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# The New South Wales Legislative Council's Oral History Project

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## INTRODUCTION

In 2013 the Department of the New South Wales (NSW) Legislative Council (the Department) held a series of interviews with former parliamentarians to document and share aspects of a particularly important milestone in the Council's history: the establishment of the modern committee system.

The Council's oral history project (the project) is now an ongoing initiative that has three primary objectives. Firstly, to study how Australia's oldest representative legislative body has developed from a staid, undemocratic institution to an upper house that has become an effective house of review. Secondly, to provide those interviewed an opportunity to reflect on their involvement with and contribution to significant events of the past. And finally it is hoped that the thoughts of the interviewees can be used to further our understanding of how a reinvigorated Council has performed in its role of legislative review, scrutiny and inquiry.

The purpose of this paper is to summarise the project's progress and outcomes to date and reflect on what is required to administer such an initiative. The paper also teases out some of the key issues and themes that have emerged from the interviews, briefly details some of the similar programs that have been undertaken in other Australian jurisdictions and outlines the project's future direction.

## WHY UNDERTAKE AN ORAL HISTORY?

The impetus for the project stemmed from the 25th anniversary of the establishment of the Council's system of standing committees in 2013. The anniversary proved an opportune moment to look at the contribution Council committees have made to the effective governance of NSW and also to consider what role upper house inquiries may take in future. Three primary means were identified through which to take stock and identify possible future directions: a debate in the House,<sup>1</sup> the C25 seminar co-hosted by the Council and the Australasian Study of Parliament Group in September 2013,<sup>2</sup>

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1 *NSW Legislative Council Debates*, 19 September 2013, pp 23765- 23796.

2 'C25: Marking 25 years of the committee system in the Legislative Council', <http://www.parliament.nsw.gov.au/prod/web/common.nsf/key/C25>, retrieved 4 April 2016.

and interviews with five former members all closely involved in creating the Council's standing committee system.<sup>3</sup>

Having decided to undertake an oral history to study the establishment of the standing committee system two additional Council milestones were identified for future examination, namely the reconstitution of the Council as a directly elected body in 1978 and the Egan cases.

Until its reconstitution the Council was the last non-elected House in Australia. The catalyst for the reconstitution was the election of the Wran Labor Government in 1976 and its promise to hold a referendum to decide the Council's membership number and future method of election.<sup>4</sup>

The Egan cases enabled the courts to consider a number of important issues regarding the relationship of the Executive to the Parliament, and in particular whether the Council has the power to order the production of state papers. The key finding of the High Court in the first case was that as the Council has the implied powers and privileges necessary for the fulfilment of its roles, including scrutinising the activities of the Executive Government, it did indeed possess the power to order the production of state papers. The second case made clear that the power of the House could be exercised and must be complied with notwithstanding executive claims of privilege.<sup>5</sup>

With identified areas of interest to examine, the oral history project was added to the Department's *Strategic Plan*<sup>6</sup> as a key deliverable and a project officer (reporting to the Clerk and where appropriate the Clerk Assistant – Committees) was assigned to manage its implementation.

## PROJECT PHASE ONE – THE STANDING COMMITTEE SYSTEM

Work on the first part of the project commenced in March 2013 approximately six months prior to the C25 seminar. To begin, a project plan was developed that: established the project's purpose; identified anticipated outcomes; outlined the role required of the project officer and the Clerk; and set out a project timeline. A key element to developing the plan involved the project officer and Clerk Assistant, Committees meeting with various people throughout the parliamentary administration who had expertise in interview techniques, historical research methods, and an understanding of the elements to conducting an oral history.

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3 Links to the interview transcripts can be accessed via 'Legislative Council Oral Project', <http://www.parliament.nsw.gov.au/prod/web/common.nsf/key/OralHistory>, retrieved 4 April 2016.

4 L Lovelock and J Evans, 2008, *New South Wales Legislative Council Practice*, the Federation Press, Leichhardt, p 37.

5 G Griffith, 1999, 'Egan v Willis & Cahill: the High Court Decision', *NSW Parliamentary Library Research Service*, 1/99, High Court of Australia – Egan v Willis – [1998] HCA 71, and New South Wales Court of Appeal – Egan v Chadwick & Ors [1999] NSWCA 176.

6 The Strategic Plan can be accessed via 'Strategic Plan – Department of the Legislative Council', <http://www.parliament.nsw.gov.au/prod/web/common.nsf/key/LCStrategicPlan>, retrieved 4 April 2016.

During the consultation phase it was suggested that someone external to the Department be involved with the project in either an advisory role or a hands-on capacity. This suggestion was made to ensure that the project benefited from the involvement of someone with expertise directly relevant to oral history rather than simply being administered by departmental officers whose principal skills and knowledge lay elsewhere. To that end, the Department was very fortunate to secure the services of Dr David Clune, the former NSW Parliamentary Historian and Manager of the Library's Research Service. Further detail and comment on Dr Clune's involvement is detailed below.

