

BICENTENARY OF THE LEGISLATIVE COUNCIL

Bicentenary Seminar Series

THEN & NOW: PEOPLE, POWER & REPRESENTATION

Thursday 18 April 2024

The PRESIDENT [The Hon. Ben Franklin]: Welcome, everybody. My name is Ben Franklin and I'm the President of the Legislative Council. It is my genuine pleasure to welcome you all here this evening to New South Wales Parliament's Jubilee Room. I would like to begin by acknowledging that we meet on Gadigal land this evening, to extend my respect to Elders past and present, and to thank them for their custodianship of this land for many tens of thousands of years. Welcome to the New South Wales Parliament and welcome to this evening's event, "Then & Now: People, Power and Representation". Tonight's event is the first in a series of seminars that we will be holding throughout this year to mark the 200th anniversary of the Legislative Council, Australia's very first legislature. These seminars are part of a wider suite of events which are being held across the State to assist us to reflect on our past, to celebrate where we are today and to imagine the future of democracy in New South Wales.

The Legislative Council has indeed come a long way since its origins as a five-member appointed advisory council to the Governor in 1824. Today it is a democratically elected, 42-member-strong, robust house of review and a cornerstone of our democracy. Its 200-year journey has had its challenges and complexities, including several attempts to actually abolish the council. Tonight we are very excited to bring together former and current members of the Legislative Council to candidly discuss and examine the turning points and the human stories behind the council's colourful history.

We have asked a learned and hopefully very spirited panel to assist us with this task. I now introduce our panellists for this evening, starting from my left: Dr Peter Phelps, a former member of the Legislative Council for the Liberal Party and a former Government Whip; the Hon. Chris Rath, another member of the Liberal Party and the current Opposition Whip in the Legislative Council; and Ms Abigail Boyd, a member of The Greens and an extremely passionate member of a number of committees through the Legislative Council committee network. To my right is the Hon. Robert Borsak from the Shooters, Fishers and Farmers Party; to his right is the Hon. Courtney Houssos, Minister for Finance, Minister for Domestic Manufacturing and Government Procurement, and Minister for Natural Resources in the Government; and to her right, ironically, is the Hon. Dr Meredith Burgmann, a former very distinguished President of the Legislative Council.

We hope this evening's discussion will shed serious light on some of the incredible stories, achievements and people who have contributed to the Council that we can all feel proud of today—a seriously valuable institution of parliamentary democracy in the State. This evening I will attempt to gently usher this panel through the key phases in our 200-year history, as we examine historical turning points and the Council's evolution across four major themes. We will do these in order. The first will be the birth of the modern, fully representative Council. The second will examine greater diversity in the Council's membership. The third will look at the modern committee system and the scrutiny powers of the Legislative Council. Finally, we will talk about the rise of the crossbench and minor parties in the Legislative Council. After that, there will be an opportunity for all of you to ask whatever questions you have on your minds and whatever has been provoked from this insightful discussion. Without further ado, let's jump straight into our first topic.

As we have just heard, New South Wales came very close to abolishing the Legislative Council on many occasions. A few years after Queensland abolished its upper House, the Lang Labor Government in New South Wales introduced a bill to the Council in 1926 to abolish itself. Lang criticised the then unelected Council as an anachronistic institution obstructing his government's legislative program. The bill failed to progress but, on re-election, the undeterred Lang took a second shot at abolishing the Council with a new bill in 1930. Once again, it failed, but this time in the courts. The final attempt came in 1961. This time it went to a referendum to the people, with voters coming out in support of their upper House. As much as we are grateful that abolition was unsuccessful, these bills were important because they provoked debate and reform that transformed the Council into the fully directly elected Council that we have today. The first question I have for my panel is this: Can we imagine a New South Wales Parliament without an upper House? What would that look like? Would that have been a good thing? I will start with Dr Burgmann.

The Hon. Dr MEREDITH BURGMANN: A number of us in the Labor Party have often thought that that would be a good thing not to have an upper House. A leader of the Legislative Council some years ago, Michael Egan, always believed that the upper House should be abolished. In fact, when you stand for the upper House as a Labor candidate, you have to sign that you will vote for its abolition if that vote ever comes up. When I was asked to sign this, I laughed, because I at least knew the history, having been a historian. But a lot of members sign it without even realising what the history is. The history is that in the '20s the members all signed and pledged that they would vote for the abolition of the upper House. But, when it came, none of them voted to abolish themselves. So it does look as if the House is with us forever.

The PRESIDENT: What do you think, Chris, as the most recently elected member of the panel?

The Hon. CHRIS RATH: I saw one year in government at the tail end of the last Liberal-Nationals Government and now the first year in Opposition. I think that, if you didn't have an upper House, there would be far less scrutiny on the Government, far less accountability and far less transparency. If you look at the way that it functions, by its very nature, the government of the day doesn't have a majority. Many people would say that that's a very good thing. As mentioned in the introductory marks, since 1988 no government has had a majority. That means that you have a lot more scrutiny and a lot more pressure being applied to the Government and sometimes the Legislative Council saying, "No, we're not going to sign off on that," or, "We want to slow this down. We want to send it to a committee for further review." I think it has been a good thing. It works the way it should work, which is as a House of review, and I think it is one of the most successful anywhere in the world. I know if you look at a lot of jurisdictions elsewhere—the House of Lords in the UK, or the Canadian Senate or the Italian Senate—they are good; ours is better.

The PRESIDENT: Abigail, Chris says that it works very well as a House of review. Does it?

Ms ABIGAIL BOYD: It certainly does. What I find amazing—and amusing at times—is how members' views differ depending on whether they are in government or in opposition at the time. In the last term of Parliament, it was obviously the opposite to this term of Parliament. Those people who were very, very upset about the use of the powers of the House such as SO52s, inquiries—

The PRESIDENT: Just explain what SO52s are.

Ms ABIGAIL BOYD: Sorry, calls for papers. This is where, if a majority of the House agrees with you, you can request papers from government departments and Ministers to show what the real facts are about a situation. We used these powers a lot in the last term of Parliament, very, very effectively. The now Opposition were very upset about that at the time, but now they are wholeheartedly embracing the powers of the House.

The PRESIDENT: Dr Phelps, in your inaugural speech to the Council, you actually mentioned that current Federal MP Alex Hawke faxed you—that's how long ago it was—a copy of Jack Lang's 1930 abolition bill with the suggestion that it would be an excellent first private member's bill for you to introduce. You did not take up the offer. Would you now?

Dr PETER PHELPS: No, definitely not. I am a big fan of the Legislative Council. One of the things you have to remember is that the Executive hates Parliament. It doesn't just hate the Legislative Council; it hates the Legislative Assembly as well, because an unfettered Executive means it can do whatever it likes. Most Executives would like to see Parliament simply as some sort of an electoral college which appoints the Premier; the Premier then appoints the Ministry; and then the Ministry gets on with doing what it wants to do without any interference or questioning whatsoever. You can see that over time. Certainly, in the case of Queensland, that's what happened. At the time the Labor Party was "Rah, rah, let's get rid of the upper House because it's an archaic, conservative Chamber based on land privilege for voting rights. That's great. Let's all be progressive and get rid of it." And then you got Joh Bjelke-Petersen. So let's be careful about what we want.

While you could abolish the upper House at the current time and get rid of 42 members of Parliament, the question is are you then left with what is effectively a democratic dictatorship of the lower House, where you have a situation where you know, because of party loyalty and binding caucus and party room votes, what's going to happen every time? That's not so true these days where we have lower Houses which are subject to a crossbench which can actually be determinative of government. But the fact is that what you have in the upper House is an institutionalised system of non-dictatorial power which can be used in a whole variety of ways.

The other thing I will say is that the upper House in New South Wales is possibly the most democratic place in all of the Parliament. When you consider that 21 people are up for election every time, the quota to get a seat in Parliament is only 4.5 per cent, roughly, and many get in at that final end on less than that. What you have is a whole range of people whose voices are represented by real people in the community, but who, because of the fact that you have unitary or single-member electorates in the lower House, would never have any representation anywhere else. That, of course, also leads to Executive not really liking the upper House because it's got all these people who have different ideas and different views from what they believe should be happening. So, would I get rid of it? No. I happen to think it's a wonderful example of representative democracy, and arguably one of the better examples of representative democracy, given the small quota required, anywhere in Australia.

