

Connecting with the People:

The 1978 reconstitution of the
Legislative Council – David Clune



part two

Part Two of the Legislative Council's
Oral History Project



President's foreword

It is hard to believe that less than 40 years ago the New South Wales Legislative Council was still not directly elected. Although the pre-1978 Council did useful work as a traditional house of review, it is almost unrecognisable from the Legislative Council of today, with its wide representation, active committee system, and assertiveness around its powers.

The story of precisely how the Council came to be reconstituted in 1978 is fascinating, and indeed essential knowledge for those who wish to fully understand the modern Legislative Council. In this monograph Dr David Clune tells that story, drawing on the memories of some of those who observed and participated in those dramatic events.

This is the second monograph arising from the Council's oral history project. The project commenced in 2013 as part of a series of events to mark the 25th anniversary of the Legislative Council's modern committee system. I am delighted that the project recommenced in 2015 and look forward to future monographs in the series.

I particularly want to thank those former members and clerks who have given so generously of their time to contribute to the project. Most of all I want to thank them for their contributions to the history and development of the extraordinary and unique institution that is the NSW Legislative Council. This is their story.

Don Harwin MLC

President

Preface and Acknowledgements

This is the second publication resulting from the Legislative Council's Oral History Project.* It is based on interviews with former members and staff of the Council. They were conducted by David Blunt, the Clerk of the Parliaments, and David Clune, Consultant Historian to the Project, in Parliament House between November 2015 and September 2016:

- John Evans, 5 November 2015
- Les Jeckeln, 1 December 2015
- Jack Hallam, 8 December 2015
- John Hannaford, 10 December 2015
- Max Willis, 2 February 2016
- Michael Egan, 9 February 2016
- Elisabeth Kirkby, 11 February 2016
- Ann Symonds, 16 February 2016
- Ron Dyer, 5 July 2016
- John Jobling, 7 July 2016
- Jenny Gardiner, 12 September 2016

The original Hansard transcripts have been edited to eliminate extraneous material and repetition and to enhance clarity and readability. All quotes, unless otherwise acknowledged, are from this source. The complete edited transcripts of these and all other interviews conducted as part of the project are available on the NSW Parliament's website: <https://www.parliament.nsw.gov.au/lc/roleandhistory/Pages/Legislative-Council-Oral-History-Project.aspx>

The author would like to thank Milton Cockburn and Brian Dale, key members of Neville Wran's staff at the time of the 1978 reconstitution, for their helpful advice and comments. Brian Dale deposited a number of Neville Wran's documents about upper house reform in the NSW Parliament's Archives (A536).

* For more detail about the project see D Blunt and A Stedman, 'The NSW Legislative Council's oral history project', *Australasian Parliamentary Review*, vol 31 no 1, Autumn/Winter 2016.

These were a valuable source and include hand-written notes made by Wran during the free conference and a briefing note commenting on various systems of electing members of the Legislative Council.

Les Jeckeln, Barry O'Farrell, Terry Sheahan, Greig Tillotson, Andrew Tink and Ken Turner kindly read the draft. Antony Green analysed the referendum results in detail with his customary expertise. The responsibility for errors and omissions remains mine alone. Alex Stedman of the Legislative Council staff provided unfailing support, both with the interviews and this publication. The Appendices are largely his work. Sincere thanks go to the Hansard staff for their professionalism, support and interest in the project.

David Clune





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The background to reconstitution

At the NSW general election held on 1 May 1976, the Coalition Government of Sir Eric Willis was defeated by Labor under Neville Wran. The ALP won 50% of the primary vote compared to the Coalition's 46%, but only a one seat majority. Labor alleged this was due to a pro-Coalition bias in the electoral boundaries. In the Legislative Council, the new Government was in a minority, with 24 MLCs to the Coalition's 35 (there was one Independent Labor MLC). The Council had been reconstituted in 1934 into a chamber of 60 members. The term was 12 years, with 15 MLCs retiring triennially. Upper house members were elected by an electoral college consisting of all members of both houses.¹

