

LEGISLATIVE COUNCIL

ORAL HISTORY PROJECT

At Sydney on Monday 12 September 2016

The discussion commenced at 10.30 a.m.

PRESENT

Mr David Blunt
Dr David Clune
Ms Jenny Gardiner

Dr CLUNE: Can you tell us how you became a member of the Legislative Council?

Ms GARDINER: I had been the General Secretary of the National Party for seven years and it had been an incredible experience through some really tumultuous times, for example, Joh for PM and the so-called North Coast land deals inquiry by ICAC. I guess after seven years in that sort of a role you think what will I do next? I did not have a plan to be a parliamentarian but inevitably there was going to be an election sometime in 1991. Judy Jakins, the only National Party woman MLC, was up for re-election but she had indicated that she might not run again. I was literally putting my whole career on the line. In the mix was Robert Webster, who was transferring from the Legislative Assembly to the Legislative Council because he would not run as the National Party candidate against John Fahey in the seat of Southern Highlands. His seat of Goulburn and the Premier's seat had been amalgamated. The National Party actually preselected and endorsed Robert Webster regardless. The Executive did that rare thing, they said, "You are our candidate" – instead of waiting for the local Party membership to almost certainly make the same decision - but he decided that was it not in the interests of the Coalition for him to run and decided to transfer to the upper house. He was almost certain to be at the top of the ticket. I was the General Secretary of the Party, Doug Moppett was the Chairman. He was also running in that particular preselection. And there was the possibility of Judy recontesting. I realised there were only 2½ winnable slots for the National Party, so it was a pretty big gamble because I had to beat one of them. Judy did nominate and I won in a very close preselection for that last position and was elected.

Dr CLUNE: When you became a member what were you expecting and how did the reality meet your expectations?

Ms GARDINER: I think in a way - although I had obviously had a close association with the institution of Parliament by knowing so many of its inhabitants and working with them in various capacities - what I was hoping for was a different lifestyle, a different occupation. I really did enjoy that chance of getting my teeth into completely new topics and working in a different environment. Even though it was still closely related to where I had been before, I made a conscious break and was looking forward to being a full-time parliamentarian.

It was really interesting from a National Party point of view because there was a good little team. It is very interesting reflecting on it. Fortunately Judy gave me a warning—she did not realise how important it was to me—that she had found it quite lonely being the only woman in the team. She felt kind of excluded from the group, the little National Party group. I never expected anything like that to happen because I knew them all really well and had worked with them in other capacities, but I am glad she told me that because they did operate at the beginning like a bit of a boys' club. I had not ever experienced that before because in the party organisation I had always worked with blokes who were extraordinarily inclusive. The fact that I was a female did not matter. It was a complete shock to me. Gradually it just worked itself out.

Dr CLUNE: What about as a woman in the Chamber as a whole? Did you form friendships with women across party lines?

Ms GARDINER: Firstly, I never felt that the matter of one's gender as a member of the Legislative Council in the Chamber was relevant at all. The fact that the house had a critical mass of about a third who were women meant that the world had moved on from the days when people would rave and say there should never be any women in the upper house, which people did say in my presence years ago. I found the number of women to be normal and welcome. When Queen Elizabeth was in the Legislative Council in 1992, waiting for the members from the 'other place' to join MLCs in the chamber before the official opening of Parliament, she noticed the significant number of women and remarked upon it to some of us afterwards.

In terms of friendships across the house, certainly there were other women members that you would have a joke with and laugh with outside the Chamber. I did not form any really close relationships with people on the other side of the house but certainly I always got on with people like Annie Symonds and Jan Barham. It did not matter which party they were from, there were people that you could relate to. So there was a bond and you could share some experiences but not necessarily socialise to any great extent outside the place.

Dr CLUNE: When you first came in, how effective do you think the Council was as a house of review?

Ms GARDINER: I think the review role has strengthened subsequently. There is no doubt about that. It has got stronger than it was when I was first elected, mainly through the committee system.

Dr CLUNE: Was there any review of legislation when you first came in or any possibility of amending legislation?

