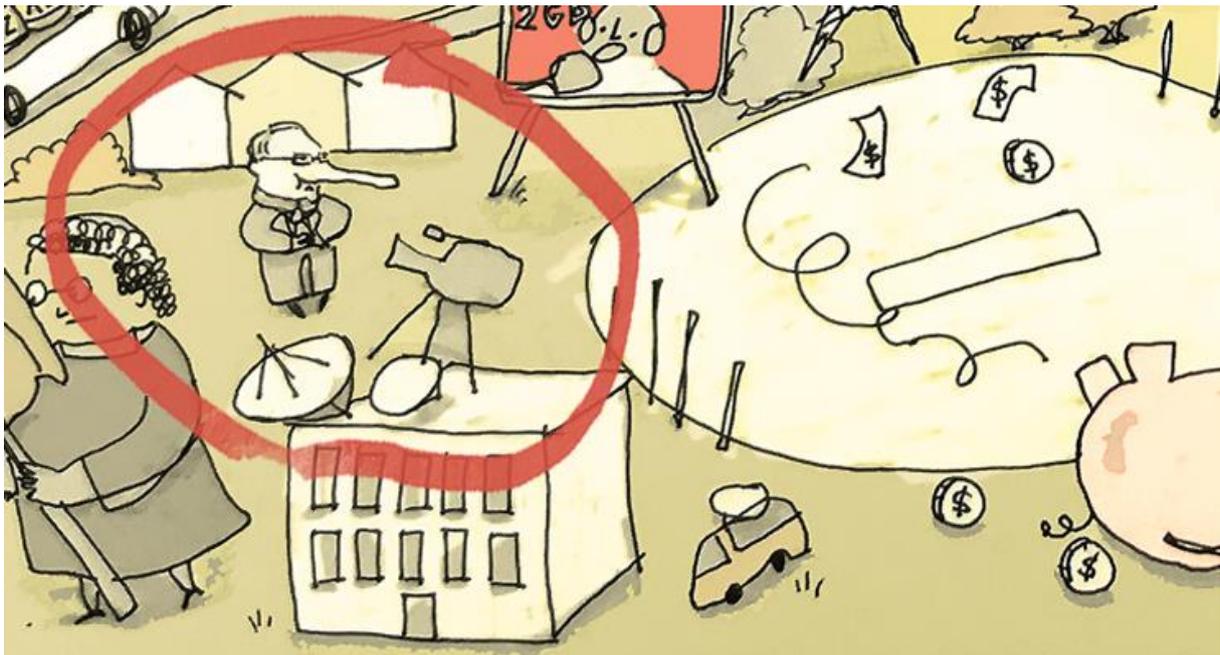


# Can we sue the Morrison government? The calls are getting louder but the answer stays the same...

This prime minister and his motley crew have lied, misled and shredded long-established norms of behaviour. No wonder citizens are rising up.



(IMAGE: GORKIE/PRIVATE MEDIA)

The reasons why are arguable, but there's no doubting the recent exponential increase in the volume of appeals we've been fielding about people wanting to "sue the government". Specifically the Morrison government.

My guess is it's the confluence of existential threats with certain uniquely distinguishing attributes of this government, in an environment where litigating everything is very much in vogue.

Mainly people want to sue the government for fraud. For lying. For saying one thing and doing the other. For shifting and squirming and denying and evading; for taking responsibility for nothing and for refusing to own up to its manifest failures in the most basic particulars of its job.

Not everyone, obviously. Just the people who hate the government for one reason or another.

An example of one query: can we sue this government for a decision we only learnt about recently? That is that last year it placed a ban on workers providing their services across more than one aged care facility after massive outbreaks that had caused hundreds of deaths, mainly in Melbourne. That, you'd say, was a sensible measure that came too late.

But it turns out the government secretly lifted that ban in November. It reinstated it quietly after the latest hotel quarantine outbreak — too late again.

## **Uselessness or wantonness**

At what point is a government's uselessness — or, if you prefer, its wantonness — so bad that it is not feasible to wait for the next election and we need some other form of legal intervention to stem the bleeding before the body politic is completely dead?

No, the governor-general can't step in. I mean, he could, but he can't and definitely won't. As for the courts, they have no overriding supervisory jurisdiction to come to the rescue of the nation, no matter how spectacularly the elected government is failing in its basic duties.

The reason is democracy. Like it or not, our entire system of representative democratic government is predicated on a fundamental structural norm: that lawmaking power, and the practical reins of executive government, are held by the elected arm. If we don't like how the government is running the country, we have an election every three years and can try a different one.

It's an old compact. Thomas Jefferson put it neatly: "Whenever the people are well informed, they can be trusted with their own government; that whenever things get so far wrong as to attract their notice, they may be relied on to set them to rights."

That is to say, if we can't keep the bastards honest then ultimately we'll kick them out.

## **Fundamentals of democracy**

However, there was a second assumption implicit in the founding fathers' ideals, living also in our own constitutional arrangements. Democracy rests on two pillars: its formal structure as laid out in our constitution, and a set of less-defined conventions that go back as far as the concept of responsible government, independent of that government's legal form.

The reason we got democracy in the first place was that the conventions of responsibility, carried as they were by absolute monarchs, progressively fell down over the centuries. Unsurprising, because absolute power corrupts in accordance with the cliché.

As democracy came to the fore, it was never envisaged by those who did the hard work to bring it into physical being as a thing of perfection. How could it be, as long as humans were still to be involved?

There are in fact many conventions we rely on our elected parliamentarians to observe, although we generally have no idea they even exist. They include, critically, what we sometimes call the Westminster system of responsible government. It dictates that ministers who form and lead the executive arm will behave like grown-ups without being forced.

If a minister fails in their duty — which includes a failure for which they are not necessarily personally at fault but that occurred under their watch — they will take the fall for it and resign their office.

That is the convention.

In the Morrison government, ministers do not resign, regardless how dreadfully they or their departments have mucked up.

It is also conventional that ministers do not mislead parliament. In the Morrison government, in particular the prime minister, openly lying to parliament has no consequence.

Not that democracy has ever expected that ministers won't lie, be negligent, behave like vandals or occasionally cheat and steal. Its internal conventions are designed to keep the aberrance to a tolerable level between elections, and it relies on civil rights, the free press and the universal franchise to ensure that a bad government will be removed by the people within a survivable time frame.

What the Morrison government is doing is stress-testing those fail-safes by shedding the conventions of responsible government and banking on a quiescent populace not bothering to notice.

That's why the calls to sue the government are getting louder. It's the fear that this mob may have found a way to make itself permanent. Not an entirely misplaced fear, either.

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