

**LEGISLATIVE COUNCIL**

**ORAL HISTORY PROJECT**

**At Sydney on Tuesday 28 August 2018**

**The discussion commenced at 11.10 a.m.**

**PRESENT**

Mr David Blunt

Dr David Clune

Ms Sylvia Hale



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

**Ms HALE:** It was never a long-term ambition. I was asked to put my name forward for preselection by several people—John Kaye was one of them and there were others. That was after I had been a Councillor on Marrickville Council for five years, where again I had harboured no electoral ambitions. I had stood for election to Marrickville Council only because the No Aircraft Noise Party, of which I was a member, needed someone to run in a ward that was considered unwinnable and, lo and behold, I won. I found I enjoyed being a local councillor and did my best to respond to residents' concerns, even if I occasionally disagreed on some issues. I think my local profile subsequently contributed to my election to the Legislative Council. But I also owe it to the fact that The Greens have an affirmative policy with regard to women, which resulted in my being number two on the ticket, behind Ian Cohen.

**Mr BLUNT:** Can you tell us a bit about life before you became a councillor at Marrickville?

**Ms HALE:** My working life revolved around printing and publishing. A group of people, many of whom were members of the Australian Labor Party [ALP], were interested in radical, left-wing politics. We were aware of what was happening in, say, Cuba and throughout the 60s in Vietnam and elsewhere. We thought there was an opportunity for an alternative, more radical perspective on what was locally and internationally so we set about raising money to produce a journal of radical comment. Post-war changes in printing technology, such as the introduction of small-offset printing and the ability to set proportionately spaced type meant individuals who had no technical training at all could set themselves up to print. By raising sufficient money we acquired second-hand machinery and launched into print. We also had the help of a number of distinguished journalists—Craig McGregor was one. There were quite a few.

As with most things that rely exclusively upon voluntary effort, everyone's enthusiasm eventually flags. I think we made it to about six issues of a magazine called *Comment*, then it faded. The company we'd established to purchase the equipment then focused more on commercial work (which was always meant to underwrite the magazine). We were contracted by the Australian Elizabethan Theatre Trust to produce *Masque*, a magazine of the performing arts. Things grew from there. We were attacked, particularly in the 1970s and later, because we did a lot of work for the Vietnam Action Committee and the Moratorium. We also printed material for the Teachers' Federation, the Defence of Government Schools, several ALP candidates and for the Australia Party. At one time Peter Collins, later Liberal Leader of the Opposition in NSW, employed us to print a university college journal. When, some years later, we were attacked in the House by the member for Northcott, Jim Cameron, as a fountainhead of radical disaffection, it was satisfying to be able to refer to our former client.

Roger Barnes and I had always been more interested in publishing than printing. Printing was simply a means to an end. We began to specialise in book printing and got to know John Iremonger, who had been production manager at ANU press before leaving to work for Kep Enderby, Attorney-General in the Whitlam government. Come November 1975 and the dismissal of the government, John was looking around for something to do. The three of us concluded that becoming book publishers and not merely printers was an enticing prospect. We settled on the name Hale and Iremonger solely because it sounded old, established and respectable, like Angus & Robertson. We also determined that H&I's focus would be on Australian history, politics and women's studies, which reflected the preoccupations of the time.

The success we had with one of our earliest books, John Edwards' biography of Malcolm Fraser, *Life wasn't meant to be easy*, convinced us that publishing had a lot going for it. Another early success (to our thinking at least) was a book that came to us circuitously. Melbourne University Press was to publish a collection of 16 autobiographical essays by prominent women academics called *The Half Open Door*. It was a really interesting collection but the sticking point was the refusal of several contributors to delete some particularly evocative swear words. MUP's Director, Peter Ryan, was adamant: the vulgarity had to go. To have academics, especially women academics, resorting to the vernacular in his opinion was an affront to the dignity of the university. The end result was the book end up with H&I.

It was the first in a series. We followed up with essays by Sydney women academics. Having done two collections with women, we then turned elsewhere. Garry Wotherspoon put together *Being different: nine gay men remember* for us. We asked Don Dunstan to launch it. Dunstan had retired as the Premier of South Australia and was then the Victorian Tourism Commissioner. I think the straw that broke the camel's back was the Sisters of Perpetual Indulgence blessing the book. The Victorian editions of *La Fiamma*, the Italian community newspaper, were outraged and railed against the book and against Dunstan and eventually succeeded in obtaining his resignation.

