asking for change. NSW Premier the Hon. Gladys Berejiklian MP also argued for changes in the way the Commonwealth and States interact. Her frustration with the complexity and straight-jackets of the Council of Australian Governments is shared by many.[[5]](#endnote-5)

For transport, Luke and I used Constitutional precepts to differentiate Commonwealth core business like defence, trade and rail interoperability from optional extras like roads and cities. Among the differences is that the Commonwealth does not legally need to deal with the States on core matters; it can override State policy and even State legislation.

We warned the Commonwealth should address core business above wandering into optional extras; not least because the extras encourage the Federal *and State* grandstanding increasingly repugnant to the community.

At the time we commented the Commonwealth had much to do in transport core business especially in relation to a proper national network. Unfortunately it has done very little to address this policy deficit. In one important respect – a national rail policy – it has gone backwards.[[6]](#endnote-6)

We also said that if there is a desire for a wider role second tier cities like Geelong or Newcastle are the places to start. Among the reasons; capital city transport with its Byzantine labyrinths and high stakes teaches hard lessons.

It is good to see the Prime Minister starting to move along some of the suggested lines. Inland rail and a study into rail to Melbourne airport are clearly Commonwealth core business.[[7]](#endnote-7)

Studies into rail to connect regional centres to capitals may be optional extras but would help to develop experience.

Yet the Government went much further than we advised; putting $10 billion behind its wish to ‘agree’ capital city rail plans with the States. This is a bridge too far. That is, too far for the Federal *Government*. A more powerful yet urbane approach is needed if only for practical reasons.

## The practicalities

Rail to seaports and airports, like to Badgerys Creek, is core Commonwealth business. So is the freight task using track controlled by its Australian Rail Track Corporation. The Commonwealth must assure itself that big city rail plans do not cut across, and preferably support, its purposes.

However, the Commonwealth Government faces practical limits in pursuing this responsibility. The usual approach of trusting internal advisers, hiring consultants – even the best ones - or asking organisations such as Infrastructure Australia, the Productivity Commission or the new unit in the Prime Minister’s Department will be inadequate.

One problem arises from the fact that Australia has few urban rail experts. Moreover, most of the even fewer outside State departments have deep and enduring ties with States. This arises from the fact that for over a century the States have spent much, much more on urban rail than the Commonwealth. $10 billion sounds like and is a lot, but the States are committing themselves to vastly more.

Frequent reversals of Commonwealth Government attitudes to urban rail, such as by former Prime Minister Abbott, hardly helps in developing expertise. The smart rail experts could be forgiven for doubting long term prospects with, or the sincerity of, the Commonwealth.[[8]](#endnote-8)

The NSW Transport Minister let on more than probably intended in saying the States *have* the expertise. The States monopolise the expertise. It will be difficult for the Commonwealth Government to gain adequate, independent and understandable advice from the small pool of expert advisers – at least in the time frames shoved on it by States eager to commemorate themselves by pet project plaques and Canberra’s cash and kudos.[[9]](#endnote-9)

States create another problem for the Commonwealth when they ‘negotiate’ via the media. This practice pressures advisers. For example, some people would feel chided by the Sydney Morning Herald report that their ideas for Badgerys Creek rail were a ‘concrete example’ of where the Commonwealth can ‘unhelpfully complicate matters’. Note the context; the ideas were put forward during the joint Commonwealth - State taskforce *currently* looking at the issues.[[10]](#endnote-10)

State government rail plans can be incomplete and unstable. The several changes to and debate about the Brisbane Cross River Rail proposal is an example, hopefully now being cured.[[11]](#endnote-11)

Few States have developed an expert, peer reviewed and publicly scrutinised transport plan; of the type recommended by real rail experts like Mr Ron Christie AO for Sydney or conducted by Sir Rod Eddington for Melbourne.[[12]](#endnote-12)

## A serious matter

Big city rail plans and projects entail serious consequences; consequences (at present hopefully) not appreciated by State governments. The Commonwealth, should act more maturely than, and provide a lead to, the States.

If the Commonwealth wants to buy into big city rail and agree ‘plans’ it’s Government cannot go it alone. Parliamentary involvement is needed, as is legally the case for Commonwealth funding for many urban rail projects.[[13]](#endnote-13)

Joint-House public inquiries, one for each big city rail plan, are in order; inquiries with powers to take evidence and examine advisers and decision makers. Present Commonwealth advisers, including Infrastructure Australia, do not have these powers and have not tried to publicly seek and resolve comments on plans etc.

The first inquiry should be for NSW where the air is in most need of being cleared.