The PRESIDENT: To your point, I think one of the arguments that the Lang Government made was that the upper House should be abolished because it stymies the government's agenda. What would you say, Robert Borsak, to that—if that criticism was levelled today—as a member of the crossbench?

The Hon. ROBERT BORSAK: Sometimes I think the government agenda does need to be stymied—certainly modified, certainly thought through, certainly negotiated. The big role for the upper House is examination and understanding, and then making recommendations. How many of those recommendations, that

come from our committee system are ultimately picked up by government? I don't really know. I mean, we had 53 inquiries last year alone. This upper House is just so full of the work that needs to be done by the upper House, in terms of examination, in terms of debate. At times it is quite difficult to keep up with it.

Dr PETER PHELPS: Can I just pick up something that Robert said there? Part of this antagonism is the—and I'll use the term "BS"—mythology that somehow governments have a mandate for something and you should naturally genuflect to this mandate which has been given by the community. But if you actually have a look at the primary votes for the parties generally, no-one's coming anywhere near a majority. You're winning government in the high thirties, maybe low forties. The whole idea that minor parties have to defer to this supposed mandate is nonsense. If you use that argument—

The Hon. ROBERT BORSAK: Everyone in the upper House has a mandate.

Dr PETER PHELPS: —The Greens have a mandate to do their policies.

The Hon. ROBERT BORSAK: Yes, for their people.

Dr PETER PHELPS: The Shooters have a mandate to do their policies, the Libertarian Party has a mandate to do its policies, One Nation has a mandate, Animal Justice—you can't have a mandate that applies only to parties which have a plurality. It's a nonsense. Yet that's exactly the same sorts of arguments that are used.

The Hon. ROBERT BORSAK: We have a minority government now in the lower House. Do they have a mandate? They would argue they do.

Dr PETER PHELPS: It's convenient to argue that you've got a mandate because it means, "Don't dare interfere in what we might want to do."

The PRESIDENT: Minister Houssos, where do you stand on this?

The Hon. ROBERT BORSAK: Tell us about your mandate.

The Hon. COURTNEY HOUSSOS: I was quite enjoying sitting here being a quiet part of the panel until this point. I'd have to respectfully disagree with Dr Phelps, as I often have in the past—though we do find some issues where we can align. I certainly don't speak for my colleagues, but I can speak in a personal capacity. I've been a member of the upper House for nine years in opposition and a vociferous user of some of our procedures in relation to Standing Order 52 calls for papers and budget estimates—

The Hon. ROBERT BORSAK: And now being the victim of them.

The Hon. COURTNEY HOUSSOS: I'm not sure my staff feel the same way, but I still love budget estimates. It's a bit of a process. But I genuinely believe that these transparency mechanisms play an important role in our democracy. It certainly shaped me as a member of the opposition, seeing how you can use them to uncover what the government is actually doing, but also now as a government Minister, thinking through the processes. When I'm confronted with an issue I will think, "Can I explain this if I'm asked a question in Parliament or in budget estimates?" That's ultimately what the public wants. They want to know that what you're doing is being thought through well and they want to understand the reasons behind that thinking. The upper House plays an important role in that, in both shaping individual members but also establishing that culture of transparency across government. Yes, it can be a bit uncomfortable, but I firmly believe in the institution and the institution that we've evolved to become. I think it's excellent.

The PRESIDENT: One of the most important things for the upper House is that it takes government legislation and perhaps smooths out the edges and improves it. You may perhaps not agree with that anymore, Ms Houssos, but I'd be interested if any panellists can think of a piece of legislation that has been substantially improved by the upper House from what the government of the day was proposing in the first place.

The Hon. Dr MEREDITH BURGMANN: My problem with the upper House as it is, is that we have a system where we all agree that governments are formed in the lower House; everyone agrees with that. But then we're saying the Government is formed in the lower House and it will now govern—oh, except for the fact that if they haven't got a majority in the upper House, they're stuffed. It's a really silly system. We see it at its worst in America, where the Congress puts through stuff and then the Senate stops it. In a bicameral system, where you're really saying, "Governments are formed in the lower House"—and that's what we all say—why do we have another system on top that says "except when we don't want them to"?

Ms ABIGAIL BOYD: Because of democracy.

The Hon. Dr MEREDITH BURGMANN: But why is it democracy to have two Houses?

Ms ABIGAIL BOYD: Because democracy is not electing your local member once every four years. Democracy is representing the views of the people that you're elected to represent throughout the four years. That's why the upper House is so important. All of those parties, particularly those on the crossbench, are continuously representing the people who voted for them to try to massage and make legislation better. I can't recall circumstances where a government in New South Wales has been completely stymied by the upper House. Rather, what I've seen is a series of improvements made.

The Hon. Dr MEREDITH BURGMANN: You think your Greens members in the lower House can't do that?

Ms ABIGAIL BOYD: We get over 10 per cent of the vote in New South Wales and we have only three members in the lower House, which is about 3 per cent, whereas we have 10 per cent of members, as you would expect from a 10 per cent vote, in the upper House. The work that we do to scrutinise and hold the Government to account, and work with them to make legislation better, has been a really rewarding and I think valuable contribution.

The PRESIDENT: This may be the first time I say it, but you'd agree with The Greens on that, Robert Borsak.

The Hon. ROBERT BORSAK: I don't want to be trapped into that—agreeing with The Greens. I get enough of that on Facebook. I think the reality is that, yes, that may have been the case in 1988. But the development of the crossbench, the development of what we've done with the standing orders and procedures and all those sorts of things—governments have learnt, in the lower House, how to talk to the upper House. I've been there for 13½ years and governments mostly get what they want.

Dr PETER PHELPS: Further on that, it's not unusual for crossbenchers to be visited by Ministers or senior ministerial staff and be told, "Abigail, you're going to hate this bill; it's a terrible bill. But if you were to move these amendments to this bill, it would be a much better bill."

Ms ABIGAIL BOYD: All the time.

Dr PETER PHELPS: That's one of the ways that Ministers actually use the crossbench. I don't mean "use" disparagingly, but to actually get through bills which they can't get through their own caucus, their own Cabinet or their own party room, to give them what they want and what they think is a better bill. Of course, there's the usual argy-bargy of "We'll have to fight you and say we're not changing anything," but at least it's a negotiated outcome. It's Ministers who understand that there is a negotiated outcome to be had, work on that basis and then go back to sell it to their own respective parties.

That's a way forward, because that's what being a member of Parliament is about. Ideas don't go anywhere unless you can count to 22 in the upper House. Unless you can count to 22, the best idea in the world isn't going to become law, and that's what members of Parliament are there for. Members of Parliament are paid to come into this building and to make and unmake laws. That's what they're there for. It's not about going to open ethnic fairs, or do Rotary functions and dinners, or go and hand out giant-sized novelty checks. You are there—

The PRESIDENT: As important as all of those things are.

Dr PETER PHELPS: They are completely unimportant and irrelevant to what you're supposed to be as a member of Parliament. Unless you realise that there is an institutional minority in place in every upper House, essentially, that there is, and you have to start working with the crossbench—and some people call it horsetrading of policies—then you're never going to get anything through.

The Hon. ROBERT BORSAK: I would not like—

The PRESIDENT: We will be getting to the crossbench very shortly. That's another whole section of this.

The Hon. ROBERT BORSAK: We've got a whole crossbench discussion. But since he brought it up, the reality is I don't think I can remember it actually happening in that way, but I certainly know—and Minister Houssos does it too—that they say, "We've got this bill and there are parts of it we know you're not going to like, but let's have a discussion about them." You don't necessarily see the amendments appearing on the floor and being voted on because the Government, in an effort to get its stuff through, will go and talk with The Greens on issues that they think they'll have or come and talk to us or go to what used to be the Christian Democrats, and others, and try to get a negotiation for something that will work smoothly and properly through the House. Really, in the end, I've actually seen many circumstances where someone—and I won't necessarily say it's me, but others on the crossbench would say, "No, I'm not going to wear that," and the bill just won't proceed because the Government doesn't want to see a failure.

