

LEGISLATIVE COUNCIL
ORAL HISTORY PROJECT

At Sydney on Monday 6 May 2013

The discussion commenced at 10.00 a.m.

PRESENT

The Hon. Ron Dyer

Mr David Blunt
Dr David Clune

Mr BLUNT: Mr Dyer, thank you very much for attending this first interview of the Legislative Council's Oral History Project. The project aims to chronicle some of the key events in the recent history of the Legislative Council, starting with the establishment 25 years ago of the modern committee system, in which you played such a pivotal role. Before we commence with the talking points, is there anything you would like to say?

Mr DYER: I would like to thank you for your introductory remarks, and your welcome. I would indicate that I am very happy to be here. I had a long association with the Legislative Council. Some people here might have thought that they had seen the last of me, but here I am back again; certainly Hansard would have thought that they had seen the last of me.

Mr BLUNT: I would like to take you back to the time before the modern committee system was established, to the 1980s. What was the Legislative Council like at the time the Select Committee into Committees was established? How effective was the Legislative Council as a House of review? How did it change after becoming fully elected? And how effective was the existing Subordinate Legislation Committee?

Mr DYER: I became a member of the Legislative Council in September 1979. Between then and when the Select Committee on Standing Committees was set up, the Legislative Council to a large extent followed the old model. It had been a part-time House; it commenced sitting at 4.30 in the afternoon, for example; there was, if at all, a very short Question Time, which over the years developed into a full Question Time, similar to that in the Legislative Assembly.

The members of the Upper House tended to be in the old days, on the Labor side, from trade unions—not exclusively, but to a large extent; and on the non-Labor side of the House there were representatives who had an employers' association background or a pastoral background, and so on. It was very much a part-time House, and one that certainly needed updating when it evolved into a House directly elected by the people. The old Council was indirectly elected by a joint sitting of the two Houses; so it could not be said that the House was directly elected by the people, nor that it had a direct democratic basis.

So there were a lot of things in the old system that did change dramatically when the House first became elected. I perhaps should add that it became elected in stages. The old Council had 60 members, and eventually it evolved into a House of 45; and, still later, 42. So there were panels initially of 15 each election, and later 21 each election, and gradually those panels evolved into a fully elected House.

You have asked me about the committee system, how effective it was, and how effective the Legislative Council was as a house of review. I suppose, in one sense, you could say that if the government of the day, whether Labor or non-Labor, lacked a majority, it was partly effective. What I am thinking of is that if the government had the numbers they tended to be in a position to ram legislation through, sometimes very quickly indeed—which, in my view, is not particularly healthy, whichever government happens to be doing it. That itself is an argument for a committee system in the Upper House, so that it can operate effectively as a house of review.

It seems to me that if there is a committee system the review function can be carried out better than if there is no effective committee system. To give you a simple example, interest groups out in the community have the capacity to be consulted if there is an

effective and workable committee system. If there is controversial legislation pending, the Upper House, exercising its review function, can institute an inquiry into that particular policy or administrative area, whatever it happens to be, and witnesses can be called representing that particular interest group. So I see that as contributing to an effective committee system, but also an effective consultation of the people and interest groups via that committee system.

The Upper House certainly did change after it was fully elected in the ways I have indicated. I think the development of Question Time is a very good example, and the growth of the committee system is another example.

I have been asked, "How effective was the existing Committee on Subordinate Legislation?" I joined that committee very early in my tenure as a member of the House; I would have become a member of that committee quite soon after I became an MLC. I was chairman of that committee between 1980 and 1987. Prior to my chairmanship, Sir Adrian Solomons chaired the committee; and he did the best he could, under the prevailing circumstances. I would want it to be understood that nothing I say would be intended as any reflection on the capacity of Sir Adrian Solomons, with whom I was on close, friendly terms, despite the fact that we belonged to different parties. My recollection is that Sir Adrian Solomons thought it was more appropriate that a government member should chair that committee; and it was in those circumstances that I became a member and chairman of that committee.

The fundamental difficulty with the Committee on Subordinate Legislation was that at each meeting—which was approximately monthly—a formal motion was proposed that all of the regulations had been examined and none of them offended against the standards laid down by the terms of reference of the committee. Those terms of reference related to traditional matters that the Senate Committee on Regulations and Ordinances would have regard to—matters such as whether, for example, the regulation in question trespassed unduly on personal rights and liberties. That is just one example. I cannot remember exactly how many terms of reference there were, perhaps 10 or 12; and the committee at those meetings would tend to blithely carry that motion, when in fact very little attention had been given to the regulations. Some members did occasionally look at the *Government Gazette*, as I did. But as we were serving as members of the House, and not all of us were lawyers, it was not an ideal situation that members were expected to trawl through the gazette, which comes out very regularly, as you know.