By the 1970s, such a body was widely seen as anachronistic and undemocratic. The Council's public image was not helped by the high average age of its membership and the often leisurely pace of activity. Les Jeckeln joined the Council staff in 1954 and was Clerk of the Parliaments 1977-89. He observed that, although the house contained some impressive members, 'sittings starting at 4.30pm and often finishing at 6.30pm did not do the reputation of the Council any good'. It was 'a rest home in those early years. It was in the gift of the parties to put members in the Legislative Council'. Jack Hallam, who became a Labor MLC in 1973, recalls:

When I arrived, the atmosphere was amazing, to my eyes, a 30 year old just off a tractor. There was Sir John Fuller, the Leader of the Government, Sir Edward Warren of Coal and Allied Industries fame, Sir Harry Budd, the President, who wore a full wig and gown and gaiters ... It was not a high tempo house and issues were dealt with in a fairly formal manner. Clearly, it was a part-time house. It certainly had that 19th century establishment feel. But they made me very comfortable and people were extremely cordial. I only have fond memories of it on a personal level.

¹ On the Council as reconstituted in 1934 see K Turner, *House of Review?: the NSW Legislative Council 1934-1968*, Sydney University Press, 1969.



Jack Hallam

Max Willis became a Liberal MLC in September 1970 at the age of 34:

One was not expected to rock the boat—it was not the kind of thing one did in the Legislative Council. It was a very gentlemanly place and, of course, I was the second youngest member. ... I made my maiden speech after about a year – one was not expected to rush into making one's maiden speech – and got plaudits all round. All the much older members were very accommodating, very kindly. There was little political backbiting. It was very relaxed—a bit *noblesse oblige*.

Willis feels that the Council did make a valuable contribution in its own way:

It was effective because most of the members on both sides were really experts in their field. There was nothing people like Sir Edward Warren did not know about the coal industry and the industries allied to it. He only ever spoke on that subject and when he spoke everybody listened. So if there was any kind of legislation relating to the coal industry which required amendment the government took notice of him, whether it was a Labor government or a Coalition government ... Very often these

revisions to legislation, in my observation, occurred behind closed doors. Ted Warren would take the minister aside and say, “Look, you can’t do this,” so an appropriate government amendment would be introduced. He would not stand up on the floor and hammer the hell out of the minister and then move an amendment. That was the way it worked. For its time and because of its composition I think it was effective, but in a quite different way to now.



Max Willis

John Evans joined the Council staff in 1971 and succeeded Les Jeckeln as Clerk in 1989, a position he held until 2007. He believes that the unreconstructed Council did play a role as a house of review:

You could usually guarantee that there was going to be disagreement between the two houses on industrial relations bills, education bills and local government bills. This was because in the Legislative Council you had members who had lots of experience in those areas. A lot of the Labor MLCs were union officials and they had an extensive knowledge in the industrial relations area. There were members on both sides of the house who were councillors or ex-councillors in local government and they had lots of knowledge on local government issues. There were other members who were solicitors, barristers and accountants who brought a lot of knowledge and experience to the house ... There were disagreements between the two houses over bills, with the Legislative Assembly disagreeing to the amendments, the Legislative Council insisting on the amendments, and the Legislative Assembly again disagreeing. The house did have an effective form of review in terms of that.



Jack Hallam, who was Leader of the ALP in the Council from 1986-91, expressed a different perspective:

There were people there with expertise, certainly. I think that is acknowledged [but] I do not recall the experts vigorously participating in debate on issues ... I do not recall the Council as an aggressive reviewer of legislation. My general impression is that, in the flow of legislation that was coming through, the debate was generally of a partisan nature rather than intrinsic review. The house was discouraged from being a house of review because it had evolved into a partisan house. When one of the major parties had a majority they were not inclined to review legislation unless there was a broad, popular uprising or concern about a particular issue. Amendment was discouraged by the powerbrokers, Askin and then Wran. If they had political control of the Legislative Council, it was legislation by instruction rather than review.

Another Labor MLC, Ron Dyer, who served as a Minister from 1995-1999, found the Legislative Council to be 'something of a backwater' when he commenced his term in 1979:



Ron Dyer

It was not fully elected by the people. Question time, such as it was, did not extend beyond two or three questions each sitting day. The sitting itself often lasted only from 4.30 p.m. until about 6.30 p.m. The committee system was rudimentary, to say the least. I am not denying that there were some excellent members of the upper house. I merely wish to say that compared with other legislative chambers in Australia, such as the Federal Senate, the NSW upper house was a very quiet place. That is the gentlest way I can put it.