The PRESIDENT: Because, as Peter says, you've got to count to 22. That's an excellent segue on to the next section, which is to talk about greater diversity in Council membership. The first Council, which met in 1824, comprised just five members and all of them were men. We've come a long way since then, I think we'd all agree, but it wasn't until the 1930s that the first women entered the Chamber as members. They were Catherine Green and Ellen Webster, both appointed as members in 1931. Later in 1952, Gertrude Melville became the first indirectly elected member to enter the Chamber. These women paved the way for future generations of women MLCs to take a seat in the Chamber, including the Council's very first female President, Virginia Chadwick.

In our current Parliament, I'm very proud to say that 20 out of the Council's 42 members are women. The Council today is much more representative of the broader New South Wales community, but there is still a way to go. Women like Catherine, Ellen and Gertrude were undoubtedly trailblazers in paving the way for future generations of MLCs. Can I start by asking the women members on the panel: Have there been particular women in the Council who inspired your work and who you looked to as trailblazers in your journey? I'll start with Meredith.

The Hon. Dr MEREDITH BURGMANN: First of all, I was always very impressed by the stories of Catherine Green and Ellen Webster, particularly Catherine Green who was a working-class woman who ended up in the upper House. When I was President, I discovered that there were 14 busts in this Parliament, all of men, so I decided there needed to be a bust of the first woman in the Legislative Council, Catherine Green. I had read up all about her and I convinced the then Treasurer, Michael Egan, that we needed a bust of Catherine.

We did a bit of a trade-off. He wanted some old Catholic guy to get a bust too, so it was a no-knock policy. He agreed to have the bust of Catherine Green. We went out to Alexandria where the public works department had their workshop where they do all the carving of the stonework, repairing the beautiful old stone buildings here. It was all going ahead and then suddenly Michael stopped being the Treasurer. The new Treasurer was Michael Costa, who thought it was a terrible idea to have a bust of a woman.

Busts are quite expensive. We were quoted \$40,000. There is now a bust of a woman, and it's of Virginia Chadwick. We all liked Virginia, but it's a hundred years too late. It should have been of Catherine Green. The other point about women was, when I entered the Legislative Council in 1991, it was the most feminised Chamber in Australia. We had 15 women out of 45 members—it was 45 then—and we were only a third women, but it was still the best in Australia. I understand we're not now the best in Australia.

Ms ABIGAIL BOYD: I was particularly inspired by Lee Rhiannon, who was a Legislative Council member and then went on to become a Senator. The thing that inspired me about Lee was that she wasn't going to play by the rules, and she certainly wasn't going to act how she was expected to act. I think she had a long history in Parliament, both here and in Federal Parliament, of doing the things that she believed was right rather than things that she thought would be popular. She was very good at calling out the things that she thought were wrong and tried to change them, from the very small to the very large. She was the first one of us Greens to reject the honorific. We're all given the title "the honourable" when we come into the Legislative Council, and we are technically servants of the Crown. The Greens believe that we're servants of the people, so we reject that honorific, so we're not "the honourable". Lee was the first one to do that and she was very unpopular as a result. She's a role model for me because she wasn't going to conform to the norm.

The Hon. COURTNEY HOUSSOS: A number of women across the generations have inspired me. I'd particularly call out Dorothy Isaksen, who was a Government Whip in the upper House. I was particularly inspired by her. I got to know about her because she was the first woman to be an organiser for the Labor Party. Historically, women have not necessarily taken on roles within the organisational wings of parties. Prior to coming into Parliament, I was the first woman to be a country organiser for the Labor Party and so I took a lot of inspiration from the pathway that Dorothy took. Unfortunately, she passed away last year.

The thing that really stays with me is that is a range of women. I know Rose Jackson, one of my ministerial colleagues, had a beautiful painting of Gertrude in her office. I think there's a long history of women who have served the community from all sides in the upper House. Perhaps they're not quite as well known to the public, but their legacy of policy achievement, in particular through the upper House committee system, is a remarkable service to the people of New South Wales. It's not done because of the public feedback or for the public admiration, or even recognition. It's just really important day-to-day work and that's probably the thing that inspires me the most.

The PRESIDENT: You talk about women across all party lines. On several occasions in recent decades we've seen women MLCs working across party lines to achieve reform for women's rights in the broader community. One example took place in September 1991 when a group of women MLCs from across parties walked out of the Chamber's debate on an anti-abortion bill introduced by the Reverend Fred Nile. Meredith, you

were one of those MLCs. Can you tell us about how that cross-party action came into being, what it was like, and a bit about that particular story?

The Hon. Dr MEREDITH BURGMANN: Yes, Fred was making his speech about abortion. His wife, Elaine, and one Liberal woman were sitting in the Chamber but every other woman in the Chamber walked out. It was 13 women representing four parties and both factions of the Labor Party. Everyone walked out except Marlene Goldsmith and Elaine Nile, which was quite interesting. It really was the women in the Chamber walking out. It had all been organised by a Liberal woman called Beryl Evans, who was one of those old-fashioned blue stockings that—

The PRESIDENT: She is the one on the left of the picture.

The Hon. Dr MEREDITH BURGMANN: Yes, she is there in the picture; I'm coming to describe that picture. We got outside and I thought I should tell the press gallery that it was all organised by Beryl. We always used to say that she used to be in bomber command during the war but I'm not certain she was. She had some sort of military background, but she certainly terrified us all. Anyway, I went and saw the press gallery and said, "I want you to all know that that walkout was organised by Beryl Evans," and they said, "What walkout?" Thirteen of the 15 women in the Chamber had walked out and they hadn't noticed it, so we had to do it again. That's the second walkout and that's us.

But it made me realise there are issues that are women's issues in the Parliament. On another occasion there was a vote on stem cell research, and all the women were on one side and all the men were on the other side. It was something to do with sperm, which I thought was really interesting. It was all a bit technical but that's how it was, and the Clerks actually took a photograph of it because it was such an interesting vote. The other occasion when I felt that women really voted a different way to men was on swimming-pool fences. Isn't it interesting the issues that women have very different views than men on? And on guns, of course, women always had a different position.

The PRESIDENT: I think one of the perennial issues impacting women in the workforce is obviously balancing family life and work life. We all know it's been a longstanding barrier to women in the workforce generally but particularly in their participation in politics as well. I want to throw this one to Minister Houssos because this issue came up for you several years ago. I'm interested in how you handled it and what you did. Perhaps you might tell us of an example which might have included somebody on this panel here today?

The Hon. COURTNEY HOUSSOS: When I was elected my daughter was 15 months old and so she was still very little. One night she'd come in to have dinner with me. My husband had brought her in and we had to go in and vote in a division. I thought, "I'll just take her in with me. I'm just going in to sit down." She was very well behaved, so she'd sit on my lap and it'd be fine. But because I was no longer breastfeeding her she was not allowed to come in under those particular requirements at the time; she was recognised as a stranger in the House. I thought this was pretty ridiculous because I'd actually heard stories of members of Parliament in the other place, in the previous Labor Government, bringing their kids in. It's really up to your own judgement. You're not going to bring a child in who's not going to be able to cope with it or whatever the like might be. I thought it was a pretty logical change. In true upper House fashion, to get this relatively minor change took four years, an upper House inquiry and a change in the make-up of the upper House.

We introduced a range of changes after the 2019 election, and one of them was that we would allow young people to come in if they are in the care of a member. Just like any other workplace, if you're juggling and you're having a bad day and your child can't go to child care, or something's happened, you can bring them to work with you and use your own judgement as a parent as to whether you can take them in or not. I have to say, when we are reflecting, this has been a really significant change in the attitude towards children. In fact, I had my second child, my son, when I was in Parliament. The then Deputy Leader of the Government, in reflecting on when I came back to work and used to bring him into Parliament with me, said that he had been the best behaved member of the House in that particular year. I'm not sure that was the case!

It was a way that things had really changed over the course of even four years and, certainly, in speaking to Meredith, in the way of our attitudes have changed over time. I give a special call-out to Dr Phelps. We don't see eye to eye on a lot of issues, but I shared an anecdote earlier—pairs are granted in the upper House. Obviously having young children and different responsibilities, you rely on the goodwill of the Government at the time. One particular day I got a call during question time and had to rush out, and the pair, which is normally quite a formal process, was granted by Dr Phelps giving me a wave to say yes, I could leave. It's that kind of attitude, and I'll wrap up on this point. It really strikes me that often when women are thinking about running for office they think about the logistics of how it is going to work with their families. I often talk really practically about the logistics and the arrangements because it is a big consideration for women when they're considering.