So, after I became chair of that Subordinate Legislation Committee I started to annoy the then Premier, Neville Wran, by asking for some staffing to assist that committee. Evidently, my pleas did not entirely fall on deaf ears, because the committee was given a part-time researcher, an academic from Macquarie University. He used to, prior to every meeting, between meetings, go through the regulations and draw our attention to any that in his view violated or offended against the standards that the terms of reference of the committee required it to consider. So I was very grateful to Premier Wran for that breakthrough. It was not really enough, but it was a start; we needed a full-time researcher.

Dr CLUNE: The committee had been reactive before that: if there was an issue about a regulation with which a lobby group or some citizens group had a problem, they would bring it to the committee's attention, and someone might do something. But, without a secretariat to go through things, the committee did not tend to be very proactive.

Mr DYER: Yes, I think that is an appropriate way to put the matter. If a matter were drawn to the attention of the committee, the committee would not overlook or fail to deal with the matter raised. I was more concerned with a thorough examination of all regulations, to see whether they offended against the committee's standards. My view is that, without a researcher part time or full, we were facing an uphill battle to really keep abreast as we ought to have been doing.

Dr CLUNE: There was also a Printing Committee.

Mr DYER: Yes, there was a Printing Committee. I know that when there was an appointment to the Printing Committee from my side of the House there was a little titter of amusement and a comment would sometimes be made, "Oh, you'll be working very hard on that committee." The Printing Committee, I suppose it could be said, was a fairly formal exercise. I was never appointed to the Printing Committee. That was part of the parliamentary experience that I missed. Judging by the reaction of my colleagues, not a huge amount of work was required on the part of members of the Printing Committee.

Dr CLUNE: Why did the government then set up a Select Committee on Committees?

Mr DYER: My recollection is that the Committee on Committees, as it was jocularly and popularly referred to, was set up to meet the need for a committee system having regard to the evolving nature of the House, namely, the transition of the House from a part-time body elected by a joint sitting of the two Houses, to a popularly elected House, and one that, over time, extended its sitting hours and no longer started sitting at 4.30 in the afternoon. It was not uncommon for the House to adjourn at about 6.30 p.m., having started to sit at 4.30 p.m. So it is not unfair to say that it was a part-time House.

Some unkind things used to be said in the media. It was referred to as a House of geriatrics, and so on, which is perhaps somewhat unkind. Some of the members were getting on in years. Perhaps I should not identify any particular member, but I can remember when I was still a schoolboy sitting in the gallery of the Upper House and looking at the proceedings of the House—many years, indeed, before I became a member here—and some of the members, on both sides, were certainly of advanced and advancing years.

Max Willis has told me that in the past it was not the fashion for members to "speak too early". He was counselled, he told me, to not really attempt to make a maiden speech in under 12 months' membership of the House; to "absorb the atmosphere, and wait your turn, young man." That tended to be the ethos. It appeared to have been the practice that it was seen as perhaps a little presumptuous to expect to "speak too early".

Dr CLUNE: We have talked about why the committee was set up. What about the government's and the opposition's attitude?

Mr DYER: Well, it was somewhat difficult to determine the Labor Government's attitude. The motion to appoint the Select Committee on Standing Committees, to give it its proper name, was moved by the then Leader of the Upper House, Barrie Unsworth; and I have no reason to believe that he was other than sincere in moving for the appointment of the committee. He could see the evolving composition and nature of the House, and he

could see the merits of having a committee system, along the lines that I have indicated - to give people outside a voice and to give the House a proper and constructive role. There is no doubt, in my view, that an extended committee system, or a committee system at all, is consistent with the review function; and I am sure that Mr Unsworth took that view.

The Opposition was perhaps more overtly supportive of a committee system at the time. Lloyd Lange certainly was. He had uttered remarks in favour of a committee system. So how I would characterise it is that the Government had a quieter and less publicly expressed attitude toward the committee system compared to that of the then Opposition.

Mr BLUNT: I have often wondered what Neville Wran would think, looking at the ultimate consequences of the reforms of the late 1970s: democratising the House and making membership full time, the establishment of the committee system, and particularly the nature of the electoral system that was put in place with proportional representation and a relatively low threshold for election. I just wonder whether you have any observations as to whether the sort of dynamic that we see in this modern era was really envisaged.

Mr DYER: I am not sure what Mr Wran's view might be, given the complexity of the changes, and the number of changes, that occurred in the Upper House. First of all, it should be remembered that Neville Wran started his political career as Leader of the Government in the Council. As a matter of fact, when he was in that role he moved my admission as a solicitor over at the Supreme Court. So I remember Mr Wran very distinctly in that role. I had other connections with Mr Wran in that a firm of solicitors I worked for at one stage briefed him a lot; so I had a lot to do with Mr Wran. At first I did not even know he was a Labor supporter, or had anything to do with the Labor Party. I was to find out later that there certainly was a close connection.