John Hannaford was Leader of the Government in the Council 1992-95 and Leader of the Opposition 1995-99. He became a Liberal MLC in April 1984 as the Council made the final transition to being a fully elected house. Hannaford does not believe the Council at that time was an effective house of review:

You advocated for amendments. If you came up with something that the Government thought was good then it might have been accepted, but for the vast majority of the period it was a rubber stamping of the Government's agenda. We had no committee system. There was effectively no oversight of the Government. It was a continuation of



John Hannaford

what had been the situation for decades.

Like Hannaford, John Jobling was elected as a Liberal MLC in 1984. He served as Government Whip from 1988-95 and Opposition Whip 1995-2003. Jobling has strong memories of what it was like to be a member then:

When I first came in it was almost as if you sat like an obedient lapdog on your bench and when the Whip or the Leader decided he wanted you there, you were there. When they wanted to have a vote, it was: “You will sit over here and vote accordingly”. I was probably a little bit of an irritant inasmuch as some of the new members had taken up to three years to make their first speech. I managed—almost demanded—to make mine straight away though it took me about six months to do so. They did not want you to answer questions, interject or do anything of that nature. I thought that was wrong and when we came into government in 1988 I wanted to get my members fully active in the House straight away, able to speak, able to ask questions. If we did not have enough numbers, you could not have somebody sitting there, being very nice, being very cooperative but contributing nothing.



John Jobling

Although (perhaps because?) he had been an MLC from 1970-73 and Leader of the Opposition 1972-73, Wran was a virulent critic of the Council, labelling it a 'geriatric ward. It was like an old men's home except the conversation wasn't as lively'.² Ann Symonds, a Labor MLC 1982-98, has commented: 'Wran was like Keating, he did not want to have anything to do with the upper house: "unrepresentative swill".' Democratic election of the upper house was part of Wran's 1976 policy speech. The Premier's attitude to the Council was not improved by the fact that the Opposition soon began to amend Government legislation. There were 74 successful non-Government amendments to bills in the 1976-78 session, compared to none in 1975-76. A major piece of Labor legislation, the Anti-Discrimination Bill, was heavily amended against the Government's will. In 1978, again in the face of Government opposition, the Coalition established a Select Committee on Crime Control. Its revelations about organised crime and police corruption embarrassed the Government. Under the existing system, the Government would have eventually gained a majority in the Council, as Willis explains:

A government would be elected and in its first term it would not have a majority in the upper house. Then, if it maintained or gained more of the confidence of the electorate at the next election, it would achieve a majority in the upper house and be free to implement things that might have been previously blocked or diluted. Of course, that is the history of the rollover effect of the triennial elections between 1933 and 1978. A government inevitably came to office with a hostile upper house.

The Labor Government elected in 1941, for example, gained control of the upper house in 1949. Neville Wran, however, was not noted for his patience. All of this meant that a Government move to reform the upper house would happen, and soon.

² M Steketee and M Cockburn, *Wran: an unauthorised biography*, Allen and Unwin, 1986, p72. Brian Dale, Wran's press secretary and close confidant, has said that the Premier's constant references to the 'geriatric upper house' had an upside and a downside: 'The downside was the drop in ALP support from many elderly in the community, which made us rethink the use of the term and the upside was the creation of Senior Citizens' Week. That was a direct outcome of the geriatric references and was Neville's way of reconnecting with the elderly. From political expediency (which worked) Senior Citizens' Week became a real feature for the State's seniors and was replicated by other States'. Email to the author, 27.4.2016.