That's why it was really important for me to get this written into the rules to allow women to know that if they're having a bad day they could bring children in. It took me many years to use the rules, but it was when I saw my colleagues using them—indeed, one of the grandparents in the House using them—to bring their children in. It makes for a better Parliament when we look like the community we seek to represent. Workplaces across the country are doing this. It's only natural that our Parliaments do it as well.

The Hon. ROBERT BORSAK: It's my great pleasure to have supported that. I think what you're also pointing out is that the upper House functions in a more collegiate way. Quite often when things are being done, negotiations occur between the Government and the Opposition, the crossbench and Opposition et cetera. It's adversarial but not as cutthroat adversarial as you see in the lower House, because in the end we're trying to get a result that is going to work for the best interests of the community. In that sense, the upper House is very, very democratically elected. That community is reflected by all the people that are elected there. The requirements of mothers and other people in the House—I've never seen a situation where anyone's actively opposed those initiatives when they're brought up.

The PRESIDENT: Of course, diversity is about more than women. In 1990, for example, Council member, the late Paul O'Grady, came out in an interview with the LGBTQIA+ press. He was the first openly gay member of the Council. Dr Burgmann, not only did you work alongside Paul, you were among several MLCs to support his request to join the 1992 mardi gras parade. Indeed, you marched in the original 1978 protest. What's your recollection of that momentous time when we had the first openly gay member of the Legislative Council?

The Hon. Dr MEREDITH BURGMANN: It was a really interesting time because it was in a period when coming out as gay was still pretty unusual, and there was still a lot of hostility towards the idea of a gay member of Parliament. One of the things he tried to do, for instance, was take his partner with him on political trips in the same way that heterosexual members could take their wives, and he was refused. I actually joined him in that campaign to allow it—and the amount of attack we got from the public as well as from other members of Parliament. I found a letter recently that he sent out in 1992, saying that members of Parliament should march in the Mardi Gras. We just take it for granted now that all parties seem to have a float at Mardi Gras saying how wonderful they are.

Dr PETER PHELPS: Not Fred Nile's party.

The Hon. Dr MEREDITH BURGMANN: The others. But on this occasion only four people joined in. It was me, Paul, Richard Jones from the Democrats, Clover Moore and a guy from South Australia who was a member of Parliament, who was a friend of Paul's. That was it. He had sent the letter to every single member of Parliament, and we were the only people who marched. It was very brave of him to do what he did at that time, and he certainly got attacked for it, sometimes physically.

The PRESIDENT: Chris, when you came into Parliament, you acknowledged in your maiden speech your partner, Patrick—who is here today, I believe—sitting in the gallery, and there didn't seem to be a ripple. That was from what I saw from outside. How have you found the experience?

The Hon. CHRIS RATH: I think it's a very good thing that it was so utterly boring to say in your inaugural speech that you're gay and your partner is there in the gallery. It just shows how far that we've come. I think that you want your Parliament to be as broadly representative of the community as possible, and I think you provide a different perspective when you come from a different background. I look at people like Bruce Notley-Smith, for instance, in the lower House previously, who got elected in 2011. He pushed for an apology to the 78ers, for instance. Being an openly gay man, as he was, he pushed for that. I think that that shows, when you do have diverse voices in the Parliament, what you can achieve. In our Chamber in the last term of government, it was something like the special commission into LGBTI hate crimes, which was definitely pushed by a good friend of mine, Shayne Mallard, in our Chamber, as well as Alex Greenwich in the other place.

You want your parliaments to be as broadly representative of the community as possible because of the unique perspective that they bring and the different issues that they push for. That's incredibly important. I was thinking about a quote from Julia Gillard the other day. When somebody asked her about what it feels like to be the first female Prime Minister, she said, "It doesn't explain everything; it doesn't explain nothing. It explains some things." I think that is the same as being an openly gay legislator. It doesn't explain everything; it doesn't explain nothing. But it does explain some things, because when it comes to something like the recent bill we had in the upper House to ban gay conversion practices, I think that the unique perspective that the six members of the Legislative Council who are from the LGBTI community had was really important. And we wouldn't be as rich a Chamber if we didn't have that representation.

The PRESIDENT: In recent decades we've also seen really important strides made towards greater ethnic diversity in the Council. In 1988, for example, Helen Sham-Ho was elected to the Council, becoming the

first Chinese-born Australian to serve in an Australian parliament. In 2013 Dr Mehreen Faruqi became the first Muslim member of the Council. Most recently, Treasurer Daniel Mookhey was sworn in on the Bhagavad Gita in an Australian first. But there is still some way to go. Abigail, how can we achieve some more diversity in the Council?

Ms ABIGAIL BOYD: This is an excellent question. I'm going to try to build in a couple of responses to Meredith and Courtney as well. Firstly, when I came in last term, we had a lower percentage of women in the upper House than we'd had since the '80s. It was 30-something per cent. It's now 48 per cent, which is great, but that is by no means guaranteed.

The PRESIDENT: A lot of that is due to The Greens, to be honest, having an entire female membership in the Legislative Council.

Ms ABIGAIL BOYD: Yes, we are seven women in our party room. Now that we are getting to the point where we're having a more stable percentage of women, we need to look at what other attributes those women have. We are very low in representation of women of colour, of First Nations women and of women with a physical disability. We don't have anybody in the upper House with a physical disability. Even women from regional backgrounds—Courtney was talking about having her children in. I'm a regional MP, which means that when I come for a sitting week, I am staying at a hotel and we're here for five days before I go back to see my family. So when my kids, who are still quite young, have any issues, I can't be there with them. I think that if we're to encourage people from a broader array of backgrounds, that's really important.

I also noticed, when I first came in, that there are white men on the bus, primarily, but everywhere you look, the norm is very much the white, able-bodied heterosexual man. When someone like Mehreen Faruqi came in, she is away from home; she is a woman who doesn't share the religion. We have a Lord's prayer that gets read out in the Chamber every morning. It's naturally excluding people who aren't of a Christian faith. You come into this environment and it can feel very lonely when you don't meet that norm. I think we need to work a lot harder on catching our Parliament up to date with the realities of what our communities look like, which is why I'm such a big proponent of getting rid of the Lord's prayer in the morning.

The Hon. Dr MEREDITH BURGMANN: Can I just add to the bit about the Lord's prayer. We tried to get rid of that a couple of times because it's not just a Christian prayer; it's an Anglican prayer, which of course all the Catholics object to. It's absurd that we now have a Chamber which has quite some diversity and we're still starting with an Anglican prayer, and there is meant to be a division between church and state. When I became President—and the President is meant to lead the prayer—I had to get the standing orders changed, which hadn't been changed for 57 years. I had to get the standing orders changed so that I didn't have to lead the prayer. I was allowed to ask someone else to lead the prayer, but we couldn't get it actually abolished because the Chamber voted and always voted overwhelmingly to keep the prayer, and I just think it's ridiculous in our present day.

The PRESIDENT: And that will be a debate for another day. We will need to move on, I'm sorry.

Dr PETER PHELPS: Can I just say one thing?

The PRESIDENT: No, you can't. We will need to move on to the next issue. If we're going to stop, we will start with Courtney. Because you have a louder voice, it doesn't mean you can go first. Courtney first, then Peter.

The Hon. COURTNEY HOUSSOS: I just want to make one point, which is in the context of diversity, that four of the six Ministers in the upper House are women, and one of those men is the Treasurer, a good friend of mine and also a very proud Indian-Australian. I think in understanding that diversity and making great strides in that diversity, the point that Abigail makes is correct. Of course, I should say that we are the first Cabinet in New South Wales to have fifty-fifty male-female representation.

The PRESIDENT: Thank you. Dr Phelps.

Dr PETER PHELPS: Just on the Legislative Council, if you think about it, they have been far more progressive. There has always been a greater representation of women of non-Anglo minorities in the Legislative Council, and the question is why. People are going to hate this, but, inevitably, parties and factions have been more important in getting people into our Chamber than members of the general public. Previously, you had appointments, then you had the election by members of both Houses for new members and, ultimately, under the current system you have, effectively, a list system where you go in based on not your personal popularity in the community but where you fit in in the ecosystem of your party. In many instances, the parties have been more progressive—even conservative parties like my own—than has been the general public of New South Wales. The irony is that the Legislative Council, which is often derided as the bastion of reaction and conservatism, has often

led the way in areas of social progress because of that intimate link between the parties and factions and the selection of people to winnable spots on the respective tickets.