Well, it is a matter of speculation as to what Mr Wran's view might be. Could I say that, traditionally in the Labor caucus, there was an evident hostility toward the Upper House on the part of Labor members of the Lower House. I am not suggesting that they thought that it was illegitimate. They did, however, think, "Oh, well, members of the Upper House do not have electorates"—in the sense that members of the Legislative Assembly do. I used to respond to that by saying, "Oh, yes, we do. The whole State is our electorate, and we have five million constituents." But, of course, that glosses over the fact that members of the Lower House do have to work hard looking after their constituency, particularly if it happens to be a marginal seat.

I think Mr Wran would not resile from converting the Upper House to a democratically elected Chamber. I think that he believed in that then; and I do not think he would ever have ceased to believe that that was the right thing to do. It is not really justifiable, in democratic terms, that there should be a periodic election that was performed by members of the Lower House and the Upper House sitting together. What his view might be regarding other matters, such as the committee system, I am not sure. It is possible that he might take the view that it went too far. But I can only speculate; I have not had a conversation with him about that ever, and I really do not know. But I am grateful to him for allowing a part-time researcher, and later on a full-time researcher, for the Committee of Subordinate Legislation.

Mr BLUNT: You were made the chair of the Select Committee on Standing Committees. How did that come about? And what was your personal attitude to the committee and its task?

Mr DYER: It came about when Mr Unsworth, the then Government Leader in the Upper House, moved that the Select Committee on Standing Committees should be appointed; and the proposed membership of the committee was mentioned. The members were identified in the motion. Mr Unsworth moved, so, in a simplistic sense, that is how I came to be on the committee. Self-assessment is not necessarily the best form of assessment, but I think that I would have been made the chair of the committee because I was seen as diligent and thorough, and not easily diverted from a task or objective. Some people would even say that I was stubborn—that when I had an objective, well, that was it; I would follow through and ultimately endeavour to reach the objective.

Other reasons that might have been held by Mr Unsworth in particular would be that I was a lawyer and used to considering detailed matters. And it would not have passed his attention that, from a personal perspective, I believed, and strongly believed, that a committee system was very desirable given the changes that were occurring in the Upper House. Finally, I had—and still have—a good relationship with Mr Unsworth; all of those matters to which I have referred I suppose might have something to do with why I became chair of that committee. I can certainly say that I was absolutely sincerely dedicated to reaching that objective of the Upper House having a sound, working, committee system.

Dr CLUNE: What are your observations on the functioning of the committee, and how it went about its task?

Mr DYER: The committee entered into a very detailed exercise. Could I say first of all that it is my view and my recollection that the committee worked very well, on a bipartisan basis. That is not to say that when it came to the pointy end of the exercise there might not have been some differences of approaches to what committees we ought to recommend. What we did was set out to consider committee structures that existed in other jurisdictions. Prominent examples at that time of legislatures that had effective, working, committee systems included the Australian Senate and the House of Representatives, although the Senate of course was more analogous to the Legislative Council, being an Upper House. The Victorian Parliament had an effective committee system. The South Australian and Tasmanian parliaments did also, although in those two latter cases they perhaps were not as extensive as the Victorian system. However, the committee, apart from taking evidence from numerous witnesses here in Sydney, travelled to Canberra, Melbourne, Adelaide and Hobart. From memory, we spent about two days in each of those cities, taking evidence.

Before we set out on the road, though, we took a considerable amount of evidence here at Parliament House in Sydney; and one of our first witnesses was a very valuable one, and that was Mr Jim Odgers, a former Clerk of the Senate, a highly respected figure. We valued his evidence very much; he was able to talk with authority on the Senate system. Other witnesses I can recall were Professor Ken Turner from the Department of Government at the University of Sydney; Kevin Rozzoli, MP; and Les Jeckeln, at that time Clerk of the Parliaments, in other words, Clerk of the Legislative Council. When we went to Canberra, Mr Alan Cumming Thom, who was then the Clerk of the Senate, and one of his deputies, Ann Lynch, were prominent witnesses, particularly when we travelled to Canberra. Laurie Marquet, Clerk of the Legislative Council in Western Australia, came to

give evidence here about the Western Australian system. In Victoria, we met at Parliament House in Melbourne, and we had witnesses such as Dr Cheryl Saunders, who at that time was, I think, senior lecturer in law at the University of Melbourne, later a distinguished professor at that university, and Haddon Storey, MLC and James Guest, MLC. There were many other witnesses but they stand out in my mind.

We endeavoured to conduct a very thorough and exhaustive exercise. To that end, we spoke to everyone we thought could help us. The Senate was clearly crucial, in that they had a highly respected committee system, and a highly effective and longstanding Committee on Regulations and Ordinances, as it was called.