Jenny Gardiner

The reform legislation

The Liberals and Labor were both committed to reforming the Council into a directly elected body, although neither wanted the other to gain any political advantage from it. The Country Party, however, was completely opposed to any change. The Party had historically been over-represented in the upper house, in 1973, for example, having 20% of the seats. According to Max Willis, Leader of the Liberal Party in the Council from 1977-81:

The policy of the Liberal Party at that time was that the Legislative Council should not be abolished, it should be reformed, but there was nothing more specific than that. It was a fairly ineffective policy because the policy of the Coalition partner, the Country Party, was no abolition and no change and we will maintain that unto the death. My personal attitude, being somewhat younger, and, using my knowledge of constitutional and legal matters, was that for all its virtues the current system was not in tune with modern times and that the Legislative Council should be a popularly elected house. However, if it was to be popularly elected it had to be quite differently elected and quite differently constituted from the Assembly.

Even in the Country Party, younger and more progressive elements were questioning the value of the upper house as it existed. Jenny Gardiner was General Secretary of the NSW National Party from 1984-1991 and a Nationals MLC 1991-2015:

Years ago, I was the State Secretary of the Young Australian Country Party. We used to be rather scathing about this thing called the Legislative Council ... I think that there was actually a submission that we wrote about how the upper house should be reformed. So when Wran proposed the reform my personal view was obviously that there should be reform. And internally in the Party it was so ridiculous in terms of the process as to how a person would be nominated: it was completely opaque; it was literally undemocratic. It was just announced to the Central Council that

so-and-so was our nominee. When I was in the Young Australian Country Party I remember Tim Fischer came to a meeting in Orange and I put my hand up and asked him—he was in the Legislative Assembly at the time—”Do you think that the Legislative Council is the most exclusive club in Australia and what should we do to change it?” That is the way it was perceived, and that is the way that we perceived it.

The major parties agreed that the electorate for a reformed Council should be the whole of NSW, not a system of provinces or enlarged lower house seats as in some other States. Provinces would necessitate individual campaigns in local areas which would be difficult and expensive to run. For the ALP factional bosses, central selection of one list of candidates was easier to control than a series of individual contests. Neither major party wanted rural provinces as this would advantage the Country Party. Having the whole State as an electorate obviously prevented the gerrymandering of boundaries, ultimately in the interests of both major parties. On the question of the voting system to be used, however, there was a strong divergence of opinion.

On 1 June 1977, Wran introduced the Parliamentary Electorates and Elections (Amendment) Bill into the Legislative Assembly. It provided for an upper house of 45 elected for three Assembly terms (a maximum of nine years at the time). The transition to a fully elected house would happen in three stages:

- At the first Council election, the 32 MLCs whose terms would have expired in 1979 and 1982 would retire. Of these, 22 were Coalition members compared to ten from the ALP. In an immediate gain for Wran, the Opposition’s majority and the Country Party’s over-representation would be eliminated. The continuing 28 would be joined by 15 popularly elected MLCs. As Labor and the Coalition each had 14 continuing MLCs, a level playing field was created. Whoever won a majority at the first Council poll would have a majority in the house
- At the next election, the 14 short-term continuing MLCs, whose terms expired in 1985, would be replaced by 15 elected members

- At the third election, the 14 long-term continuing Councillors, whose terms expired in 1988, would make way for a final tranche of 15 elected MLCs.

The method of voting proposed by Wran was based on the list system used in South Australia. It was non-preferential proportional representation, where electors would vote for a group of candidates and their votes would then exhaust. The State constituted a single electorate and the quota for election was 6.25%. Groups not receiving a quota would have their votes discarded.

While reaffirming his commitment to direct election, Leader of the Opposition Sir Eric Willis strenuously opposed the Government's proposals, particularly the list system:

The aims of the Labor Party's proposals are, first, to get quick control of the Legislative Council. Second, to gerrymander, in a geographical sense, seats in the Legislative Assembly, just as it proposes that the seats in the Legislative Council be gerrymandered mathematically. Third, to have both houses of parliament controlled by the Labor Party after the 1979 elections so that they can enact socialist legislation without restraint. Fourth, after a period of time, when the people have seen that the Legislative Council is now nothing more than a rubber stamp, to persuade them that it is a waste of taxpayers' money retaining that body, and they might as well abolish it. By that time we shall be well on the way to having a permanent one-party government in NSW. Indeed, we shall be well on the way to having a permanent one-party socialist government in this State.³

Under Section 7A of the *Constitution Act 1902*, any bill abolishing or altering the powers or constitution of the Legislative Council has to be put to the voters at a referendum. When introducing the reconstitution legislation, Wran gave a strong indication of the line he would take in such a campaign:

This is an historic day in the life of this Parliament and this is an historic measure. Through this bill, the Government aims to further advance and fully establish democracy in this mother of the States and in this mother of the Australian Parliaments. I truly regret that our colleagues in the Opposition have chosen not to join us in this purposeful endeavour.