Ms GARDINER: There was one private bill I remember. The issue related to a piece of land near Tamworth and I took it up on behalf of a local shop owner whom I knew. I got pretty involved in questioning what the Government was doing. I remember another time when there was a suggestion - which did eventuate in the Legislative Assembly - of having non-members of Parliament on the Privileges Committee. I objected to that profoundly and prevailed. So there was an opportunity for an individual member to cause a bit of an upset.

Dr CLUNE: What were relations between your team and the Liberals like?

Ms GARDINER: I have been thinking quite a lot about this lately because of what is happening in the Senate, with Liberal and National Party backbenchers ganging up on the Government. Nothing like that has ever happened here. The cultures of the Parties are really quite separate and different. Our Party has always been a close-knit group of people, whereas you see in the upper house Liberal Party the whole factional game being played out.

Mr BLUNT: What about your National Party group in the Legislative Council and the National Party in the Legislative Assembly? Were there differences?

Ms GARDINER: I think that is a really interesting part of the evolution of the reforms to the upper house and how that played out internally in a parliamentary context. Before the reforms the Legislative Councillors were almost invitees to meetings of the National Party. It took quite a long time for that to work its way through the system. In fact, it was not until after Andrew Stoner became the leader of the party that the Legislative Council National members were able to vote in a leadership ballot. We were the last group in the whole of Australia in any political party, including the National Party in bicameral parliaments, not to have a vote for our leadership, which had implications for our team, obviously. But it changed incrementally because people like Duncan Gay and I had played the key roles in the organisation. The same with Robert Webster moving from the Assembly to the upper house. Rick Bull had always been prominent in the organisation as well as here in the house. People just got used to the idea that we were not some sort of foreign body—that we were one of them. It became almost a non-event. It also helped that one of the roles in each of the parties is to have "duty MLCs" for seats that we do not hold in the other place. And of course Legislative Councillors, particularly in the National Party and in the Liberal Party, have played really key roles on the ground in campaigns, literally running the campaigns themselves. If that candidate gets elected to the Legislative Assembly, obviously you have a very close bond with that person which is practically lifelong. They are just one of your mates. You are on the same playing field.

There is always the "unrepresentative swill" type of comment, I suppose, from time to time but that is not really the prevailing mood any more. It is good that it has moved on. When I first used to come up here in the morning as the General Secretary of the Party I could see that they had had a wonderful night. I thought, "This is an amazing life here." That is another change—that change in the culture of the place is dramatic. Nobody would even think of doing that now. But that was routine then. They would look at their watch and say, "We will have a meeting and it is 11 o'clock—we will have a whisky."

We used to have very regular meetings of the National Party team, which pretty much fell out of fashion when Duncan became the leader because I think he just had too many meetings. When you are the Leader of the Government you have to think about the actual running of the place and the other house and the legislative program and all the crossbenchers and so on. But when Robert and Rick were the leaders of the party in the upper house there were regular meetings. We have also always had joint meeting with the upper house members of the Liberal Party, quite formal meetings with minutes, usually to talk about the bills that are coming up, the strategy that we might adopt in the upper house, any pitfalls that we saw with what the Government was doing and that sort of thing.

Dr CLUNE: Can you tell us about your approach to your role as Deputy President and Chair of Committees?

Ms GARDINER: I think it is really important that a presiding officer has respect for the simple fact that every member is elected on the same basis. It does not matter who they are or what they represent. They are democratically elected and they have their legitimate place in the house. Your personal views about them are

irrelevant. Your views about what they are saying are irrelevant. I hoped members would get to understand that was the way I viewed every one of them. Provided they were civil and acting within the standing orders then I respected whatever it was that they were doing. That was my key thing. Being a member of the Government party, there were times when you had to consciously say to yourself, "It does not matter if the Leader of the Government is upset that this debate is dragging on. The house wants that to happen, so be it." I certainly ruled people on our side out of order. I did not accept their points of order just because they had taken one. After a while they got to realise that they had better think pretty carefully because otherwise they were just going to be rebuffed. I was never hauled over the coals, so they accepted that I had a job to do.

Dr CLUNE: What do you believe were your main achievements during your career in the Legislative Council?