The PRESIDENT: And that's a beautiful way to conclude this section. We'll move onto the modern committee system and scrutiny powers. Many of you, I'm sure, are very familiar with the cut and thrust of the parliamentary Chamber—you see videos of question time and so on. But so much of the important work that we do in the upper House actually takes place in inquiries conducted by its committees. In fact, committee inquiries have been part of the Council's work since 1825 when it conducted an inquiry into conditions for female convicts at the Parramatta Female Factory.

But the big change came in 1986 when a select committee chaired by the Hon. Ron Dyer investigated options for a revived committee system. The outcome was a new set of committees, including the Standing Committee on Social Issues. That committee's very first inquiry into adoption practices led to groundbreaking legislative and policy change, setting a benchmark for inquiries to come. Today the Council has 17 standing committees, and last year alone our committees conducted 58 inquiries. They are incredibly important. They are an important way that the community can directly engage with matters that affect them the most and ensure that their voices get heard back in the Parliament. Robert Borsak, what contribution do you think that upper House committees have made to parliamentary democracy in this State?

The Hon. ROBERT BORSAK: Well I can say they're very exhausting. There is an awful lot of it happening. I think, especially after the post-2019 changes we made to the standing orders, that the committee system is very, very important in. I was saying earlier in the discussion, bills need to be reviewed, bills need to be discussed, but even more importantly it opens the whole process to transparency. Frankly, I chair or participate in so many committees and quite often I think, "We're not doing enough on this. We're not getting enough participation." Depending on what the committee inquiry is, and it could be something not necessarily related to a bill, you could get hundreds and hundreds and hundreds of submissions. Where do you start? Where do you end?

As far as I'm concerned, it's the major contributor to what government is about. It's not a blockage. I think that question was going to be asked or will be asked. It's not even a handbrake. If people out there want to see and understand what's going on in this place, watch what the committees are doing and participate if you have an opinion because it's very, very important. From election to election the committee process is how the Parliament actually interacts with the people that elect them. The nature of the upper House, especially the way it's elected on a statewide franchise, I would say, is the most democratically elected house in Australia. In fact, it's reflective of what happens in the Federal Senate. Be there, be part of it, watch what goes on. If you want to understand, make a contribution because the options and the opportunities are there.

The PRESIDENT: What do you think, Chris?

The Hon. CHRIS RATH: Committees play an incredibly important role. I think some of them are just about scrutiny, so you look at the budget estimates process that we do twice a year now, which is more about holding the Government to account. But there are a whole lot of other committees that are subject matter committees that you get a lot of collaboration between the Government, the Opposition and the crossbench, and it does lead to really important outcomes.

In terms of the committees being a handbrake, mostly they're not, but sometimes they are and I think sometimes they need to be. I look at the end of the last Government—and this is just an anecdote; I'm not saying I agree with this—and we tried to put through, very quickly, a policy that I loved, which was called the First Home Buyer Choice program. It was basically giving young people a choice to pay an annual land tax rather than an upfront very large stamp duty. We tried to get that through the upper House in blitzkrieg fashion just before the end of the term, and the Parliament—the Chamber, the Legislative Council, said, "No, we're going to send this to a quick inquiry to look at this in more detail."

I think that sometimes the committees and the upper House actually do need to be a handbrake on, what Peter said before, the tyranny of the majority. That inquiry wouldn't have happened had it just been left to Legislative Assembly, had we been a unicameral system, because the Government of the day has the majority there. So sometimes, for very good reasons, the Legislative Council says, "Let's slow things down. Let's send it to a committee. Let's take another look at it. Let's see if there are some amendments. Let's invite stakeholders in and ask for their opinion," because sometimes there is an arrogance of government in terms of trying to rush things through the Parliament. So I think the committees play an incredibly important role for many different reasons.

The PRESIDENT: Who can tell me about a committee that they were involved with which was particularly groundbreaking or maybe shifted their perspective on a particular issue or changed the focus in terms of how committees themselves even work?

The Hon. COURTNEY HOUSSOS: I am going to call out one of the first major inquiries that you and I were on together when we were first elected to the Parliament in 2015. That was for financial reparations for our First Nations people, and that was remarkable because it was a long-running inquiry. To go to Robert's point earlier about it being a really collegiate atmosphere in the upper House, all of us had representation on that committee. It was chaired by Jan Barham from The Greens. It had members of the Government at the time—The Nationals and the Liberal Party—the Labor Party; and Fred Nile, a Christian Democrat. We came to a unanimous decision about how we thought the Government should be dealing with financial reparations for the Stolen Generations. We worked really hard to get a unanimous committee position. That was then implemented by the Government of the day, and I think that shows that our upper House committees have a really important role to play in terms of scrutiny.

I was going to call out the inquiry that I was a part of in the early days of the pandemic. At a time when there were no other parliaments meeting around the world, our Parliament here in the oldest parliamentary chamber in the country found a way to get up and running and to have some level of parliamentary scrutiny at a really unprecedented time. That was, again, a long-running inquiry that went through the course of the pandemic. At the same time, I think sometimes what is not as well known is the way that upper House committees can really deal with complex and difficult policy questions and often come to unanimous committee reports, which is really important. That can be the basis for really important policy change for the people of New South Wales.

The PRESIDENT: Abigail Boyd, what about you?

Ms ABIGAIL BOYD: I was actually going to talk about an inquiry that I managed to get up—basically one of the first ones when I started. But then I remembered that in the course of trying to get that inquiry up I spent quite a bit of time trying to convince Mark Banasiak from the Shooters to look into it. That was in relation to coal ash repositories around coal-fired power stations. He was pretty open-minded, but he said, "Yeah, but on that other committee that we are on that you chair, would you think about doing an inquiry into taxis and taxi licences and the changes that happened when the point-to-point reforms came in with Uber?"

In my previous existence, I was not a taxi policy expert, and I had never really thought about this. But I had a little look into it, and it was one of the most satisfying inquiries I have ever done. It was a real moment of me having to become an expert on taxi policy, reading everything I could, and then hearing from a really switched on, engaged group of taxi drivers, their families and communities and really listening to what the issues were. It was a fantastic inquiry. It took quite a long time, but three or four years later we ended up with an actual result where those taxi drivers got more compensation. I think that was a beautiful example of working together across the Chamber to shine a light on issues that we care about. It was really good.

Dr PETER PHELPS: I just want to say two things. Firstly, I will differentiate between estimates committees, which I think are vitally important and which I do not think go hard enough in New South Wales. I was a Senate staffer and I do not buy the argument that we should have second-rate estimates procedures here.

The PRESIDENT: Just explain what estimates proceedings are to some who may not know.

Dr PETER PHELPS: Estimates is when you call in the relevant Minister and their departmental officials and you grill them—in New South Wales, for roughly 3 hours. They dissemble and rabbit on until their time finishes, and they walk out of there and say, "Phew! Done for another six months." They used to say, "Done for another 12 months," but that got changed. Good governments come from good questioning, whether from oppositions or from crossbenchers. If you are a good Minister, you should be able to take the pressure of being questioned on your portfolio for multiple hours, because, if you can't, you should not be a Minister. If you do not know what your department is doing, you should not be a Minister. If the department has held things from you, that should be exposed and, arguably, you have been a bad Minister. I would say that estimates committees in New South Wales need to be strengthened. It got slightly strengthened in recent years, but it needs to be strengthened.

General committees, I think, make MPs better people. I don't just say that because of the enforced bonhomie which you are forced to engage in when you travel around the countryside and actually have to live with them in the same accommodation, having the same breakfast and the same lunch and the same dinner with them. It makes them better people. What Abigail said is absolutely right, and that is that, in a job where you have no in-service training whatsoever, committees have a wonderful educative effect. I come from a particular background, Abigail comes from a background, Robert comes from a particular background—we all come from particular backgrounds. But we inevitably end up on committees where we have no idea what's going on and you hear from experts and general members of the public and officials and you investigate and you study and you learn and you read and you form opinions—some, like my opinions, already come pre-formed because I am an ideologue. Nevertheless, you at least have an informed ideological opinion after going through this committee process.