With a project plan established and external assistance obtained, the project officer worked to identify potential interview candidates that had been integral to the establishment of the standing committee system. To begin, the two key books which detail the institutional history of the Council and the Parliament, namely *New South Wales Legislative Council Practice*<sup>7</sup> and *Decision and Deliberation – the Parliament of New South Wales 1856–2003*<sup>8</sup> were referred to. Next, the 1986 report of the 'Select Committee on Standing Committees'<sup>9</sup> that investigated and reported on potential options for the Council to implement a structured committee system was examined. The identification process also involved going through relevant Hansard debates and media clippings and consulting former departmental staff.

The project officer sought to identify potential interviewees representative of the then government, opposition, and cross-bench. The identification process yielded five potential interviewees: the Hon Max Wills (Liberal), the Hon Ron Dyer (Labor), the Hon John Hannaford (Liberal), the Hon Lloyd Lange (Liberal), and the Hon Elisabeth Kirkby (Democrats).

Those identified for interview were contacted in writing so as to detail the project and its objectives, as well as to ascertain their interest in participating. Fortunately all agreed to an interview. With the interviews canvassing events and issues that had occurred at least 25 years prior, it was important to ensure that all interviewees were fully briefed prior to their interview in order to provide them the best opportunity to confidently answer questions at length.

Briefing packages were prepared for all interviewees. The briefings detailed their contribution to the development of the standing committee system as well as their service as a member of the Council. They also included a timeline tracing the history and development of the Council and provided indicative questions and suggested talking points. Also attached to the briefing packages were relevant Hansard extracts, journal articles and extracts from both *New South Wales Legislative Council Practice* and *Decision and Deliberation*. Each interviewee was given at least two weeks to review the material prior to their interview. Additional material was provided to the interviewees on request.

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7 L Lovelock and J Evans, 2008.

8 D Clune and G Griffith, 2006, *Decision and Deliberation – the Parliament of New South Wales 1856–2003*, the Federation Press, Leichhardt.

9 Select Committee on Standing Committees, 1986, NSW Legislative Council, *Report of the Select Committee on Standing Committees of the Legislative Council*.

The interviews were held at the NSW Parliament, transcribed by Hansard, and conducted by the Clerk in collaboration with Dr Clune. As noted above Dr Clune is a trained historian. He is also the co-author of *Decision and Deliberation* and is currently an Honorary Associate at the Department of Government and International Relations, Sydney University. Dr Clune's expertise significantly benefited the project given his in-depth knowledge of the Parliament's history and experience in interviewing parliamentarians for the purpose of developing narrative accounts that recite key events from the past. An historian's training is undoubtedly different to that of a Clerk and as a result the interviews benefited from having two interviewers with different perspectives and approaches.

Following the interviews the transcripts were edited to eliminate extraneous material and to enhance clarity and readability. The edited transcripts were then provided to the interviewees and they were offered the opportunity to make revisions or corrections. Once the transcript had been returned it was treated as the final version and each interviewee was advised that it would be published on the Council's website and ultimately be added to the Parliament's archive series.

After the interviews were concluded work commenced on a monograph with the purpose of tying together the memories of the interviewees into one document. Drafted by Dr Clune the monograph, entitled, *Keeping the Executive Honest: the modern Legislative Council committee system* located the genesis of the standing committee system, namely the Council's transformation in 1978 into a fully elected full-time House and the ensuing expectation that members would take a more active approach to their work.<sup>10</sup>

More importantly, the monograph teased out the observations of the interviewees regarding the effectiveness of the Council's standing committee system and its strengths and weaknesses. Common to the interviewees was the belief that the standing committee system has made a significant contribution to the good governance and accountability of NSW. That shared assessment, however, did not preclude the interviewees from commenting on ways committee inquiries may be improved. For example, the Hon John Hannaford and the Hon Ron Dyer both criticised instances where the committee system has been used for political purposes (particularly the Budget Estimates process<sup>11</sup>) with both arguing this deflects attention from its core objectives of policy development, government accountability and the opportunity for members to enhance their knowledge about the machinery of government.<sup>12</sup> Meanwhile, the Hon Max Willis emphasised that the Council committee system is only as good as the people running it and urged that it receive ongoing levels of adequate funding.<sup>13</sup>

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10 D Clune, 2013, NSW Legislative Council, *Keeping the Executive Honest: the modern Legislative Council committee system*.