Ms GARDINER: Being a Legislative Councillor gives members other than Ministers an opportunity to be involved in policy in a pretty profound way that they might not otherwise have had. Certainly one example for me has always been that I chaired a General Purpose Standing Committee inquiry into rural health services which was very tumultuous. Andrew Refshauge was the Minister and there was an extraordinary pent-up feeling of disconnection between local communities and their hospitals. We went right across the State. That committee let everything run free, so it was the first time that health professionals, patients, their families and community leaders were able to say what they were thinking about what was going on in their local hospitals. The fact that their evidence was protected by parliamentary privilege was very empowering to so many citizens who felt there had been nowhere for them to turn, nowhere to get a hearing.

Out of that came for me a definite view that the management of health services should be returned to at least some local autonomy—that there should be connections between the community and the most important public institution in its locality. So I drafted a policy to that effect which was strongly supported by the National Party. I even sat down and wrote out a map as to how it would all work. And the Liberal Party strongly opposed it. Jillian Skinner was adamantly against it but eventually changed her mind, as did the leader of the Liberal Party. When we came back into government that was legislated for. Prime Minister Kevin Rudd came to the same view, although it was opposed by the Labor Party in New South Wales. That is an example of how you can influence policy in a pretty profound way. It meant a lot to me because my grandfather had founded a hospital as his way of setting up a war memorial in his home town, Penola in the south-east of South Australia. As a kid I knew what he was doing in the community and as an adult I came to appreciate what it meant to the community and still does. That was just one example of what you can achieve as an ordinary member if you pursue something vigorously enough.

Mr BLUNT: That General Purpose Standing Committee inquiry started in the late 1990s but the legislation went through in 2011/12. Sometimes these things can take time to develop and for public policy to evolve. I presume you have seen that in a number of examples over the years?

Ms GARDINER: I think that is one of the great things. An upper house committee may come up with a whole set of recommendations. The government of the day might say, "We are not interested in any of them", or, "We will do one of them." What is really interesting to me is that committee reports are such a great body of information - often extremely well researched. A great amount of evidence has been gathered from people who are really respected in the community. Any Opposition that does not take note of that is not doing its job. It is a great source for policy work. Even if it is years down the track, you can inject the findings of a committee into your work and it can be implemented by the next government. That alone is worth all the work you put into it, as long as you understand it might not be acted upon immediately, but some of those ideas will be really important and taken up later on.

Dr CLUNE: People tend to think of lower house members as being more connected with the community. It is interesting that you were able to do that as an MLC too.

Ms GARDINER: One of the things I really enjoyed was that you meet so many people around the State in your constituency role and you are able to bring lots of ideas into focus, either in speeches in Parliament or in other policy work and you can bring it all together. You have the capacity to change the government's attitude by simply using your position in the Legislative Council, within the bounds of not using public resources to do campaign work. You are able to relate to community leaders throughout the State, and you build up a network of people, and you can actually change things at a local level.

One of your functions as a duty MLC is to build up those connections with community leaders and with interest groups. They get to know you quite well and appreciate the fact that they have an alternative channel into the parliamentary system. If the lower house member, whoever it is, has not been particularly receptive on something, then they have another option. Then there is the committee system: they may find that you can help them in a particular parliamentary inquiry and they can find that really satisfactory—that there is a place in which they can express their views about something that matters to them.

Dr CLUNE: What areas were you responsible for as a duty MLC?

Ms GARDINER: Lots of places. In the beginning it was Tamworth, Northern Tablelands, Tweed and Bathurst. When Wendy Machin resigned as MP for Port Macquarie, I stepped in to ensure it was business as usual. The same applied when the MP for Myall Lakes, Stephen Bromhead, was seriously injured in a car accident. At other times, if a Nationals MP was snowed under, I would assist with the electorate workload. When we were transitioning from Russell Turner to Andrew Gee in Orange, I was looking after Orange to make sure it came home. I spent quite a bit of time out at Broken Hill. Doug Moppett mainly worked out there but I would go out and help him at times. So you get around. Just being in places like that gives you an understanding of the difference in policy priorities—people west of the range compared to what we call the saltwater Nationals on the coast. You get a better perspective if you travel the State. You know the passions of people and what is really gnawing at them. It might be totally different to what is happening in another part of the State.