³NSWPD, 2.6.1977.

It should be a matter of concern to all citizens of NSW that our parliamentary democracy is so deeply flawed and that the oldest legislative chamber in Australia, the NSW Legislative Council should still – 153 years after its establishment – be chosen not by the people but by politicians and party machines. I am convinced that this concern is shared by the overwhelming majority of our fellow citizens. It will be a matter of shame if vested interests in this Parliament should seek further to perpetuate this falsification of democracy.⁴

In anticipation of a referendum, conservative interests had established the Constitutional Security Movement in October 1977 to campaign against the Government's reforms. Wran launched a scathing attack on the group to undermine its credibility:

The whole thing is a complete and utter sham, a front movement or organisation that has been put forward by the Liberal Party. The people on it have been nominated by the Liberal Party. They have never had a meeting. Some of them, curiously enough, do not know each other. They have been provided with funds by the same sort of people, who traditionally prefer to maintain exclusive clubs like the Legislative Council rather than give the people the right to a vote. They can cant and they can rant, but the simple fact is that, despite the delays and despite the frustrations, the public will be given the opportunity to say yes or no in a lawfully conducted referendum. The whole purpose of this Constitutional Security Movement is to confuse the public about what the real issues are in this election. Its whole purpose is to try to make respectable that which is unjustifiable and, most of all, to give the public the impression that there is some ground swell of opposition ... There is one concession that I want to make in relation to the Constitutional Security Movement. It does have at least one person renowned in the community for his constitutional knowledge, his objectivity, and his acquaintance with and wrestling with problems of great logic, especially in the political and constitutional field; that is the well-known rugby league commentator, Mr Rex Mossop.⁵

⁴NSWPD, 1.6.1977.

⁵NSWPD, 24.6.1978.

The Parliamentary Electorates and Elections (Amendment) Bill reached the Council on 8 June and was referred to a select committee chaired by Derek Freeman, a prominent Liberal MLC. The Government opposed the motion and ALP members appointed to the committee refused to participate. While attacking the Government's legislation, Leader of the Opposition Sir John Fuller did not exclude the possibility of reform:

I am certainly not closing my mind to the thought of improvement. I have said also that I have not seen anything that would be an improvement on the present system. The Opposition believes that the principle of consideration by a select committee, as has always happened in the past with proposed constitutional change, is most desirable on this occasion. I should hope that the select committee when looking at details of the proposal will look also at the constitution and the method of election of upper houses in Australia and elsewhere. If the committee can come up with a system that the Opposition considers preferable to the present system it will be given close consideration.⁶

⁶ NSWPD, 8.6.1977.



Les Jeckeln

On 4 August, Freeman attempted to present an interim report from the Select Committee, basically saying that it had not had time to complete its task. His problem was that the Committee's terms of reference permitted it to make a final report only. Freeman initially sought the consent of the house to amend the terms of reference to rectify this. Consent was denied. Freeman then sought leave to present the interim report. In the course of doing this he read it out. It was Les Jeckeln's first day in the house as Clerk of the Parliaments and it was a baptism of fire:

The Deputy-President was in the chair, Tom McKay, a former barrister and a gentleman. I do not know what was taking place on the Opposition side, but it seemed obvious that they wanted to get the report of the Select Committee onto the record so Dr Freeman read it out. The reading of the report onto the record was confusing to the Chair because he asked Dr Freeman what motion he wanted to move. It was a procedural mess. Eventually, Dr Freeman sought leave to table the report. One objection to leave being granted is enough to prevent tabling, but the Chair did not hear any objection and allowed the tabling to go ahead. After the house got up, I went back to my office and we tried to sort out what had taken place. Jock Cumming from the Hansard staff came to my room with his notebook and he had Mrs Roper, a member of the Government party, objecting to leave being granted but by then it was too late. The tabling was crucial to what transpired. A committee not having leave to report from time to time, if it does report, extinguishes itself according to Erskine May.