11 Budget Estimates involves members of the Legislative Council questioning ministers and senior public servants on the expenditure, performance and effectiveness of their departments and is thus an integral aspect of the Council's scrutiny role. The Budget Estimates inquiry has been conducted annually by GPSCs since their formation in 1997.

12 D Clune, 2013, p 36.

13 D Clune, 2013, pp 36–37.

The issues canvassed in Dr Clune's monograph were also raised during a series of panel discussions participated in by current and former members, journalists and academics at the C25 seminar. Matters relating to the effectiveness of committee scrutiny of bills and the adequacy of government responses to inquiry reports were also considered at the seminar.<sup>14</sup>

Subsequently, in June 2015 the Council established the Select Committee on the Legislative Council Committee System to inquire into and report on how to ensure that the committee system continues to enable the Legislative Council to effectively fulfil its role as a House of Review.<sup>15</sup> The committee is currently gathering evidence and is considering a diverse range of issues such as opportunities to enhance both the Budget Estimates process and scrutiny of legislation. Other matters being considered include whether the Council's current committee structure is appropriate and adequately resourced and ways through which to improve community engagement with the inquiry process. On the procedural side, the committee is looking at whether committees have adequate powers to undertake their inquiry role and the possible implementation of a mechanism whereby the House can debate government responses to committee reports.<sup>16</sup>

Although the creation of the Select Committee owes itself to a number of factors, the oral history project obviously played a leading role and demonstrates the worth of looking to the past to help navigate future paths.

## **PHASES TWO AND THREE – THE 1978 RECONSTITUTION AND THE EGAN CASES**

After close to a two-year hiatus work on the project recommenced in mid-2015. Originally the intention was to look at the 1978 Reconstitution during 2015/2016 followed by the Egan cases in 2016/2017. However due to the availability or otherwise of some of the proposed interviewees it was decided to hold interviews for both topics concurrently.

Potential interviewees were identified via the same process adopted for the standing committee interviews, namely by reviewing the various sources that document that Parliament's institutional history and looking for members that had made significant contributions to the topics being examined. Also consistent with the committee interviews, the potential interviewees were contacted in writing to gauge their willingness to be involved. Unlike the standing committee interviews, it was decided to interview not only former members but also two former Clerks in order to obtain a broader range of

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14 Seminar transcripts can be accessed via 'Proceedings of the C25 Seminar Marking 25 years of the committee system in the Legislative Council 20 September 2013', <http://www.parliament.nsw.gov.au/prod/web/common.nsf/key/C25>, retrieved 4 April 2016.

15 *NSW Legislative Council Minutes*, 245 June 2015, pp 218–219.

16 Select Committee on the Legislative Council Committee System, 2015, NSW Legislative Council, *Legislative Council Committee system – Discussion paper*.

recollections. Unfortunately due to ill-health and personal reasons not all those who were identified as being suitable for interview have been able to participate.

To date eight interviews have been held with six former members (the Hon John Hannaford – Liberal, the Hon Jack Hallam – Labor, the Hon Max Willis – Liberal, the Hon Elisabeth Kirkby – Democrats, the Hon Michael Egan AO – Labor, and Mrs Ann Symonds – Labor) and two former Clerks (Mr Les Jeckeln and Mr John Evans). In order to help facilitate constructive discussions the interviewees were again provided with briefing material and indicative questions at least two weeks prior to their interview. All interviewees have been afforded the opportunity to make revisions or corrections to their transcripts prior to them being published on the Council's website and ultimately being added to the Parliament's archive series. It is anticipated that approximately eight further interviews will be held before the end of 2016.

Without delving too deeply into the content of the interviews themselves (this will be done during the drafting of future monographs on the 1978 Reconstitution and Egan cases) they have produced a valuable set of reflections and commentary on a variety of matters. Potential future Council reforms have been canvassed along with suggestions to enhance the administrative arrangements of the departments that support the House. The natural tension between a government's right to legislate and an upper house's right to review the work of the Executive has been a topic of discussion as has the work performed by those in Council leadership positions. It should also be noted that the interviews have enabled some people, who gave decades of service to the Parliament and who otherwise may not have had the opportunity, to re-engage with the institution and reflect on their storied careers.

It is hoped that the topics canvassed during the latest interviews will not only yield future monographs, but also other outcomes such as ideas for members to pursue, potential procedural improvements, or the identification of other matters to investigate via future oral histories.