You learn things which you would never previously think. I will start off with my personal experience. When I first came into Parliament, I got appointed to the Standing Committee on State Development, which is jokingly referred to sometimes as the standing committee on National Party pork-barrelling. Inevitably, it's about infrastructure around the State and how Gulargambone needs a new hospital and Oodnadatta needs a new road—you know, six lanes with no tolls. But what you did was you went around and I learned things about fishing, about forestry, about mining, about geomorphology, about coal seam gas and about a whole range of things which I'd never had any previous experience with. My time in Parliament, after eight years of being on committees—many of which involving issues which I had no prior knowledge on—actually made me a better, well-rounded person, as a member of Parliament but also as a human being. You learn so much more, surprising things which you never knew about previously.

The PRESIDENT: As well as committee work, another important dimension of the council's work is its role in scrutinising the government of the day. One of the powers that the council has in this regard is the power to order government papers, which Abigail was referring to earlier. This power was challenged in 1996 when the then Treasurer and Leader of the Government in the House, Michael Egan, refused to table papers which were ordered by the council. This led to a well-known climax in the Chamber, when Mr Egan was escorted outside by the Usher of the Black Rod. Meredith, you were a member during this period. What's your recollection of these events and how important they were?

The Hon. Dr MEREDITH BURGMANN: It was an absurd situation because the only way the issue of "Did the Legislative Council have the power to order papers?" was to get it into a New South Wales court. The only way this could happen was for the Treasurer, Michael Egan, to refuse to present the papers and then for our Serjeant-at-arms—in the upper House, he is known as the Usher of the Black Rod—to come and take him outside. Our Usher of the Black Rod, Warren Cahill, was a wonderful bloke who did a terrific amount of work with the budding parliaments of the 14 nation-states in the Pacific. He was a very interesting guy, but he was very gentle. Of course, Michael, despite his size, was a fairly ebullient personality.

I happened to be sitting next to Michael on this occasion, quite by accident. Poor old Warren had to come in and tap him on the shoulder and say, "Mr Treasurer, could you come with me?" And that was the assault. Poor old Warren was charged with assault in the common courts and the whole issue was then decided in a fairly low court in New South Wales. However, what was very exciting for both Warren and Michael was that they made it into not only Odgers' *Australian Senate Practice* and everything but also Erskine May, which is the Bible of all the Westminster parliaments around the world. Whenever the Ghanaian Parliament used to produce a new senate practice or something, Michael would come up and show it to me and say, "See? See? Egan versus Cahill. There it is." It was a really important case. It was decided in a New South Wales, I think it was, appeals court or something that eventually made the decision that, yes, the Legislative Council could ask for papers and have them handed over.

Dr PETER PHELPS: Yes and no. It was a three-way decision. One said, "Absolutely, yes." One said, "No, if they are Cabinet documents." And one didn't deal with the issue. And then you had *Egan v Willis* later on over a comparable matter, which goes to the High Court and doesn't resolve it any further. We have the situation where it has never been totally proven through black-letter law, but the Executive doesn't want to test it because they are afraid they might lose. It is like, "There you are. Have our papers, damn you." And that's the approach. Really, no-one is sure exactly how it's going to go because parliamentary privilege is very important; nevertheless, Executive claims a qualified privilege which they would say—and that's what you had. You actually literally had three separate judgements. The Executive, or the Executive governments subsequent, have grudgingly bit their teeth and handed over documents because they don't want to test the principle in a court of law, fearing that they will lose—and not only that they'll lose; they'll lose the privilege which applies to Cabinet documents. That's the real \$64 question.

Of course—getting slightly off topic—Cabinet records in New South Wales are held for 20 years. In New Zealand, they are held for two weeks. That is another reason why the Executive doesn't want to test it, because they are afraid that the New Zealand situation could lead to the courts saying, "Well, here we have another Westminster jurisdiction where you don't need to have Cabinet documents held for 20 years, when they are being voluntarily released after two weeks."

The PRESIDENT: We are going to have to move on to our final session for the evening, and that is about the rise of the crossbench and minor parties. In 1981 the election saw the first two minor party members join the council: Elizabeth Kirby of the Australian Democrats and Fred Nile of Call to Australia. In the decades to follow, minor party representation in the Council continued to grow, including new representation from The Greens, from the Shooters, Fishers and Farmers, and from a range of other parties. Indeed, since 1988 no government has held a majority in the Council, which has made the crossbench a critical feature of the Chamber and ensures that negotiation and compromise make the Council an effective upper House. Today our crossbench

includes representatives of The Greens and the Shooters, Fishers and Farmers, but also the Animal Justice Party, the Libertarian Party, One Nation, the Legalise Cannabis Party and two Independents. Dr Phelps, we'll start with you on this one. Noting that no government has held a majority in the upper House since 1988—

Dr PETER PHELPS: And will almost certainly never hold one again.

The PRESIDENT: —making the crossbench a particularly unique feature of the Legislative Council, what contribution do you think minor parties make to democracy in our upper House and in our State?

Dr PETER PHELPS: Minor parties are an annoying roadblock, but you will never get rid of them. This is the problem which major parties don't—

The Hon. ROBERT BORSAK: Speak for yourself.

Dr PETER PHELPS: By the way, I note for Ben that the National Party is, in fact, a minor party too. The mere fact that they are in coalition doesn't hide the fact that they are a minor party. They are arguably the most effective minor party in Australia's history—The Greens are probably a close second, but they are the most effective minor party. Governments, and certainly the Liberal governments—and Labor's Left, I will say, has the same attitude towards The Greens, and that is there is an indignation. "How dare people not vote for us. If they are conservatives, they should be voting for us. If they are progressives, they should be voting for Labor Left." And these parties come up. And the argument is not: "These parties are terrible. They don't have any mandate. They should listen to us and just do what I say." There should be a bit more introspection, and they'd say, "What are the major parties not providing which the minor parties are providing?" And then you have to make an assessment: "Can we actually take back some of that ground?" And there might be the case, "No, you can't."

The general convergence towards the centre of politics from both the Labor and Liberal parties—and the National Party too—means that there is now a far more open field, particularly in a list system like we have in the upper House, for that individual organisation or individual parties, which represent particular things which the major parties are not delivering for people, to capture their vote.

I'm sure you're all well aware of the principle that people vote for one party in the lower House and then they'll deviate and vote for another party in the upper House. Why? Because I might be a progressive leftist and I'll vote for Labor in my local area, but you know what? I want The Greens, because they're a little bit more progressive and left than the Labor Party is. You might be a conservative shooter, so you'll vote for your local Liberal in the lower House, but you know what? Shooters, Fishers and Farmers are more representative of my interests in my gun matters. Or you're more libertarian, so you vote for John Ruddick; or you might be a conservative who likes small government and tough economic policy but you love cats, so you vote for Animal Justice in the upper House. This phenomenon is something which is not going away; indeed, it's only getting bigger and bigger and bigger. While you have the option of doing so, people are choosing that option. Minor parties are not dying.

Ms ABIGAIL BOYD: No.

Dr PETER PHELPS: Which then leaves the question, what do you do? How do you deal with them? As I like to say, and I said earlier, you can't go through—it certainly was the case in our government, in the Liberal Government, where there was an arrogant disregard for minor parties. It's like, "We are the Government. We have a mandate. We should be doing what you want us to do." To be fair, there are some minor parties—Fred Nile always said, "I'll vote for whatever government legislation comes forward because it's the Government, and I respect the mandate of government unless it affronts the moral sensibilities of myself and my party." That's one way of approaching it.

But there's another, more universal way across a whole range of jurisdictions around the world: "Okay, we want to get this tax reform through. Let's go to The Greens, because The Greens alone will give us the votes which can get it through. What do you want? Okay, that's fair enough; we don't care about that. You vote for us, we'll vote for it." The Greens worked together with the Coalition to reform the electoral laws in the first term of the Government I was in, over everyone else in the Chamber. Cate Faehrmann was there.

The PRESIDENT: That doesn't sound like an arrogant disregard of minor parties.