Dr CLUNE: A Liberal MLC once said to me that one of the advantages of the Coalition was that the National Party could make them aware of those kinds of issues, things that they would not otherwise know about.

Ms GARDINER: That is definitely true. Yes. I have always been a strong opponent of any concept of amalgamating the two parties. The voices of people outside the capital would be definitely diluted. There is no doubt about that. That is the driver. You get some satisfaction out of being able to make sure that they do have a voice, and you do educate the Liberal Party metropolitan members about priorities and a different view on so many issues.

Mr BLUNT: In your committee work in the later years of your parliamentary career you found yourself in the chair for some quite contentious and controversial inquiries, such as the Orange Grove shopping centre redevelopment and planning in the Badgerys Creek area. Is there anything you would like to share with us as you reflect upon those experiences?

Ms GARDINER: Orange Grove was a turning point in terms of the profile of the Legislative Council's committees. The public gallery was packed every day. One time, for example, Quentin Dempster, when he had his Friday night ABC television program, did not have a camera crew and he was kicking himself. After that, he never ever missed another day of the Orange Grove hearings, and he made sure there was always a pool camera. It was, I suppose, pretty theatrical, insisting that Frank Lowy come back from London, or wherever he was, and not having a video conference, and all those extraordinary decisions that we made. That was the inquiry where we insisted on a member of ministerial staff coming and giving evidence.

It was obviously very intensive. I learnt so much about the New South Wales Labor Party. It was all being played out before us, not just simply what had happened necessarily in planning and the Government - it was what was going on between the Labor members of the committee from one faction and the other. There were just so many levels to the drama and the theatre of it. I guess it played a part in creating the momentum for an eventual change of Government. It was one of those issues that played out and perceptions of the Government were increasingly negative so, in a political sense, it was pretty exciting.

I think all Legislative Council committees should always think carefully about how far they go because it can reflect upon the institution itself if you upset some sort of balance between the Parliament and the executive government. But in the end a house of review should be able to scrutinise whatever the government and the bureaucracy are doing. They are funded by the taxpayers and the public have a right to be able to explore what it is they have done.

Dr CLUNE: So you are saying that the upper house's power has to be used responsibly, otherwise the whole process loses its respect and integrity?

Ms GARDINER: I think on balance, when push comes to shove, members generally know intuitively where that line is. Not always, but most of the time they do. If you believe in the institution, that there should be a house of review, you do not want to go to the point where you endanger its existence. I think most MLCs do respect that. Some realise it maybe instinctively, while others more consciously. It is one of those exquisite things about democracy, where that line is and how far you go. Most of the time it works well enough.

Dr CLUNE: One area some people have mentioned as where things might sometimes go too far is estimates committees.

Ms GARDINER: I guess sometimes it focuses a lot on the “gotcha” moment. Each shadow minister, whatever house they are in, is working through an upper house member on an estimates committee and wants to get their paragraph in the *Sydney Morning Herald* or the *Daily Telegraph*. That is part of the deal. I think the bottom line is, does it serve to keep the government accountable? I do not think there is any doubt that it does. Ministers are conscious of, firstly, they have to be on top of it—if they are any good at their job—and things have to be done properly. Secondly, they have to be able to account for what they have done. Ministers can say: If people do not like it that is fine but I can account for it; I am doing what I believe is the right thing for the people of New South Wales. Estimates committees do aid in the accountability process. There is no doubt about that.

I have always found it a bit amusing that some Ministers are so conscious of the need to have a bunch of people from their parties in "protect me" mode, running interference, and that takes up so much time in some estimates hearings. It would be much better if Ministers actually better prepared themselves for what might happen, rather than concentrate on being protected from their lack of intimate knowledge of what is going on in their portfolio.

Dr CLUNE: What are your general thoughts on the committee system and its effectiveness?