Dr CLUNE: What resources were you given for the inquiry?

Mr DYER: Initially, we were assisted by a committee officer, Mr Gordon James. He was an Englishman. My recollection is that he came to us from the staff of Kevin Stewart, who was a longstanding Minister for Health in New South Wales. In England, I think Mr James had been an officer of the Ministry of Defence; and he returned to England, I believe, possibly to resume his career there. When that happened, we advertised for an officer to fill the role; I am not sure whether the formal title was clerk or secretary, or researcher. But, whatever the formal title was, we interviewed applicants, and we settled on a Mr Ian McKendry. Fortunately, Mr McKendry turned out to be an excellent appointee, and I worked very closely with him to the end of the committee exercise. So we did have resources. I did not have to batter down anyone's door to get assistance. There was an open acceptance of the fact that we would need full-time assistance for such a detailed and even onerous exercise such as we undertook.

Dr CLUNE: That brings us to the writing of the report.

Mr DYER: Mr McKendry would have played a central role in drafting and writing the report. The text of the report and the recommendations made by the committee were, generally speaking, made on a consensus basis. The committees that the committee ultimately decided to recommend are identified at page 134, at least in my copy of the committee's report. We recommended a Standing Committee on Subordinate Legislation and Deregulation, a Standing Committee for State Progress, a Standing Committee on Social Issues, a Standing Committee on Country Affairs, and a Standing Committee for the Scrutiny of Bills. However, regarding the last-mentioned committee, the decision was made that it ought to be set up in the second stage, and that the first four committees should be considered for the first stage.

My recollection is that Mr Willis was pressing for a Law and Justice committee as well. There were some divisions on the committee - I use the word "divisions" in the formal sense - so actual votes. Well, it will not surprise you to hear that I was not unsympathetic to a committee on Law and Justice. However, I maintained party discipline and voted against that at that stage.

You are no doubt saying, "Well, why was that?" My response would be that at this stage the Labor Government had been in office for a long period of time. Premier Wran was in office for just over 10 years before he resigned; then Barrie Unsworth became the Premier. It is fair to say that after the lapse of a period of years such as that the electoral pendulum starts to swing; and this applies to any government, no matter what its political complexion. So Mr Unsworth was faced, when he became Premier, with an apparent tide

in the other direction, shall we say. So I suppose it is fair to say that his attention was focussed on all sorts of matters, endeavouring to arrest the slide in the Government's fortunes. So as Premier it was not his number one priority to set up committees of the Upper House, even though as Leader of the Government in the Legislative Council he had moved for the committee to be appointed. I am not saying that by way of criticism; it is just a reality that that was the position at that time.

Dr CLUNE: There was some negative comment in the press, I recall, so that perhaps there might have been some political sensitivity about the recommendations?

Mr DYER: Yes. I do not have any direct clear recollection of that, but I would not be at all surprised that that happened. Sunday paper stories, in my view, tend quite often to be lacking in a huge amount of substance; and politician knocking is one of the popular sports, I suppose, in the less serious end of the newspaper industry. So it is very probable that such things were written. But could I say this: that having a committee system meant more work for Upper House members, and properly so. I do not complain about that. Any monetary gain would be relatively minor. Certainly, committee members receive sitting fees, and the chair receives an additional allowance, but, set against a parliamentary salary, they are not major amounts.

Mr BLUNT: Can you tell us about the response that the committee's report received from the Government and the House?

Mr DYER: In the immediate aftermath of the report, I think the Government's response was somewhat muted and quiet. I do not know that they rushed to indicate that the recommendations were being adopted promptly. I think it is fair to say that. But I go back to what I said a short time ago: that Premier Unsworth was aware of the electoral swing that was apparent, as reflected by opinion polls. So there was a delay in the adoption of the select committee's report by the Government. That is clearly apparent, because it was not until the Unsworth Government was defeated at an election and the Greiner Government came to office that two committees were in fact set up: the Standing Committee on State Development and the Standing Committee on Social Issues.

Dr CLUNE: So could we say that perhaps Premier Unsworth, although he supported it, had other things on his mind at that stage; it was not a top priority? And, perhaps more speculatively, would it have been too hot politically at that sensitive time?

Mr DYER: I think it is fair to say that it was hot politically, and it was a sensitive time; an election was approaching. The Government's tenure was in question in terms of electoral support, just given the sheer longevity of the Government. Premier Wran had been there, as I have said, for some 10 years; and the Unsworth Government had been in office a couple of years beyond that. So it was very far from being a new government. The height of the Government's popularity was evidenced at the 1978 election and the 1981 election. In common political parlance, they were referred to by political analysts—and still are I suppose—as the first and second Wranslides. However, the gloss wears off any government; and by the time the Select Committee on Standing Committees report was being considered the gloss had well and truly worn off—people were thinking about voting in another government.