Dr PETER PHELPS: No, that was a good example. But from then on—

Ms ABIGAIL BOYD: We work with everybody.

Dr PETER PHELPS: —we lost that way. But because we had mutuality of interests, largely due to Lee Rhiannon, of course, to be fair, and her pushing for electoral funding reform—

The PRESIDENT: I will go to—

Dr PETER PHELPS: But I just will say this—

The PRESIDENT: Very quickly.

Dr PETER PHELPS: —governments have to understand that we are now in a situation of permanent and entrenched minority government. You can disregard that, but you'll disregard it at your own peril and you will only have gridlock for your legislation. Alternatively, you can engage in horsetrading. If you don't, you're only going to have the most anodyne legislation. The alternative, of course, is to work with the Labor Party or the Opposition—

Ms ABIGAIL BOYD: I'm going to correct you there, though. The Greens don't horsetrade. We will work to actually come to some sort of compromise position that suits us both, but there's no horsetrading.

Dr PETER PHELPS: But if we could give you something that you wanted—

Ms ABIGAIL BOYD: Not on something completely different, no. It's just not how it works.

Dr PETER PHELPS: You wouldn't do that? See, the feds were different. The Federal Greens will do that.

The PRESIDENT: Abigail?

Ms ABIGAIL BOYD: From my perspective, I think people are voting for minor parties for two reasons. They vote for them because of the belief in the policy, but they also vote for minor parties because they don't want the Government to have too much power. What I've experienced being on the crossbench is that you've got two parties: one that's in power and one that wants to be in power soon, so doesn't want to do anything, in terms of powers of the House and that sort of thing, to really cramp their style when they get in next time. We've got two very similar parties who have an idea about how they want to govern.

What the crossbench does is hold both of them accountable. This is what I've been trying to get across to the now Opposition when they say, "Why are you looking into things that we did when we were in power?" The crossbench holds both of you to account. We hold the government of the day to account but we also hold previous governments, and perhaps governments-to-be, to account. What we're trying to do is keep a system that has integrity and accountability. I think sometimes we don't give people enough credit. When they're voting, they're not just voting because they like cats, for instance; they're voting because they actually think it's a healthy thing for democracy to have more voices in the room than fewer.

The PRESIDENT: Why do you think it is, Robert? Why are people voting for minor parties?

The Hon. ROBERT BORSACK: I can only think about it in terms of my party, in that sense. John Tingle got elected in 1995. He brought into our party a process—more taught by example, I think, rather than trying to lecture us—to listen to all sides, to consider what's being said, to think about it and, above all, don't forget your principles, your policies, and think about your constituents always.

I think that's why—and some people have said to me, "Well, you guys always get re-elected. Why do you do that?" The reality is we have a very clear focus on who our constituents are. In some cases we might actually pick up constituents along the way who see their causes as lost causes—taxi drivers, for example, the greyhound racing industry is a good example and I could pick up a number of others. The reality is that the crossbench has a role. But because we are—our particular party is, and I know The Greens are, and I know Animal Justice are—very focused on who their constituents are, they know who they are as a party. When Government or Opposition comes along, everything they say to you has to be thought through in those terms.

I must say, as far as our party is concerned, the last Government was very bad at doing that. It was hopeless, in fact, especially when it came to our party, because there was an arrogance of power there—"You people don't matter; just do what we tell you to do." I can tell you that's the last thing you should be saying to a party like ours, for example. We're not going to do what you tell us to do; we'll do what we think is in the best interests of our constituents and what we think is in the best interests of the people of New South Wales.

The bill that Chris was talking about, the change to the stamp duty—our analysis of it was that it was a nice little growth tax that was going to be put in. Every government would benefit from it, and it had to be opposed in all terms because, in the long term, it would basically be a situation where government would own everything and we'd all be paying rent long term, monthly, to the government to own our own properties. Yes, the price of property has gone up and stamp duty has become ridiculous, but that's the reality of it.

Every government—and New South Wales is no different—wants to get away from the lumpiness of stamp duty income, as a direct but periodic tax, and put in a nice smooth land tax that's going to apply to everybody. Guess what? It's going to be indexed as well, so they'll never have to think about it again. I can't think

of anything worse from a family point of view, and that was the conclusion we came to in our party. John Tingle taught us to think those things through and work on it and think about not just our constituents—although obviously our focus is with them because we want to get re-elected—but to think about the big picture. Where is that going to take us? Whether you agree with us or not doesn't really matter. We've got some seats there, we've got some votes, and we'll take advantage of that.

The PRESIDENT: Before we go to questions from the audience, we'll leave the final word to Minister Houssos. There have been a lot of allegations thrown around about how governments deal with the crossbench. You are the Government now; you are a senior Minister in the Government. What are your reflections on this?

The Hon. COURTNEY HOUSSOS: I think my experience of the upper House is, as we spoke about earlier, it's quite a collegiate atmosphere. If you respectfully engage with the crossbench then I find—and understanding where they're coming from and appreciating that we've all been democratically elected to represent the people of New South Wales. We have come to it from different perspectives, but the approach that I've always tried to have is to find a way to work with everyone who's been elected. I can probably call out Dr Phelps here. I did eventually, after we'd been in the Parliament for many years together, find that we both don't agree with electronic voting—also Mr Borsak and I should acknowledge Mr President. We were all serving on the electoral matters committee, and it's that kind of work together that finds a way through really complex policy and some difficult decisions.

I actually don't think that government mandate is quite as black and white as Dr Phelps has outlined. I think that the Government is elected, fundamentally, to govern on behalf of the people of New South Wales, with their values, and approach the problems and things that come up over the course of a four-year term in that way. But it doesn't mean that you can't have input from the other people who are elected. I think that makes, ultimately, for better government and, ultimately, for better policy for the people of New South Wales. I actually think it's really clever that we have a different system in the lower House than the upper House. We do both reflect the community equally, but we just reflect different parts of it. I really respect the institution of the upper House. I'm really excited to be part of the celebrations of the bicentenary, but I think it's really interesting to be considering how much we've changed over the course of that time.

The PRESIDENT: On that excellent, very positive and upbeat note, we have come to the end of the formal section. I note also that the time is 7.30 p.m. I know there are a few people who want to ask questions. We won't be able to have too many, but who has a question that they would like to ask one of the panellists?

QUESTION: You mentioned the third woman elected to the Legislative Council was indirectly elected. How do you get indirectly elected?

Dr PETER PHELPS: What happened was, originally it was appointed. In other words, the government of the day would say, "We want you, you, you and you," and that's how Lang tried to swamp the upper House in the late 1920s. One of the ways around that was the incoming conservative government introducing a system whereby all members of the lower House, and those members of the upper House who weren't standing for election, would vote for the people who were standing for election. So you had parliamentarians voting for that particular cohort of incoming members into the Legislative Council. It was called indirect election, but it was basically parliamentarians voting for other parliamentarians to fill the spaces which you had as part of the rotation through Council.

The PRESIDENT: I think we can all agree that we're thankful that that doesn't occur anymore.

QUESTION: I am Stephen Frappell, one of the Clerk's assistants in the Council. The Council peaked at a membership of 125 members in 1932. Then when the indirect election to the Council was occurring, it went back to 60 members. As referred to earlier, it went down to 45 in 1988 and now it's at 42. It is at its lowest level for probably a hundred years, or something like that. At the same time we've heard the discussion about just what an important role the Council plays. We've heard the discussion about how important committees are and how stretched members are on committees. We've heard about budget estimates and we've heard about diversity and how important a quorum is in the Council. I'd be interested in any reflections. The council is the second-largest upper House in Australia at 42 members after the Senate, but we don't have the nexus that they have in Canberra where the Senate numbers are set at basically half of the House of Representatives. Obviously the Council isn't half of the Legislative Assembly in New South Wales. I would be interested in any reflections on: Is 42 members enough?

The PRESIDENT: Good question. I promise that wasn't a Dorothy Dixier.

The Hon. Dr MEREDITH BURGMANN: Can I make a point that was referred to earlier by Robert. The Senate is not a democratically elected Chamber because it has 12 Senators from Tasmania and 12 from New

South Wales. It is, as Paul Keating pointed out, unrepresentative swill. Seriously, it is probably the most unrepresentative Chamber we have in Australia because you need 400 votes in Tasmania to be elected to the Senate.