Ms GARDINER: I think it has definitely enhanced accountability as it is an important component of the review role of the Council. It gives members an opportunity to be involved in, at times, serious policy thinking that they would not have otherwise had the opportunity to engage in. I think in this Parliament and the last the burgeoning number of Legislative Assembly committees has complicated things a little. One of the last committees I was on was about the naltrexone trial that Fred Nile wanted to set up. I think there were two other inquiries in the Parliament running at the same time which had to do with drug and alcohol matters. They crossed over each other and I think that complicated everything. I do not think it is a very sensible use of public resources when all is said and done. That was obviously just a function of the large majority that there was in the last Parliament in the lower house and the Premier wanting to keep backbenchers occupied. Maybe things will flip back to normal as the inevitable balance is restored. Generally though I think the committee system, as it has evolved, has been to the benefit of the Council as a house of review keeping the executive accountable.

Dr CLUNE: In your career in the Council who were the MLCs that impressed you most and why?

Ms GARDINER: It is an incredibly long list. I think that is a great question because it is wonderful to look back and know you were associated with a lot of people on all sides of the house whom you enjoyed working with and respected. In no particular order, there were people like Robert Webster. I always liked working with Robert. His sense of calmness and his resilience, I used to think, were great. His work on the adoption legislation was very significant as a result of the Standing Committee on Social Issues inquiry. My good friend Doug Moppett was regarded as one of the great orators to have served in the house in the modern age. John Hannaford I think was outstanding. One of the things about John - I have talked to people about this recently in the light of current controversies in the Government - is that he had a very respectful view of his backbench committee. He would never introduce legislation without consulting members of the Liberal and National Party backbenches. It served him well. That extra bit of wisdom can keep you out of political trouble.

Of course, I had worked in a very junior capacity with Sir Adrian Solomons when he was chairman of the party. Again, I think he was obviously one of the great orators. Adrian was also someone who was pro-women in terms of their role in society. He articulated that from time to time. Annie Symonds was someone whom I regarded very highly. At a time when there was so much discipline in the Labor Party under Wran and Carr - members were buttoned up, they would not speak outside the script - Annie was her own person and she had her passions on social justice matters. She would say what she believed needed to be said. I have always respected that.

Duncan Gay is outstanding, for his work ethic for a start. I do not think I ever saw Mike Gallacher at question time come under serious pressure. He was always well prepared. If he was not he certainly gave a good impression of somebody who was. Elisabeth Kirby, again because of her extraordinary resilience, her capacity to cover so many portfolios and attend to each of them in such an incredibly detailed way. Michael Egan—I reckon Michael Egan is one of the few people I have ever met who could earn a living as a stand-up comedian. It was very hard at times to be in Opposition because he was so genuinely funny. With Michael on his good days, telling his ridiculous jokes about his mother and his dog, I would have tears streaming down my face—I could not stop laughing. And I thought, "What a way to earn a living!" To come to work and laugh is a really great experience.

Virginia Chadwick: I think Virginia was a consummate parliamentarian, minister and presiding officer. One of my favourite memories of Virginia was when Bill Clinton was in town. He gave a speech down in the Botanic Gardens. There was a bunch of us—Virginia, Patricia Forsythe, I think Catherine Cusack—and we all wanted to go and see Bill Clinton. I think it was a lunch break so we literally ran down Macquarie Street. I remember Virginia taking off her shoes. We were running because he was about to make his speech. She took her shoes off and was running down Macquarie Street in her stockings to see the President of the United States. We actually got to shake his hand. I have very fond memories of Virginia's role. People like Carmel Tebbutt—she was always a very pleasant person but also very professional and calm—and sadly, recently, John Kaye. I had a really good relationship with some of the Greens like Sylvia Hale and Ian Cohen. I worked with Ian on a fisheries inquiry and, as my deputy, he stepped in to chair part of an inquiry into the privatisation of FreightCorp when my mother suddenly passed away. There was a kind of Nationals and Greens coalition on some of those things. So right across and around the Parliament, right around the house, there have been quite a lot of people that I have really valued working with and respected, and enjoyed their company.

Dr CLUNE: We might now talk about the 1978 reconstruction of the Legislative Council. First of all, what was your attitude to reform and what are your memories of the process?