**Dr CLUNE:** What were your impressions of the Legislative Council and its effectiveness when you commenced your term in 2003?

**Ms HALE:** My husband Roger Barnes died in 1990 and at that stage I pondered what I should do with myself. After years of avoiding jury duty, I was empanelled for two trials, in the first of which the defendant was acquitted. In the second, I recall arguing strongly, together with another juror, that there was little evidence that the defendants had stolen some radios but there was plenty to indicate they had subsequently tried to sell them. The other ten jurors very reluctantly acquiesced, fearing that the defendants would receive lesser sentences. Everyone was genuinely surprised to discover that dealing in stolen goods carried a heavier penalty than stealing them. But it was watching the barristers perform that really intrigued me. Recounting this some time later to a friend, I persuaded myself that I should broaden my horizons and study law, not with a view to practising, but simply because it was inherently interesting. The relevance of this is that one of the last essays I wrote was on *Clayton v. Heffron*, which caused me to consider whether the upper House should be abolished, as it had been in Queensland in the radical 1920s. I remember arguing that it was the committee system that was the thing that really gave hope and rationale for the Legislative Council's existence. My only expectation when I was elected was that the committee system would prove very effective. I was subsequently disabused of that notion.

**Dr CLUNE:** Do you think the council was effective as the House of review?

**Ms HALE:** It certainly depended, and still does, on who had the numbers in the House—that is all I can say. As we see today with the handling of the stadiums issue or the transfer of the Powerhouse Museum, if a Government is determined to do something, it does not matter how many committees of review you have. If a government is hell-bent on pushing something through, there's usually little that can be done to prevent it.

**Dr CLUNE:** No government has had control in its own right of the Legislative Council since 1988 due to the rise of the crossbenchers. How do you think the rise of the crossbench changed the nature of the Council?

**Ms HALE:** I think it has possibly given rise to a lot more horse trading on issues. I do not approve of horse trading. When you get individuals or groups that do not have a coherent policy, they can flip-flop when it suits their agenda. But, if you have a serious commitment to policies and to the public interest, the opportunity and desire to horse trade is far more limited. I have seen incidences where a Member will agree to one thing because it is opportune at that moment to do so but then subsequently renege on the undertaking. That outcome is always possible when a small group is essentially unaccountable to a party.

I think the nature of this parliament is such that people are susceptible to the notion of it being an august institution, and are impressed by their own importance when elected to it. As a result, they're easily duffed. Because she was very strong-minded and not at all self-important, Lee Rhiannon was a very uncomfortable presence in what was otherwise a "boys' club." I found Lee very helpful. She enlightened me on the workings of the House. For newcomers, mentoring on the practical aspects of how the Legislative Council operates would be useful, but things have doubtless improved over the last decade or so.

**Mr BLUNT:** I would like to think that over the years we have developed more sophisticated and more helpful induction programs for newly elected members. We do tend to provide quite a bit of support for those who are on their own and do not have party colleagues. But perhaps we should be equally on the lookout for those whose do have party colleagues as well.

**Dr CLUNE:** Was there regular consultation and negotiation between the Government and the crossbench?

**Ms HALE:** No, or at least not with The Greens and certainly not with me. At least that was my experience. It was odd really because I had known Bob Carr when we were both in the ALP Youth Council, and he had rocked up as a kid in shorts from Maroubra High School. In fact, I believe I was the first person he ever voted for in the ALP. But, no, I had very little contact with Bob. Nor with his chief of staff. Occasionally you would be approached but not really seriously. If the government had Fred Nile on side then they did not have to worry about The Greens. Why expend your time on people whose vote you did not need?

**Dr CLUNE:** Since the crossbench has had the balance of power, the rate of amendment of bills has greatly increased. Do you think this has led to better legislation?

**Ms HALE:** It may have in particular cases. But it was so dependent upon the type of legislation. Sometimes you just could not make a silk purse out of what was a sow's ear. Often a whole raft of amendments would be voted down so you might conclude that the effort that was put into them was wasted. But, on the other hand, if you were trying to persuade the broader community of the correctness of your position then you were able to say, "Look, we tried to do this, this and this but we were unsuccessful". The Greens had a political program and could show that we were doing our best to act in accord with it.

We would frequently point to divisions to show who had actually voted on something and how. Planning was a huge issue and the Liberals would say that they had opposed whatever the proposed legislation. We could point to Hansard and demonstrate how false their claims were.