Mr BLUNT: What are your views on the subsequent establishment of two standing committees by the Greiner Government, and how effective were they?

Mr DYER: The Greiner Government, in 1988, did establish two standing committees; and those were committees that clearly arose out of the report of the Committee on Committees. The Government established a Standing Committee on State Development and a Standing Committee on Social Issues. Clearly, I would say that I was more than glad that those committees were established at that stage. I am less familiar with the work of the State Development Committee than I am with the work of the Social Issues committee—not that I ever served as a member of the Social Issues committee, but it tended to consider matters that I was familiar with, particularly when I became Minister for Community Services, Disability Services, Aged Services and Juvenile Justice all at the one time. That committee tended to consider issues that fell within the areas for which I was then responsible. So I would say that I was glad that the Greiner Government did set up those two committees.

I would have to add that I would have been somewhat disappointed I suppose that the Law and Justice committee was not set up at that stage. However, the Carr Government did in fact establish that committee in 1995; so it did eventually happen. As I have said, I am less familiar with the work of the State Development committee. I am not trying to downplay it in any way. But the two standing committees with which I am most familiar are Social Issues and Law and Justice.

Dr CLUNE: Why was the Law and Justice Committee established? What do you think were its major inquiries and achievements? And how bipartisan was the committee on the whole?

Mr DYER: I have said already that I was glad that the Carr Government set up the Law and Justice committee in 1995. Could I say, by way of explanation, that at that time my primary focus was not on the setting up of the Standing Committee on Law and Justice because it was at that time that I was being appointed as a Minister in the Carr Government, which had been newly elected to office. I have already identified the portfolios I held that were all quite contentious. So I took the view, understandably, that I had plenty of work to be going on with and I would not be meddling in the Standing Committee on Law and Justice. In fact, I can tell you that behind the scenes, after the Government had been formed, Premier Carr approached me and asked me to take Corrective Services as well as all the others that I have identified, Community Services, Disability Services, responsibility for Juvenile Justice; and I demurred. I thought to myself—I did not say this to Bob Carr—"You're trying to collect all the bad news in the one portfolio." He did not press me to take Corrective Services; he did, by way of exchange, give me Aged Services instead. So that was not quite so contentious. So my attention was, on becoming a Minister, getting on top of my brief there. But I was more than pleased that the Standing Committee on Law and Justice was being established.

Mr BLUNT: You were clearly a parliamentarian who was a strong supporter of the committee system. You were pleased that the initial two, and then the third committee, the Law and Justice committee, had been established. Given your primary duties as a Minister, how would the work of the committees during that period have been a matter to which you could devote the interest that you genuinely had? I am trying to get a sense of what it is like being a Minister who is a strong supporter of the committee system but who has other, very onerous duties at the same time.

Mr DYER: I could not pretend that I could give primary attention to what the committees were considering in terms of their terms of reference at that time. Holding the Community Services, Juvenile Justice and Disability portfolios gives plenty to be going on with. Myriad interest groups are all clamouring for attention, and even more for funding; so that is the number one priority. But I am a known supporter of the committee system, and I would have been aware of what was going on, particularly in the Standing Committee on Social Issues. That certainly would have come to my attention. I think I am correct in saying that Ann Symonds would have been the chair of that committee at that time. I had quite a lot of contact with Ann. I respected her very much; and on occasion, if I was not able to attend a particular function, or open some particular gathering—and I did not do this very much—but if I was truly pressed, I would approach Ann to deputise for me, which she always obliged me by doing.

Dr CLUNE: Did you see the committees as helping you as Minister? Were they providing input to your portfolio?

Mr DYER: Yes. There is no doubt that I would have been paying attention to what the Social Issues Committee in particular would have been doing.

Mr BLUNT: Could we move on to Law and Justice?

Mr DYER: The first chair of the Standing Committee on Law and Justice was my colleague Bryan Vaughan. He chaired the committee for four years after the Carr Government was elected in 1995. It is my recollection that he and his fellow committee members spent a great deal of time inquiring into motor accident compensation. It is an area with which I have had a continuing contact. I can remember John Della Bosca shepherding through the Upper House what was called the green slips legislation. In more recent times, I have spent six years on the board of the Motor Accidents Authority—in fact, until last year, when the present Government decided to change its arrangements and that particular board went out of existence and was absorbed basically within the WorkCover board. So I have had a continuing interest in the general topic of motor accident compensation.

I would like to say that Bryan Vaughan gave me the impression that he was engaging in a very thorough investigation of that matter; and I think that committee probably brought down two separate reports dealing with that particular issue. However, it was not any of my direct business or concern at that time, being a Minister in the Government, to take a close interest in motor accident compensation. But I did have an awareness that that detailed report was in the course of examination and preparation.