Dr PETER PHELPS: That's a family in Tasmania.

The Hon. Dr MEREDITH BURGMANN: That's right. It's extraordinary that it's referred to as a democratic Chamber because it's not. I do agree—although I have problems with upper Houses—that New South Wales has the most democratically elected Chamber because it is proportional representation at its purest.

The PRESIDENT: Chris, is 42 members enough?

The Hon. CHRIS RATH: I think we probably need to expand both Chambers. I think that we've been stuck at 93 members of the Legislative Assembly now since 1992, or sometime in the early '90s. We have members who represent quite large electorates, as we do in Canberra. I think the House of Representatives in Canberra has some of the largest electorates in the world in terms of population. But if we increase the number of electorates in the Legislative Assembly, we should also increase the number of members in the Legislative Council. Ideologically, I think that we should probably have larger Legislatures and smaller Executives.

Dr PETER PHELPS: Hear, hear!

The Hon. CHRIS RATH: We were guilty of this when we were in government too. There was an ever-expanding—

Dr PETER PHELPS: Guilty? You were reprehensible. It got to a stage where every member in the Coalition party room, bar one, was either a Minister, a Parliamentary Secretary, Whip, or had some sort of extra income provided to them. Why? To keep them quiet and complacent. Everyone in the Nationals-Liberal party room, bar one!

The Hon. ROBERT BORSAK: It was also to get around the salary cap you imposed.

The PRESIDENT: We're going down a bit of a rabbit hole. I will ask if there is one final question.

QUESTION: We talked a lot about community representation in the Parliament and in the Council. Do you believe that young people in the community and the issues ongoing that I'm sure everyone is aware of are heard, and effectively and adequately represented and worked on in the Parliament?

The PRESIDENT: We will start with you, Abigail.

Ms ABIGAIL BOYD: I don't think so. I had the Youth portfolio for The Greens for a while, and one of the things I tried very hard to do was to directly speak the words of younger people, but I think that's no substitute for having younger people in Parliament. I have been a long-time supporter of lowering the voting age to 16 so that we can enfranchise that group of very switched-on people. We've talked before about how we came into the Parliament without any experience of how to be parliamentarians. We have some experience. I have had a whole career and that's great. That has informed me. But that's no more valuable an experience than someone who is coming in at 20 years old who has had a wealth of their own experience and their own life circumstances that they want to then have represented in Parliament. We do have an age problem in all parliaments.

The PRESIDENT: Chris, I think you were the youngest member when you were elected. What's your perspective on this?

The Hon. CHRIS RATH: We have six members under 35, which I think is a very good thing. Just like you want the Parliament to accurately reflect the population when it comes to women, when it comes to multicultural diversity and when it comes to LGBTI diversity, of course you want the Parliament to represent the people and reflect the fact that we have different age groups in society. We probably could do better in getting some younger people in. We've done a better job more recently, probably at the last State election. There was a new cohort of young members that did come in, and it's because the issues mix is very different that you're dealing with. I've been very outspoken and very passionate about housing and about getting more gen Z and millennials into the housing market. That's a different perspective, potentially, from where some of the older members of Parliament might be coming from. It's very important that we have young members of Parliament and that not everyone is over 65.

QUESTION: If we were to create a school type of report card for the upper House, what would be the three most important measures for your success?

The Hon. ROBERT BORSAK: Punctuality!

The PRESIDENT: Are they for members or for the House as a whole?

QUESTION: For the House as a whole.

The PRESIDENT: I will ask each of the panellists, starting from Meredith.

The Hon. Dr MEREDITH BURGMANN: What is being asked? What good things have we done?

QUESTION: What makes for a successful upper House, if we were to measure you report-card-style?

The Hon. Dr MEREDITH BURGMANN: It really does depend on whether you're the Government wanting to get your legislation that you've been elected to do through the upper House—

QUESTION: I'm a member of the public—

The Hon. Dr MEREDITH BURGMANN: Yes, but are you a Green-voting member of the public or a Labor-voting member of the public? It's a bit like asking what the public interest is. You don't really know. If you are a person who supports a minority party, then the upper House is very successful in terms of representing you—I will say that.

Ms ABIGAIL BOYD: To me, taking a step away from who are the members in the upper House, I think a functional upper House is one that allows all of those members to have a say and to put their agendas for their people onto the business of the week. In 2019, which Courtney alluded to, it was mainly the crossbench and Labor at the time that came together to improve our standing orders to give the minor parties and the Opposition more opportunity to hold the Government to account, to speak to motions and to do all of those sorts of things. That ability to hear from everyone—not just those with the most power in the room—is what makes an effective and democratic institution.

The PRESIDENT: What do you think, Courtney?

The Hon. COURTNEY HOUSSOS: I think we represent the community really well, like I said earlier. Sometimes it's a bit messy and can get a bit raucous, but I think ultimately we do. We reflect the community and I think we get there in the end.

The PRESIDENT: Robert, what does a successful upper House look like?

The Hon. ROBERT BORSAK: I said punctuality at the start, but that wasn't just a throwaway line. It's a very, very hard question to answer because of the diversity of the parties and the diversity of the individuals. You've got to look at the whole of what the House does, especially since neither the Government nor the Opposition control what the crossbench does. No-one can really tell what might come in one end from the lower House and what's going to come out the other end. It really gets down to whether you support the Government, as Meredith was saying, or whether you support the Opposition and you want to see a result from them—however that is reflected—or whether you support one of the minor parties like ours.

It's a very, very difficult question to answer. You have to look at, I believe, how is the committee system working, what is the upper House saying and doing and what reports are coming out. There's just such a monstrous amount of work being done. I'm not just trying to pat us on the back, but there's an awful lot of professionally generated opinion coming out, whether it's by way of committee, whether it's by way of budget estimates, whether it's standing up in the House debating or in question time—it just goes on and on—especially since 2019 and the ongoing significant changes that were made to the standing orders of the House. Meredith, you referred to the fact that it took 53 years to get your change through. I think it only took three or four years to do the biggest overhaul of the standing orders that our upper House has seen in probably 40 years.

For me to sit here now and tell you all what's changed—I literally can't, because so much has. It has changed so much from the time I came in here, and even from the time that Tingle came in here. Because I was chairman of the party, I came in here reasonably regularly. I said, "When do you get a chance to put a bill up?" He said, "Well, our names go in a hat. They call it the chook raffle. If I get drawn out, once a year, I might actually get up and talk to a bill." You have to look at what it was like then, back in '95, '96 and so on, and what it is like now. Now it's a difficult place for the Opposition to be, and it's an even more difficult place for a government to be. They have to learn how to deal with the upper House. That's largely reflective of the way the crossbench, with the cooperation in 2019, changed the standing orders to make the House more a house of accountability and transparency, not control. It's all there.

Ms ABIGAIL BOYD: We now get a whole day every sitting week.

The Hon. COURTNEY HOUSSOS: The points that Robert just made go to us being here celebrating 200 years of the upper House. Meredith reflected that for a long period of time it was felt that it just needed to continue to operate as it had in the past. I think the real strength of the upper House—certainly over the period that I've been there but particularly the past four to five years—has been the ability to better reflect the community,

to continue to modernise and to continue to update the way that we do things to make them more relevant. That's actually the strength of the upper House, and that's why I would say that we are doing a good job. In opposition or in government, you're holding the Government to account, but you're also genuinely investigating a range of really big and complex policy issues and representing the people of New South Wales. That ability to reinvent ourselves and to continue to update, which we haven't always been good at over the course of our 200-year history, is really important to highlight tonight.

The PRESIDENT: I can't think of a more appropriate way to finish the evening. Thank you, Courtney. Ladies and gentlemen, I think you'd agree that we've had an insightful, vigorous and entertaining session this evening. Please thank Peter Phelps, Chris Rath, Abigail Boyd, Robert Borsak, Courtney Houssos and Meredith Burgmann. I also thank the Black Rod team who have done such a wonderful job tonight in pulling this whole thing together. As we commemorate the Legislative Council's bicentenary this year, it is our hope that in reflecting on the past and celebrating the many achievements of our Council we'll create a platform to imagine how we can continue to forge a diverse, representative and effective upper House into the future. I think that tonight you've seen diversity in all its glory. Thank you for being here.

The seminar concluded.