One of the significant failings I always found with legislation was that there was never attached to it any analysis of who would bear the costs of legislative changes. This failure has always contributed to an ability to shift the costs and odium onto a lower level, mostly local government. Local councils became the recipients of a lot of additional responsibilities while simultaneously being publicly attacked for seeking rate increases to pay for them. It was a means for government to shift additional financial burdens onto the public without appearing to be responsible and leaving councils to cop the flak. I think the lack of clarity around the full ramifications of a lot of legislation in terms of who has to implement it and what costs they will be exposed to is a significant failing.

**Dr CLUNE:** Do you think crossbench power has resulted in better scrutiny of the Executive?

**Ms HALE:** Not necessarily. I think of the Legislation Review Committee where so often legislation would be subject to critical comment and yet the Government would ignore the Committee's findings, often doing so with the agreement of some of the crossbenchers. If, in general, there was a clear divide about legislation between conservatives and non-conservatives, then the crossbenchers would similarly divide along those lines. I think the Shooters are an example. On certain issues they will take a stand, the Powerhouse Museum is an example, but for the majority of the time they see The Greens as a greater enemy than the Coalition.

**Dr CLUNE:** There is a tension between the Government's right to implement its agenda and the Legislative Council's right to scrutinise. Do you think the right balance has been achieved between those two things?

**Ms HALE:** I suppose the committee system, particularly the General Purpose Standing Committees, allows for that deeper scrutiny and I think the more scrutiny the better. My only comment would be that if you are going to scrutinise and come up with recommendations, it is unacceptable for the Government to ignore those recommendations or not respond to a report. Of course, you can say the committee hearings allow people to let off steam, as we are seeing with the banking royal commission, but unless those parliamentary inquiries actually result in a tangible change then you can say that the scrutiny has been there but it has been ineffective scrutiny. I remember the General Purpose Standing Committee inquiry into the privatisation of prisons. It could be said that one of its achievements was that the Government decided not to privatise Cessnock prison. But I think it was more a question of saving the local member's seat than it was of heeding what the committee had to say. The Government and the Opposition tend to dominate the committees with the crossbenchers playing a lesser role. So they are limited to that extent. I see them more as a means to obtain relevant information about an issue rather than as a way of achieving outcomes. Calls for the production of papers might do that far more effectively.

**Dr CLUNE:** Minor party MLCs have a responsibility obviously to those that elect them but also a duty to the general public as a parliamentarian. How successfully do you think you reconciled those two roles?

**Ms HALE:** That duty applies to every parliamentarian regardless of whether they are in a major or minor party. No-one has any objections when the Liberal Party pursues its policies. Everyone sees that as consistent with the issues they took to the election. Similarly with the Labor Party. They are obviously not catering to every strand of thought within the community. I do not think it is reasonable to expect the minor parties to be all things to all people.

**Dr CLUNE:** Things do not seem to have worked very well in the Senate with minor parties and independents having the balance of power compared to New South Wales. Why do you think it has worked better here?

**Ms HALE:** Probably we have a longer experience of that situation. We have the committee system, which has been a safety valve for discontent in many ways. I think it is also a question of the State Parliament being perceived to be of far less importance than the Federal Parliament so the concerns about a government minority in the Senate attract greater prominence and media coverage than government minorities in the Council.

**Mr BLUNT:** Is there anything else you would like to say about your general views of the committee system?

**Ms HALE:** In terms of educating members of Parliament they serve a genuine purpose. They are good because you have the occasion to travel collectively and it is an opportunity for people from different parties to

get to know each other on a more friendly basis. Committees also oblige people who have firm positions to come to terms with specific issues and justify their stances in a way they can otherwise ignore, unlike voting on legislation, where the Whips direct their party's MPs how to vote.

I am also acutely aware of the shortcomings if the public service itself feels that it cannot provide frank and fearless advice. I have noticed this in relation to the call for papers. I called for papers in connection with the so-called training mine that led to John Maitland and Ian Macdonald going to jail. It subsequently turned out that the department had relevant papers but had not made them available. Similarly, one of the first committees that I was on concerned the Sydney Harbour Foreshore Authority and the leases at Circular Quay. As we now know, Eddie Obeid had a particular interest in cafes there. I had been told this—I talked a lot to the people who were leaseholders at the Quay. They were saying they were really concerned about the way the Sydney Harbour Foreshore Authority was operating, but it was impossible within the context of that committee to get the truthful answers that I was genuinely hoping to get and would expect to get from an independent public service. The loss of the public service's independence has been to the significant detriment of good government.