When I left the Cabinet after the 1999 election I asked Treasurer and Upper House Leader Michael Egan whether I could become chair of the Law and Justice committee; and he readily agreed to that. I imagine he thought that that was a role where I could do some good work. So for the ensuing four years I chaired the Law and Justice committee.

The first substantial work that that committee did—and it did a lot of work, dealt with a lot of references—but the first major one that I recall is that we did a reference which can shortly be referred to as crime prevention through social support. My experience as a Minister for Juvenile Justice and Community Services came into play there. We travelled around, taking evidence, and we prepared a very detailed report, in two volumes.

The theme that underlay those reports was, really, if you invest money at the front end into the problems of troubled kids and troubled families, you will obviate a lot more expense down the track with police time and court time, not to speak of the sheer futility of kids being in juvenile detention. I have never known kids to learn anything useful in juvenile detention, although there may be some isolated example where perhaps that happens. But, generally speaking, like adult jails, they tend to be universities of crime; other troubled kids that they mix with teach them things that they are better not being taught at all. When there was a take note debate in the Legislative Council following the delivery of those two reports Patricia Forsythe—who did not always say complimentary things about me, particularly when I was Minister for Community Services and she was Shadow Minister—was highly complimentary of this report on crime prevention through social support.

Could I say that the real difficulty, though, is convincing, especially the central agencies of government, by which I mean the Department of Premier and Cabinet, as it is now called, and the Treasury, of the merit of putting the funds in the front end. They tend to have a more reactive approach. They say: “Oh, how do we know this is going to work? You wait X number of years to see whether the kids benefit”. Their approach tends to be Police, Corrective Services, Juvenile Justice. It is not the way to go, in my opinion. To her credit, Patricia Forsythe took the same view. So I thought it was a very useful thing that the Law and Justice committee undertook as its first major project under my chairmanship.

Another major inquiry to which the Standing Committee on Law and Justice devoted itself under my chairmanship was what was commonly called the bill of rights inquiry. The terms of reference of that inquiry required us to consider whether there ought to be a statutory, as distinct from a constitutionally entrenched, bill of rights in New South Wales. The manner in which that reference was made to the committee is more than interesting.

The Attorney-General of the day was the late Jeff Shaw, and the Premier of the day was, of course, Bob Carr. Now, Bob Carr was, and is, a known opponent of bills of rights. Jeff Shaw was a supporter of having a bill of rights. I was one evening, during the dinner adjournment, quite innocently I think, having my evening meal in the Parliamentary Dining Room and a note was passed to me that the Premier would like to speak to me. So I endeavoured to ring him. Fortunately, probably, the Premier was at some function or gathering and at that stage he was on his feet speaking, so I was not able to speak to him.

Next day, though, Mike Egan spoke to me, and he was laughing. He said, “Bob was absolutely incandescent with rage last night over the fact that this reference had been made to the Law and Justice committee.” Well, could I say that the reference was made by the Attorney General, Jeff Shaw, who, as I have said, was a supporter of bills of rights. And although I had foreknowledge that Jeff Shaw was going to make the reference, I cannot say that I was aware of what consultations Jeff might have had within the Government. Nor indeed was I aware whether he had taken it to Cabinet. Clearly, he had not taken it to Cabinet, otherwise the Premier would have been aware that this reference was about to be made to the Law and Justice Committee.

Bob Carr and I did not end up having any angry conversation about the matter. We did have a conversation about it, and we agreed that we would consider the merits of having a statutory bill of rights. I would be less than honest, though, if I were to say that it was not present to my mind that the Premier was firmly against having a bill of rights. I could not see anything good coming out of a report recommending a bill of rights that

clearly the Premier of the day would reject, and the report would lie on a shelf somewhere gathering dust. I am speaking very frankly now, telling you what happened.

So the committee proceeded with its inquiry. We had a very detailed inquiry. We had distinguished and expert evidence given to the committee, by the New South Wales Bar for example, and solicitors, judges and groups that favoured a bill of rights and those who opposed it. Of the judges who appeared, some supported a bill of rights, others did not. Well, eventually we completed our inquiry. Perhaps I ought to say—and this is important—something of the members who served on the committee. Clearly I was there as the chair. The other Government members were John Hatzistergos, who later became Attorney-General, Janelle Saffin, currently a member of the House of Representatives, John Ryan, representing the Liberal Party, and Peter Breen representing the crossbench.

Of those members, Janelle Saffin and Peter Breen could be counted as supporters of a bill of rights; I could be counted as having, perhaps I could say, an emotional attachment to the concept; John Hatzistergos was firmly against a bill of rights—he is more conservative than I am; I am identified with the right of my own party, but I am not as right as John Hatzistergos. John Ryan was representing the Liberal Party. Although he was a moderate Liberal, he was representing a Party that clearly was not supportive of a bill of rights. So there was not really a majority on the committee that would have adopted even a statutory bill of rights.