Ms GARDINER: I had been the State Secretary of the Young Australian Country Party. We used to be rather scathing of this thing called the Legislative Council because we were young and these people like Sir Harry Budd and Sir John Fuller seemed ancient. Also Mac Falkiner - he was definitely not in favour of women being in the Legislative Council—and Leo Connellan. We used to be rather disrespectful. I think that there was actually a submission that we wrote about how the upper house should be reformed. When I was in the Young Australian Country Party I remember Tim Fischer came to a meeting in Orange and I put my hand up and asked him—he was in the Legislative Assembly at the time—"Do you think that the Legislative Council is the most exclusive club in Australia and what should we do to change it?" That is the way it was perceived, and that is the way that we perceived it. Tim was very diplomatic in his response.

So, when Wran proposed the reform, my personal view was obviously that there should be reform. And internally in the party it was so ridiculous in terms of the process as to how a person would be nominated: it was completely opaque; it was literally undemocratic. It was just announced to the Central Council that so-and-so was our nominee. It got to point where there was a National Country Party vacancy and it was announced that this person, a man, was going to be the nominee. And virtually no-one in the room on the governing body of the party had ever heard of him. So the question was asked: Who is this guy? It was a mate of Leon Punch's, and he was not at the meeting. It was left to Tim Bruxner as the deputy leader to explain who this fellow was. He was a very fine fellow but that was the moment when you realised how unsatisfactory it was. It was just an in-house bunch of people up at the Australian Club, basically, deciding over a gin and tonic who would be nominated.

Dr CLUNE: The Country Party always resisted upper house reform because it was well represented.

Ms GARDINER: Yes, they did. But it is interesting when you look back to when it got to the point where there was going to be reform and a referendum. In Paul Davey's history, *The Nationals*, he talks about how Leon Punch came to this pragmatic moment when he was saying to the central executive of the party: "Are we going to put resources into the no case? Well, how do you do that? How do you say we are going to oppose democracy?" It was a very profound moment, when you look back on it. It is true that we did not really put resources into it. Paul's book states on page 264 that Leon Punch said

he would not campaign for the referendum one way or the other. Campaigning against it was made virtually untenable by the simplicity of the question voters had to answer: "Do you approve of the Bill entitled 'A Bill for an Act to provide for the election of Members of the Legislative Council directly by the people?'" No matter how it was dressed up, campaigning for a "no" vote would amount to telling people they should continue to have no say in the election of one of their houses of Parliament—hardly a progressive democratic position. Wran was again on a winner.

In the end that was what it came to. There was not a well-organised campaign by the party to oppose it. It kind of fizzled out. The rest is history. Once you have the parliamentary leader saying, "I am going to be neutral," it is not something that you put many resources into because it is not going to go anywhere.

Dr CLUNE: How did your party adapt to the transition to a fully elected house?

Ms GARDINER: It was very easy, really, because we had a Senate preselection process. All that happened was that the Legislative Council preselection process was exactly the same—that is, the Central Council of the party, comprised of the electorate council chairs and others from right across the State, was the body to preselect and endorse the upper house candidates. It was not a difficult transition at all.

Dr CLUNE: How did the Council change as it became fully elected?

Ms GARDINER: Obviously I was elected in 1991, so it was the new norm by then. I think once the world has changed and moved on, everyone just accepts it and gets on with it. There was not any kind of yearning for a previous part of history—not that I recall. I do not think anybody wanted to go backwards.

Dr CLUNE: Since 1988 no party has had a majority in the Council. Do you think such an outcome was envisaged at the time of the reform and what do you think of that outcome?

Ms GARDINER: I doubt that they did really think about it. It is a bit like the New Zealand multi-member system. Obviously they did not anticipate that it would mean that practically no government would ever have a majority. In Scotland it was the other way around. The system was consciously designed to be like New Zealand, but now the SNP has had a clear majority more than once. I guess it shows that you cannot predict completely what is going to happen. I suppose the Senate reforms showed that as well in July. No, I do not think people did really expect it. The National Party, of course, was worried about what Wran would do to change the electoral legislation in terms of wiping out country seats, and he did.

Dr CLUNE: Of course, the big change was under Nick Greiner when he reduced the size of the Council and reduced the quota. That was really when independents and minor parties came into prominence. What did you think about the rise of the crossbenches?