**Mr BLUNT:** You have spoken about a couple of committee inquiries. From your personal experience, what are some examples of committees doing useful work or contributing to a positive outcome?

**Ms HALE:** There were a number of committees that were investigating things that were not particularly contentious: the spent convictions for juvenile offenders; altruistic surrogacies, though obviously Fred Nile was not too happy about that; and judge alone trials. On those sorts of things you could get a reasonable outcome because they were not front and centre of public attention. But with other things that were contentious public issues, such as the designer outlet centre at Liverpool, Badgerys Creek, Snowy Hydro, and privatisation of prisons, the committee reports were usually determined along party lines. The only thing you could do would be to write a minority report, but that had zero impact most of the time.

**Mr BLUNT:** Do you have any thoughts on how the committee system could be improved?

**Ms HALE:** Trying to find some way to implement committee recommendations or for the Government to respond in a way that shows that it appreciates the points that were being made by the committee and has decided that it will not proceed because of X, Y, Z reasons. Short of that I am not sure what you can expect or how it could be improved. I do think it is wrong that the chair of a committee should ever be appointed by the government or is a member of the governing party.

**Mr BLUNT:** The three standing committees—Law and Justice, Social Issues and State Development—have resolutions that provide for the government to appoint the chairs of those three committees. But the chairs of the Portfolio Committees, which used to be known as the General Purpose Committees, are elected by the committee at the first meeting, so there tends to be a mix of Opposition, crossbench and occasionally Government chairs. In this Parliament since 2015, of the six Portfolio Committees, four are chaired by crossbench members, one is chaired by an Opposition member and one is chaired by the Government—there is a bit of a mix.

**Ms HALE:** It might be better for the chair, given that they do play a significant role, to be drawn by lot, rather than it being dependent on the alignment of conservative or non-conservative forces. The other thing I think in terms of the standing committees, particularly Law and Justice, is that there should be an opportunity for each member of the standing committee to propose an inquiry into an aspect of law and justice that they consider to be important. For example, I had long wanted an inquiry into the status of civil rights and pressed for that, but the chair of the committee, who was a member of the Labor Party, said to me, "Look, I would never be able to get the Government to agree to that."

It is always difficult, particularly with the budget estimates hearings, when the time available for questions is so limited and many questions are taken on notice but not treated as seriously as they might be. I always had great respect for John Della Bosca because he was one Minister who would seriously endeavour to answer a question. Rather than resort to filibuster or ridicule, he consistently endeavoured to grapple with the question itself.

**Mr BLUNT:** Do you think that the judgements of the High Court and the NSW Court of Appeal in the Egan cases, which reaffirmed the powers of the House to order the production of State papers, were a positive development in codifying the Council's powers?

**Ms HALE:** Absolutely. I think they were critical in that regard. The ability to call for papers is the ultimate power that the crossbench and Opposition have to hold the government to account. Of course, one always runs up against the problem of cabinet in confidence documents and whether just trundling them into the cabinet room is sufficient to confer upon them that status.

**Mr BLUNT:** What is your view of the way that governments claim cabinet confidentiality to exempt documents from being produced?

**Ms HALE:** The secrecy that surrounds so many deals done by governments under the guise of either commercial confidentiality or cabinet confidentiality really serves to hide significant information. It's not quite maladministration nor corruption, but it certainly leaves one with a very uneasy feeling as to the motivations behind commercial contracts. When that's coupled with a system that allows a lot of donations to political parties to continue to flourish, I do not think it is a recipe for a good government, a transparent government or a government that is prepared to be open as to the reasons why it is proposing to do something.

**Mr BLUNT:** In your view, has the power of the House to order the production of documents been used effectively?

**Ms HALE:** I remember when I was very new to the Parliament and I went in to read some papers subject to claims of privilege and I wandered downstairs and was immediately confronted by someone who is now a Minister in the lower House wanting to know what was in these papers. There is great pressure on people to leak, particularly to the media or to the Opposition. If something was confidential I always felt very uneasy about being urged to disclose it.

The Government's record in refusing to release documents because of privilege meant that there were lots of appeals for the independent arbiter, initially Sir Laurence Street, to intervene. To his credit, I think he often did in a very effective way and made material publicly available that would otherwise have been withheld.