As we progressed through the exercise of considering that reference, I said to myself, "I'm not going to go through this exercise and come out of it without achieving something." So what I decided ought to happen was that we would adopt a lesser or middle position of recommending a scrutiny of bills committee; and that would require that bills going through each House of Parliament would be subject to a consideration by that committee, on very similar grounds to those that would appear in a bill of rights. So, just like the old Committee on Subordinate Legislation of the Legislative Council, or its successor in the standing committee system, there would be a scrutiny of bills committee that would give attention to whether a particular provision of a particular bill encroached upon civil liberties. There would be other grounds that would apply, but that is perhaps the most important one.

So we did recommend that there ought to be a scrutiny of bills committee. When the committee's report emerged I suppose it is fair to say that not a lot of attention was paid to that. However, being the sort of stubborn person that I am, I determined to quietly, behind the scenes, campaign for such a committee to be appointed. And I lobbied all sorts of people about that—some of whom were not all that keen. Paul Whelan, for example, was not all that keen for such a committee to exist. However, eventually they relented, and such a committee was appointed. Recollecting those events, I am quite pleased that I did get something positive out of that exercise, which otherwise could have been a political nullity, shall we say—nothing achieved, but in fact something was achieved.

Mr BLUNT: I am pleased to say that there is an ongoing legacy: the Legislation Review Committee does continue to exist, and it does do very worthwhile work. I think in the first instance Peter Primrose, as a member of the Legislative Council, was appointed chair, or at least after a very short period of time he was appointed chair for a number of years. As you would expect in those early years, a lot of work was done on establishing the practices and getting into a rhythm and routine, and so on. That has evolved over time; and one of the earliest things that happen each week just after the House starts to sit is the

tabling of the report of the Legislation Review Committee. That report contains an analysis of each of the new bills before the Houses, and that analysis looks at the compliance, or perhaps the non-compliance, of the legislation with various requirements, such as measures of civil liberties and encroachment on individual rights.

Mr DYER: I am delighted to hear that that committee still exists, and I am delighted to hear that it is doing good work. As I have said, I was absolutely determined to get something out of this bill of rights inquiry. Being stubborn, as I have said more than once, I lobbied everyone in sight. John Murray was another person I lobbied. He was the Speaker of the Legislative Assembly at the time. Eventually, that committee came into existence. Which reminds me: one of the principal mischiefs, so to speak, that even the old Subordinate Legislation Committee, chaired by Sir Adrian Solomons and then by me, sought to deal with were the infamous Henry VIII clauses in legislation. If I could say for the record that a Henry VIII clause is a provision in a piece of legislation that provides that under the regulation making power in the particular bill (subsequently Act) a regulation can be made amending the Act itself; in other words, without the legislation coming back to Parliament, the legislation can effect changes.

I have always had a horror of Henry VIII clauses. Sir Adrian Solomons certainly did as well. I can remember at one stage the committee having a tussle with Laurie Brereton, who I think was Minister for Public Works at the time. There was a prominent example of a Henry VIII clause in legislation he proposed, and we were writing letters to him, and he was writing letters back seeking to justify the Henry VIII clause. I cannot quite remember who won, but we did have a very firm view that we were not in favour of Henry VIII clauses. They were a distinct abuse of the parliamentary system. In my view, regulation-making powers should be tightly drawn. Otherwise, Parliament is subcontracting government to the executive arm of government, and that ought not to be what happens.

Dr CLUNE: Could we go to the establishment of the general purpose committees? I remember Jeff Shaw spoke very strongly against it. He claimed there were not enough members to have an effective committee system.

Mr DYER: Well, there is a procedural aspect to general purpose standing committees. Jeff Shaw may well have had the view that there were not enough members to go round. I do not think that is the primary difficulty. During my lengthy period of parliamentary service I did serve on many general purpose standing committees, so I have had considerable experience of them. The question was asked: Why did the Government oppose their establishment, and what are my views as to how effective they have been? The Government opposed their establishment essentially because, as distinct from standing committees, they do not have a government majority. That is putting it at its most basic. My view then was and still is, and the Government's view was, that the committee system should not become unduly partisan—and I would stress the word "unduly". My view is that the standing committee system endeavours to work on a bipartisan basis so far as is possible, albeit with a government majority on those committees, but nevertheless providing for opposition and crossbench representation.

It seems to me that there is a need to strike a balance and to achieve a balance between the government's right to legislate and the right of the Upper House to review legislation. Now, I would be the first to concede that that is sometimes a difficult balance to strike; and it is often, I suppose, a question of political judgment at the particular time. I am not suggesting for one moment that governments should inevitably feel that they are

entitled to enact 100 per cent of the legislation they present to Parliament. I am suggesting, on the other hand though, that governments should not be unduly frustrated by what, for the lack of a better term, I will call negative tactics.