## **WHAT HAS HAPPENED IN OTHER JURISDICTIONS?**

The Council is not unique in conducting an oral history or similar type projects. Other parliaments throughout Australia have also worked to capture the thoughts and recollections of former members and staff through a variety of means. The list below briefly details some of what has been undertaken, as provided by the parliaments:

- Department of the NSW Legislative Assembly: In 2008 as part of the Department's succession and knowledge management plans an oral history program was established to record significant events that impacted on the NSW Parliament over the previous 40 years. Four sessions were held with former members and led by the former Clerk, Mr Russell Grove, former Deputy Clerk, Mr Mark Swinson, and Dr Clune. Briefing material was provided to the former members to help them prepare and the discussions were transcribed by Hansard. Since 2009 no further sessions have been held but the material gathered has been used as a resource to

train departmental staff on standing and sessional orders. The transcripts have also been added to Assembly's collection of procedural reference resources.

- Commonwealth Parliamentary Library: Since 1988 the library has undertaken a long-running oral history project to interview members and senators. The impetus for the project was the Australian Bicentenary. Much of what has been produced from the earlier interviews is held by the National Library (subject to caveats placed by the interview subjects regarding access to some of the material). The interview materials have been a valuable source of information for contributors to the *Biographical Dictionary of the Australian Senate*.
- The Department of the Senate: While no formal oral histories have been undertaken two former Clerks (Mr Rupert Loof and Mr Alan Cumming Thom) have been interviewed. The Loof interview was with the National Library while the Cumming Thom interview was with senior Senate officers and is held in its departmental collections.
- Western Australia Parliament: It has had a longstanding oral history program which commenced in the 1980s under the auspices of the Parliamentary History Advisory Committee. The program was initially jointly administered by the Parliament and the JS Battye Library of Western Australia but the library's role in recent years has diminished somewhat. To date approximately 100 interviews have been held with members, in some instances members' spouses, and parliamentary officers at levels ranging from switchboard operators to clerks. In a small number of cases short-term restrictions have been placed on the release of the interview transcripts (at the interviewee's request) but for the main the transcripts are accessible via the Parliamentary Library and the State Library.
- Queensland Parliament: In 2009, at the request of a former speaker, the Parliament's Honorary Research Fellow, Dr Paul Reynolds commenced an oral history through interviews with former members. The aim being to capture the thoughts of the interviewees regarding the institution of parliament and also to get them to reflect on their careers. To date 23 interviews have been completed via a process very similar to that adopted by the Department of the NSW Legislative Council. At this stage there is no plan to publish the interview material. However, the transcripts will be reviewed to compile a topics-based index.
- Department of the Victorian Legislative Assembly: Under the direction of the former Deputy Clerk, Ms Liz Choat, the Department undertook a social history from 1940 onwards to document the recollections of what it has been like to work in a parliamentary administration. Information was gathered via interviews, review of department records and correspondence, clerk's notes, and newspaper reports to add social context to the stories told by former staff.
- Northern Territory Legislative Assembly: In 2014 as part of the celebrations for the Assembly's 40th anniversary a panel, comprising three members from the first Assembly in 1974, shared stories and participated in a public question and answer session.<sup>17</sup>

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<sup>17</sup> Note – the information presented in this list was gathered via a request for information sent to the Australia and New Zealand Association of Clerks-at-the-Table (ANZACATT) e-CATT Info-share forum. Thanks to all who responded to the post.

## **NEXT STEPS AND CONCLUDING REMARKS**

As noted earlier, at the conclusion of the Reconstitution and Egan cases interviews two further monographs will be drafted. As was the case with the standing committees monograph, the purpose will be to tie the recollections of all interviewees into the one document. At this point no future oral history topics have been decided but a possible area for exploration arising directly from recent interviews is the work performed by those in Council leadership positions.

Unfortunately not all those identified as being suitable for interview have been able to participate in the project with the primary reason being ill-health. To ensure this does not happen in future, the Department is considering getting departing members to reflect and comment on significant events during exit interviews. Although the exit interviews are primarily held to obtain the views of departing members on the quality of the services provided by the Department, they could also serve as a means for members to reflect on their careers and mitigate the risk of potentially not being able to hear from them in future. It is possible that future exit interviews could be merged with the oral history project.

The project has been a valuable initiative for the Department to undertake and has yielded some positive outcomes. It has helped create an irreplaceable archive of commentary on some of the key events that have shaped the Council's evolution. Work on the project is ongoing and hopefully all future actions will continue to add to our understanding of how a reinvigorated Council has performed in its roles of legislative review, scrutiny and inquiry.

Interviewees have appreciated being contacted and invited to reflect on their contributions. An additional, unanticipated benefit of the project has been the re-engagement of a number of interviewees with the institution of parliament. It has been a pleasure for the interviewers, the project officer and other Council staff to renew their acquaintance with political figures and officers who have made such significant contributions to the Parliament and the people of NSW.

The project has required resources, time and commitment. The more thorough the preparation undertaken for each interview the more worthwhile they have proven. The project has been extremely valuable and any other jurisdiction or institution considering a similar project is encouraged to do so. However, it is not an exercise to be entered into lightly.