**Mr BLUNT:** Who were the party leaders in the Legislative Council who impressed you the most and what was it that made their leadership effective? What was it about them that impressed you?

**Ms HALE:** I have already spoken about John Della Bosca. It is hard to nominate party leaders because I can never remember being particularly impressed. But one of the members who was never a Minister who impressed me was Arthur Chesterfield-Evans. Often he would speak at length and his ability to speak off the cuff and really go to the heart of an issue I thought was very admirable. I think Arthur was honest and principled. Peter Breen always was worth listening to because he was fairly forensic in his approach, but not by any means a raving radical.

The people for whom I had considerable regard were the serious people. To some extent I have got to say I would number among them David Clarke. We could not be further apart on the political spectrum, but with David I felt that he was guided in whatever he did by a certain set of assumptions and convictions that he would remain true to. I respected that.

Of course, people who are members of the Labor or Liberal parties would often be very much constrained by the lines that they were being given or the position their party was taking. I can always remember a member of the National Party, Trevor Khan, making really interesting points both about gay marriage and about the difficulties confronting Indigenous people. I asked him on one occasion, "Given your views, how did you manage to be preselected?", to which he replied, "Well, they never asked me about them. They just assumed what my position was." It is interesting that he has managed to survive.

**Mr BLUNT:** Thinking about your time in the Legislative Council from 2003 to 2010, do you think it changed in that period? If so, what do you see as the most significant changes?

**Ms HALE:** I cannot say that I went into Parliament with any great expectations. Therefore, I could not say that my expectations were confounded in any way. I see Parliament as a bit of a reflection of the currents within society, but I also think that outside the Parliament is where issues are really being fought out. I think within the Council so much depends upon what happens in terms of the outcomes of elections, the numbers of the crossbench and the resultant ability to get things done. That can change significantly every four years so comparison is difficult. Innovations such as the committee system and the right to call for papers I think were notable improvements and certainly worth defending. But I cannot say that I came out of the Parliament with any greater regard for it than when I went in. That is not to say I had a disregard; but to me it is just one aspect of political life.

**Mr BLUNT:** Looking on as an interested and well-informed outsider eight years later, what is your general assessment of the council and its role today?

**Ms HALE:** It is hard for me to speak about the Council as a body because I see it through the perspective of the performance of The Greens MLCs. To some extent what has been testing The Greens has been their electoral success because of the problems created by this success: Where do you compromise? Where do you not? Where do you draw the line? Do you avoid talking about particular topics because they are electorally unpopular? Today almost everybody agrees that climate change is a real issue. There's fairly

widespread agreement that there should be a harm minimisation rather than criminalisation approach to drugs. But in the 90s, they were very contentious topics in a way they are no longer. And yet one sees a certain reluctance on the part of Greens Members—and it may be more in evidence in lower House MPs who have seats to maintain—to be at the forefront on a lot of social issues. But it's really impossible at this stage for me to comment on the Legislative Council as a whole. I see it through this narrow prism.

**Mr BLUNT:** What do you believe were your main achievements during your time as a member of the Legislative Council?

**Ms HALE:** I must say I was amazed when reading through the material that was supplied to me at the sheer number of committees I managed to serve on. There is no doubt being in Parliament gives you a platform where you can influence the ideas and notions of the general public. I think Snowy Hydro was an interesting inquiry where we did a lot of work. I'm disappointed that NSW has since sold its interest in the scheme to the federal Government.

I have always been particularly interested in homelessness and the provision of affordable housing and public housing. Immediately after the war the Department of Housing was the strongest and most powerful State department but come the 2000s the most powerful State departments were roads and so on. That switch was something I find very disturbing. Whilst it is all the go at the moment as a topic of public discussion, it was very evident even 20 years ago that affordable housing was going to be a critical issue, as was planning. I regret I had not been able to do more in both those areas.

**Mr BLUNT:** Ms Hale, for the record, and as we close the interview, I thank you so much for your generosity in giving of your time, coming along today and participating in this project. Most of all on behalf of all the staff of the Department of the Legislative Council and my predecessors who support you as Clerks—John Evans and Lynn Lovelock—but also from a personal point of view I thank you not only for your participation in this project but for your service to the Legislative Council and to the people of New South Wales.

**Ms HALE:** Thank you very much. That is very kind.

**Dr CLUNE:** Thank you, Ms Hale, for your time and your very interesting thoughts.

**Discussion concluded.**