When Parliament starts this series, States will be only too keen to set up their own open, public inquiries as Christie recommended. A very good thing.

This approach is fully consistent with Constitutional themes. It is also a practical necessity.

The Prime Minister’s immediate step on his quest for urbane transport should be to consult the Senate to set up the public inquiries into rail.

## And more…..

The proposed Parliamentary approach suggests a thematic answer to Premier Berejilklian’s complaint about inter-governmental relations.

The Prime Minister should work to carry the authority of the whole Parliament, not just of the Government, into dealings with the States on matters outside Commonwealth core business.

The Commonwealth Parliament should choose Commonwealth representation in the Council of Australian Governments. If the Parliament participates in the Council, States will have nothing to complain about.

In practice the Parliament would likely choose the Prime Minister, but whoever it chooses will carry substantially more formal authority than being just the leader of the Government.

## And more again…..

Many big city rail matters are optional extras for the Commonwealth.

However higher priorities, core Commonwealth responsibilities, need attention.

One is a proper national transport network.

Another is a national rail policy.

The Transport and Infrastructure Ministerial Council and bureaucracy have opposed and frustrated both over several decades.[[14]](#endnote-14)

The situation must be changed; the Prime Minister should start by disbanding the failed Ministerial Council.

## Finally

A stern warning is in order; it is possible for ill-conceived urban rail projects – and/or a bad rail plan - to damage transport networks and a city. The possibility arises from the tightly-bound network characteristics of rail, something not present in roads. Among other things this means the default policy for rail should be to promote interoperability.

While the positive effects of a sound rail plan and projects in a big city are more pervasive and enduring that those of the best roads, the negative effects from poor rail planning and projects can be more deleterious than the worst roads.

Grand rail schemes for Australia’s big cities may be in order, however, the temptation for grandiosity to feed political vanity needs to be firmly checked.

Big city rail is no place for mistakes.

Hence the recommended next steps towards urbane transport - public inquiries into State rail plans and abolition of the failed Ministerial Council - is the best way for the Prime Minister to show the public he means business. Far better than throwing $10billion into what may be bonfires of vanity.

J Austen

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1. <http://johnmenadue.com/john-austen-the-commonwealth-is-meddling-in-nsw-rail-at-last/#more-10623>. The $10billion sum is outlined at <http://minister.infrastructure.gov.au/chester/releases/2017/may/budget-infra_03-2017.aspx>. [↑](#endnote-ref-1)
2. <http://www.thejadebeagle.com/commonwealth-urban-transport.html> [↑](#endnote-ref-2)
3. The reason relates to Constitution s.96 conditional grants – specific purpose payments - to the States, grants that can include ‘meddling’ conditions. The conditions for such grants are to be set by the Parliament. This means the conditions are approved twice by States; once by the Parliament which includes the Senate (the States House), and again by the State that accepts the grant. An issue would arise if only the House of Representatives, or Executive Government, were to set the conditions; then the States as a whole have not approved them. See: <http://www.thejadebeagle.com/williams-case.html> [↑](#endnote-ref-3)
4. Urbane transport series at <http://johnmenadue.com/john-austen-and-luke-fraser-urbane-transport-policy-part-1/>

   <http://johnmenadue.com/john-austen-and-luke-fraser-urbane-transport-policy-part-2-of-3/>

   <http://johnmenadue.com/john-austen-and-luke-fraser-urbane-transport-police-part-3-of-3/> [↑](#endnote-ref-4)
5. See for example: <http://www.abc.net.au/news/2017-05-03/gladys-berejiklian-says-federal-state-relations-need-reform/8490998> [↑](#endnote-ref-5)
6. A national rail policy is wholly the responsibility of the Commonwealth. The Commonwealth continues to evade this responsibility by pretence that it is a matter for State co-operation. The result is a protracted farce of denial of Constitutional Commonwealth objectives and pursuit of red herrings by a Ministerial Council. The Commonwealth has gone backwards in this respect by yet another attempt to have irrelevant matters addressed by the Ministerial Council under the heading of a national rail policy, by this bureaucratic mechanism preventing any advance on the issues until the Council fails again. See: <http://www.thejadebeagle.com/austral-obscura-1.html> [↑](#endnote-ref-6)
7. Constitution s.51 (i) and s.51 (xxxix). [↑](#endnote-ref-7)
8. See: <https://theconversation.com/its-not-in-the-knitting-urban-rails-growing-significance-13754> [↑](#endnote-ref-8)
9. See: <http://www.thejadebeagle.com/doubling-up.html> [↑](#endnote-ref-9)
10. See: <http://www.thejadebeagle.com/doubling-up.html> and <http://www.westernsydneyrail.transport.nsw.gov.au/> [↑](#endnote-ref-10)
11. Cross river rail is a scheme to increase Brisbane urban passenger rail capacity by a tunnel through the CBD and under the Brisbane River. A first plan was published in 2010. After several iterations, including after a change of government in Queensland, in June 2013 Infrastructure Australia recommended to the Council of Australian Governments that a reduced scope project was ‘ready to proceed’: <http://infrastructureaustralia.gov.au/policy-publications/publications/QLD-Brisbane-Cross-River-Rail.aspx>.and <http://infrastructureaustralia.gov.au/policy-publications/publications/files/R359_Infrastructure_Australia_National_Infrastructure_Plan_2013_Ch10-App.pdf>. In December this was confirmed;