In its urgency to get the Select Committee's report on the record, the Opposition had dissolved it. However, the Coalition had the numbers to re-establish the Committee on 18 August.

Choreographing the course of events was Section 5B of the *Constitution Act*, which sets out the procedure to be followed in the event of a disagreement between the houses. If the Council rejects, fails to pass, or unacceptably amends a bill, and the Assembly resubmits the bill after three months with the same result, a free conference of managers from both houses is to be held. If

agreement is not reached, the Governor may convene a joint sitting to consider the bill. If disagreement continues, the Assembly can resolve that the bill be sent to a referendum. A bill is considered to have failed to pass if it is not returned to the Assembly within two months. In essence, Wran would be able to take his reform plan to a referendum whether the Opposition agreed or not.

The Select Committee continued its investigations and the Parliamentary Electorates and Elections (Amendment) Bill was not returned to the Assembly within two months. In conformity with the constitutional timetable, Wran reintroduced the Bill in the Assembly on 10 November 1977. It passed all stages and reached the Council on 17 November. Fuller successfully moved that it be referred to the existing Select Committee.

On 10 January 1978, the Select Committee on the Parliamentary Electorates and Elections (Amendment) Bill presented its report. John Evans was clerk to the Committee:

We took evidence from various people like the Solicitor-General, the Crown Solicitor and Ken Turner from the University of Sydney. We travelled to Canberra to have a look at the system for election to the Senate and had discussions with the then Clerk. We travelled to South Australia to look at the South Australian system of election—the system that was proposed by Neville Wran was very similar to that which existed in South Australia—and we took evidence from various people there, including Ren DeGaris who was a prominent member of the Legislative Council. The Select Committee reported on the bill and gave reasons why it rejected the method of election proposed, which was a system where you voted for party lists and if a party did not get 6.25% their votes were not included in the count. It was called a D'Hondt system of voting. That was the downfall of Neville Wran's first proposal for the election of the Legislative Council.

The Committee recommended that the Bill be rejected and that a constitutional convention be held to consider the issue of upper house reform.

When the Leader of the Government in the Council, Paul Landa, moved the second reading of the Bill on 11 January, the Opposition amended the motion so that it became one rejecting the Bill and giving reasons why. This was transmitted to the Assembly which, in response, passed a resolution requesting a free conference of managers as set out in the deadlock machinery. On 25 January, the Council agreed to the request. The last time a free conference had been proposed was in 1960 over the then Labor Government's bill to abolish the Council. It never took place as the Coalition majority in the upper house refused to participate. The Coalition's agreement on this occasion was a sign that it was prepared to negotiate. Landa mischievously proposed that the conference take place in an Assembly committee room. Fuller amended the motion to substitute Council committee room C255. The first meeting was set down for 31 January 1978. In accordance with the precedent that managers reflect the opinion of their house, the Assembly was represented by Wran and nine senior ministers. Fuller led the Council managers, consisting of three other Country Party MLCs and six Liberals.

As the last free conference had been held in 1927, Les Jeckeln had little to guide him in making arrangements:

We had no real background in free conferences, especially on a matter of such importance as the reconstitution of the Legislative Council. There had not been one for over 50 years. We drew on Erskine May, the standing orders, common sense, and we were able to get things organised. We had set up the room with one long table, with the Legislative Assembly managers on one side and the Legislative Council managers on the other side. Sir John Fuller said, "Not on." I will not repeat the exact words that he used but I got the distinct impression he did not want to be sitting opposite the Legislative Assembly managers. So we rearranged the tables into two U-shaped groups. At the end, in the centre of each "U", sat Wran on the Legislative Assembly managers' side and Sir John Fuller on the Legislative Council managers' side. Then the cut and thrust started.

MEMBERS
ONLY.