Ms GARDINER: I think Nick Greiner, for a start, was one of the most politically naive Premiers in our history. He just did not seem to understand or think through the electoral and political consequences of some of the purist ideas that he had. Apart from the period when we had the micro parties, which was an abuse of the system via preference harvesting, once that was sorted out, the fact that you have the opportunity for smaller parties to have a voice in the house is not a bad thing for accountability. Some may not agree, but I think a diversity of voices in a parliament is a good thing. It keeps the society more cohesive.

Mr BLUNT: If we can turn now to the so-called Egan cases, did you ever think that the Government's resistance to the Council's assertion of its power to call for state papers would end up before the High Court?

Ms GARDINER: No, I do not think I ever imagined it would go to the High Court. I thought it was a game of bluff. I suppose once you go into these things, at a certain point you have to make a decision as to whether you keep on with it, and Michael Egan obviously kept charging ahead.

Mr BLUNT: What was your response and what was the response of your colleagues to the judgements from the High Court and the Court of Appeal? Do you believe that they were a positive development in codifying the Legislative Council's powers?

Ms GARDINER: I definitely think they have been positive. To have the High Court of Australia articulate the powers of the house adds to its credibility in the public domain. It is not something the house simply asserts. It has been underlined by the highest court in the land and it is unquestionable as to those powers, which adds to the status of the institution. Its place, *vis à vis* the other place and the executive government, is cemented in our democracy. The oldest part of our system of government is more established now than it was ever before.

Mr BLUNT: Do you think the power that is now regulated by Standing Order 52 has been used effectively by the house?

Ms GARDINER: Yes, I think it has been used effectively. Obviously, any government is going to want to question the frequency of the call for papers and some members might occasionally resist a call for papers. I would go back to the point I made earlier about the composition of the house: everybody has got a place in it and what matters to them, what particular project they want to embark upon, is as equally important as what some other person in another party might think is important. Therefore, if they want to pursue the government in a particular way, that is something that they ought to be able to do, and exercise their judgement as to whether they are calling for too many papers. I think it works itself out. Again, most people realise that there is a point where you decide what to concentrate on: you give this a miss and you go for that. Apart from anything else, members have only got certain resource capacities to follow these things up. Most do not want to be wasting taxpayers' money, so they make their decisions and prioritise things.

Mr BLUNT: What are your views on governments claiming legal professional privilege and public interest immunity over certain documents?

Ms GARDINER: I definitely do not think that governments should be playing games, trying to expand the number of documents that are attached somehow to the Cabinet minutes or whatever, as a way of evading accountability. They can try that, but it usually does not work in a government's best interests, because they ruin their reputation—if they are found out—for accountability and transparency. I think we are living in an age where people expect transparency more so than ever. They expect to be able to know what is going on. They expect to be able to get to the truth, and a government that does not understand that usually comes undone. That boundary of true Cabinet confidentiality should be preserved and protected. Once you play games around that you run into trouble. I think the Legislative Council has the right to probe to that edge and respect that edge, but not be fobbed off.

Mr BLUNT: Do you think the Council should take a more robust approach to dealing with claims of privilege and privileged documents? What are your thoughts regarding the independent legal arbiter process?

Ms GARDINER: In the first place, as I said, there should be a robust approach: really going to that question of where the edge of true Cabinet confidentiality is and stopping at that fence, but not being impeded by obstacles along the way. As it evolved, there was a consensus as to the appropriateness of the independent legal arbiter process and the way it worked. I think it has turned out to be a good system.

Mr BLUNT: Is there anything else you would like to say about the Egan cases or the powers of the house to order the production of documents?

Ms GARDINER: I think that Michael Egan has done the Legislative Council and bicameralism a huge favour in reality. The bottom line is that the whole pursuit in the courts backfired on the Government. If they were trying to wreck the potency of the Legislative Council and maybe revive the idea of abolition, again that completely and absolutely backfired. Professor Ken Turner of Sydney University has wryly observed on the effectiveness of the upper house: "For that matter, if we examined the actual, rather than the traditional, performance of the Assembly, we might find similar difficulty in justifying that chamber too". I always used to respond to my lower house colleagues, if they said that we should abolish the upper house, "If a referendum was held on which house do you want to abolish, people would abolish you."