    http://infra structureaustralia.gov.au/projects/files/IPL\_Web\_update.pdf. However, just prior to this, in late 2013, the Queensland government changed the proposal again; to a combined bus and train tunnel at around $5billion which was possibly either a higher or lower capital cost(!); Infrastructure Australia had estimated the cost of a rail only tunnel at around $4.5bn, however reports suggested it could be $5.2bn; while the combined bus and train tunnel reportedly had a cost of around $5bn. <http://www.brisbanetimes.com.au/queensland/state-government-announces-combined-rail-bus-river-tunnel-20131117-2xolc.html>. In 2016, after another change of Queensland government, the bus and rail tunnel project was put ‘on hold’; <http://statedevelopment.qld.gov.au/assessments-and-approvals/underground-bus-and-train-project.html>. At the same time the new State government proposed a rail only tunnel <http://www.crossriverrail.qld.gov.au/wp-content/uploads/2016/04/160322-CRR_Newsletter-FINAL-APRIL-WEB.pdf> promising a business case by mid-2016. In February 2017 Infrastructure had listed this as an ‘initiative’; a reduction in status from the previous rail tunnel, and it had not published a project evaluation; <http://infrastructureaustralia.gov.au/projects/files/IPL_170225.pdf>. In May the Queensland Minister reportedly accused Infrastructure Australia of ‘politicising’ the project assessment, claiming a several thousand page business case had been deliver to the organisation more than a year earlier; and offering to order senior State officials to Canberra to meet Infrastructure Australia – somewhat confusing since its offices are in Sydney! <http://www.couriermail.com.au/news/queensland/jackie-trad-accuses-infrastructure-australia-of-politicising-cross-river-rail-funding/news-story/0d01c23222ae2dcd7174219d18e7c005>. Two days earlier, the same newspaper had the Queensland government admitting ‘issues’ with the business case and the Prime Minister saying there were several inadequacies with the documented proposal. <http://www.couriermail.com.au/news/queensland/queensland-government/premier-admits-cross-river-rail-issues/news-story/36c8715be448704c87ec27800d8eb99c>. Recent reports include suggestions of franchising and a State government ‘rethink’. A google search Cross River Rail news will show the use of the media by Governments to press their case. [↑](#endnote-ref-11)
12. See: <http://www.catalyst.com.au/Public_files/F1_Public_Transport_Inquiry_Final_Report_Themes_and_Recommendations_26May2010.pdf> and

    <http://www.ceda.com.au/2008/12/sir-rod-eddington-on-victorias-transport-challenges>. Of course the 2008 Eddington plan should be updated. [↑](#endnote-ref-12)
13. As many urban transport projects lack an alternative Constitutional head of power eg. most roads. Airports such as Badgerys Creek would be within power, for example, because of their connection to interstate and international trade and commerce, Constitution s.51 (i). Railway powers are s.51 (xxxii, xxxiii, xxxiv): control of railways for military purposes; acquisition of a railway from a State with the consent of the State; construction or extension of a railway with the consent of the State. Railways connected with airports would seem to be supported by either head of power. See note iii above [↑](#endnote-ref-13)
14. <http://www.thejadebeagle.com/austral-obscura-2.html>. Consistent with the practice that led to that article, the latest publication from the Commonwealth Department of Infrastructure and Regional Development on national transport matters ignores the fundamental issue for Australian freight; that of efficient charging trucks on those few roads that compete with railways, rather than every road. <https://infrastructure.gov.au/roads/heavy/index.aspx>. For those who follow the ‘road debate’ it is worth noting the latest paper implies that the ‘eminent person’ to lead the examination of road pricing, is yet to be appointed. [↑](#endnote-ref-14)