Could I say, though, that I am not endeavouring to put this on a partisan basis. I am not saying this as an adherent or member of the ALP. I take the view that a non-Labor government is entitled to the benefit of what I am saying as much as is a Labor government. So, in summary, I am merely seeking to make the point that sometimes—not always, but sometimes—the general purpose standing committees have tended in my opinion to be unduly partisan.

Could I make another point though? If it is desired to investigate a particularly contentious matter, there is absolutely no reason that I am aware of that the House cannot appoint a select committee, which might not have a government majority, to investigate a particular matter. I have served on select committees as well. One I can very clearly remember was the Select Committee on Police Promotion Systems. That committee would have had a government majority, I believe. It was chaired by Richard Bull. We travelled overseas, to London, Amsterdam, Toronto, Chicago and New York, investigating police promotion systems in those jurisdictions. I am not suggesting that in that particular case that was necessarily controversial in a party political sense, but it is an example though that the select committee system, or the availability of a select committee, is a mechanism that can be used to solve a particular policy problem, or for that matter an administrative problem, that a government might face.

I think the only other thing I could say on the utility of general purpose committees—and I realise not everyone would agree me with me about it—is that the government's and the opposition's receptiveness to what they are doing would vary according to the particular topic that is being examined, whether it is controversial or not. That is my view, for better or worse; I have more faith in the standing committee system than in the general purpose committee system.

Dr CLUNE: There is, I think, a trade-off that if the committee system is going to work members should not abuse it and try to use it for partisan obstruction. It does strike me that the estimates committees have sometimes tended too much to partisan point-scoring.

Mr DYER: Yes, I agree with that. I have not been in Macquarie Street as a member since 2003, but even prior to then I think the estimates committees tended to be highly partisan; and I suspect even more so now, on both sides possibly, they may be largely point-scoring exercises. I tended to take the view, as a Minister and as a member after I ceased to be a Minister, that the proper role of a member of an estimates committee was to go through the estimates, the budget papers, line by line and ask constructive questions, for example, saying to the responsible Minister, "Line so-and-so provides for \$X million to be spent in the ensuing financial year; why was only X minus Y spent, and what were the reasons for that, and why is there such a carryover?" That is just one example. I think that is a perfectly legitimate thing to be asking. However, it is my impression, both when I was a member pre-2003 and since—and it has probably got worse since—that all sorts of extraneous things are obtruding themselves into the estimates process that are highly political.

Dr CLUNE: Perhaps we could ask whether you have any general thoughts, observations or suggestions?

Mr DYER: Yes. You did ask me which members I thought might have made significant contributions to the committee system. From my own party, I think Ann Symonds, Bryan Vaughan, Jan Burnswoods, and I hope myself, have made a substantial contribution to the committee system. In the Liberal and National Parties, Lloyd Lange clearly, particularly as a progenitor of the committee system, made a substantial contribution. Max Willis, Richard Bull and John Ryan stand out in my memory as well. On the crossbench, Liz Kirkby, Richard Jones, Peter Breen and Fred Nile have all made very substantial contributions to the committee system, both within the standing committee system and outside that committee system as well.

I apologise if there is anyone that I might have inadvertently omitted. I have mentioned people across the political spectrum. My experience, for example, does not extend to the Standing Committee on State Development, so I might not be aware of the particular performance of a member on that committee, as an example. And, again, I am not seeking to convey the impression that this is an exhaustive list; others might bring up other names.

Finally, I would just like to say that I feel vindicated: I am not the only person who was responsible for the standing committee system being set up, but I do feel that the view that I have always held, that the Upper House should have a hardworking and viable standing committee system in particular and a committee system in general, has been borne out in practice. There is no doubt that it performs a useful role and is consistent with the review function of the Upper House. I am an inveterate and perhaps obsessive reader of newspapers, and I quite often read of some committee inquiry, and I am interested to see what they are doing. That is some evidence that there is a living, breathing, functioning committee system in the Upper House which is still doing good work, and does justify the very existence of the Upper House. In my view, although it is legitimate for the members of the Lower House to have a role in the committee system as well, the reality is that many of them have far less time to devote to that sort of exercise having regard to their responsibilities in their electorate, where they are very busy indeed.

Dr CLUNE: I think, as a lot of people have argued, Upper Houses are uniquely suited to this sort of thing because in the Lower House the government obviously has to keep a majority to govern; but in an Upper House things are a little more flexible, so the scrutiny function does tend to sit better in the Upper House.

Mr DYER: I think that is absolutely right. Upper Houses are uniquely or better suited to the scrutiny role, and that is partly because of the additional time that the members have, whether they are Senators or members of the Legislative Council.

(The interview concluded at 12.29 p.m.)