Over the years I was in the upper house, because of the committee system and the High Court determination as to its powers, so many more people came into contact with the Legislative Council. Across the opinion makers and the media, the journalists know where they get most of the stories: they get them out of the estimates hearings and the upper house inquiries. One of the interesting things that I have seen is the periodic Murdoch press "abolish the upper house" story that they have in their calendar for a slow news week once a year. That is not just in New South Wales: the *Adelaide Advertiser*, for example, does the same thing with the South Australian Legislative Council. I used to dread those stories. Now they are just another story. That is because the community is better educated as to the access that they have to the Legislative Council via the committee system, which reaches out to them and has its public hearings all over the State. I did a lot of those inquiries on the Pacific Highway upgrade and the Casino to Murwillumbah rail closure where we went into communities and hundreds of people would turn up to just listen to democracy being played out before them.

From my personal point of view, bicameralism matters a lot. In my previous capacity as a party official, I worked in an environment where I was managing a civil war with Joh Bjelke-Petersen, a Premier who was completely out of control and wanted to be Prime Minister of Australia but did not want to be in the

Australian Parliament. In Queensland there is no house of review, there is no second chance if you have a government that is despotic or simply mad. For me, it matters that there is a house of review and a second chance. I have seen what happens when you do not have one. It is not good. It is interesting to see the debate in the United Kingdom where, instead of abolishing the House of Lords, they are saying, "Why don't we have an elected upper house?" It's come full circle almost. In that respect, it is much more meaningful to be a member of the Legislative Council than the Assembly.

Mr BLUNT: What do you see as the most significant changes in the Council during your term, and what is your assessment of the Council and its role today?

Ms GARDINER: I think that the most significant change is that the near entrenchment of the second Chamber—or the first Chamber in some ways—in our Parliament has definitely got stronger over the years and that is a good thing from my point of view. That was the main change. There is a better understanding of the existence of the Legislative Council and its work in policy and keeping the government accountable. The work of many MLCs is much better known in the community now than it was in earlier days. In terms of how it is today, it just seems to be a more normal type of democracy to the everyday person. The everyday politically aware person understands that it is generally a positive thing to have a Legislative Council, a house of review.

I am sure the media know the reality because they have so much full-on engagement with many members of the Legislative Council and they get so much material from them—not just in the press gallery but across the State. I live on the Mid-North Coast and, in the lead-up to the electricity privatisation debate, John Kaye was on the ABC up there about once a week as almost a regular commentator. He was just as frequently heard by the community as anyone in the Legislative Assembly in all those seats put together. In the politically literate world, I think perceptions have changed and that is the most dramatic change. So that is the way it is now and it has been like that since the reforms. There is no way in the National Party, for example, that you can get preselected just because of who you know, which club you are in or which school you went to. It does not work like that at all. It is truly democratic, it is very competitive and you have to know your onions and do your hard political work. It is not an exclusive club anymore.

In terms of the future, I have been really interested in the extraordinary resources that the United Kingdom Parliament puts into outreach to communities and educating people about the role of the two houses. These things always come down to budgets and resources, but there are probably things that we could learn from the United Kingdom Parliament and the Scottish Parliament about taking the Parliament to the people. There are some initiatives like that which I think would be worthwhile, reaching out to schools and presiding officers visiting different localities. I think they do it every six months in the Scottish Parliament. They have a little team that goes out to the community and that is Scottish Parliament Week in that particular town to further that education process.

Mr BLUNT: On behalf of my predecessors, and on behalf of all of the staff of the Department of the Legislative Council, I thank you for your very thoughtful and really fascinating answers to our questions today.

Ms GARDINER: It has been a pleasure.

Mr BLUNT: I also take this opportunity to place on the record our thanks and appreciation for your contribution as a member of the Legislative Council, as Deputy President and as chair of many very interesting parliamentary committees over the years. It has been a great pleasure and a privilege to serve and support you in those roles.

Ms GARDINER: Thanks very much, David. I have always had the greatest respect for the people who work in the Legislative Council—the clerks and the committee staff—in terms of their professionalism, their advice and their concern. That is one of the great pleasures of working in the place—the standard of professionalism in the Legislative Council and its appropriate neutrality has always been exemplary.

Discussion concluded.