MEMBER
ONLY



The free conference

There were two core issues for Labor and the Liberals at the free conference of managers. The Government did not want to seek re-election on the Coalition's lower house boundaries which it believed disadvantaged Labor. However, under existing legislation, a redistribution could not be held until after the next election. The Government could not change this as it did not control the upper house. The Coalition feared Wran intended to hold a referendum to reform the Council, followed by an upper house election which would give him a majority. He would then use this to amend the electoral legislation so that a redistribution could be held before the next general election. The Government would also be able to legislate for 'one vote one value'. Max Willis has commented: 'That was much more a fear of the Country Party than it was of the Liberal Party. Do not forget that there was a very considerable weighting of electoral boundaries in favour of the Country Party'. The Parliamentary Electorates and Elections (Amendment) Bill certainly gave credence to Opposition suspicions about such a scenario. It stated: 'A writ for the first periodic Council election shall be issued as soon as practicable after the date of assent to the 1977 reconstitution Act.' Thereafter, Council elections would be held simultaneously with elections for the Legislative Assembly. A key Opposition demand was thus that the first Council election be held with the next general election.

The other major issue in contention was the proposed voting system. Labor wanted the list system as it would minimise the informal vote. In Senate elections in 1974 and 1975, the ALP had been seriously disadvantaged by a high informal vote, 12.3% and 9.7% respectively, due to a large ballot paper and full preferential voting. A document prepared for Wran examining voting options warned:

As the number of squares to fill increases so does the number of informal votes ... Hence it is necessary to keep the system as simple as possible ... In 1974 (and 1975) the conservatives deliberately got people to be candidates in the Senate election in order to cause informal voting. They did this because informal votes adversely affect Labor more than the Liberals.⁷

⁷ 'Legislative Council Reform: comments on various systems of electing members of the Legislative Council', [Briefing document prepared for the Premier, 1977?], NSW Parliamentary Archives, A536.

The list system also eliminated the possibility of a situation where a minor party used its preferences to hurt the ALP, as the Democratic Labor Party had done. Rodney Cavalier, a NSW Labor Minister 1984-88, has said: 'Like all generals we were fighting the last war, our enemy remained the DLP. Yes, the DLP had disappeared. But not from our consciousness'.⁸

The Coalition was determined not to accept the list system as too advantageous to Labor and wanted full preferential voting. Max Willis has said:

The most important thing that we set our face against was the list system of voting. The list system was quite obviously a first past the post system. It effectively meant that the overwhelming majority of seats would go to the major party that won the election ... So we said that we had to have a system similar to the Senate at the time.

Wran's briefing note on upper house reform admitted that the list system had a 'slight bias' towards Labor: 'If the 1977 Senate result was replicated, where Labor got 40% of the vote, Labor would win 7 of the 15 seats ie 46% of the seats with 40% of the votes.' Full preferential advantaged the Liberals 'as they do pick up a lot of preferences'.⁹

There was more consensus over the high 6.25% quota, which both major parties believed would make it difficult for independent and micro party candidates to be elected. Wran's briefing note observed that it was 'small enough to give minor parties a chance' but would not allow for 'the election of an idiot fringe'.¹⁰

Both sides, however, had their own reasons for seeking compromise. The Liberals were in a difficult situation as they were committed to reform and could not credibly oppose direct election outright. They did not want to be forced into the position of defending the indefensible. The Opposition was also aware that Wran could have refused to compromise and gone to a referendum under the deadlock provisions of the Constitution. If he was successful, the Coalition would have lost all. Max Willis, who was heavily involved with the negotiations as a Council manager, has observed:

⁸ Email to the author, 4.12.2015.

⁹ 'Legislative Council Reform: comments on various systems of electing members of the Legislative Council', [Briefing document prepared for the Premier, 1977?], NSW Parliamentary Archives, A536.

¹⁰ 'Legislative Council Reform: comments on various systems of electing members of the Legislative Council', [Briefing document prepared for the Premier, 1977?], NSW Parliamentary Archives, A536.

It has always surprised me that Neville Wran did not have the political courage to call our bluff and go for a referendum on his list system. In my view he would have won because the people out there who vote are not terribly interested in whether it is first past the post, preferential, optional proportional or whatever. But if you go out there and say to them, “We are giving you a right to elect”—you the people—“this unelected house of Parliament”, they would say yes. I remember attending a party meeting in a blue ribbon Liberal area on the North Shore. After I had made my plea about this terrible list system, one gentleman at the back of the room stood up and said: “If the list system is the price I have to pay to have the Legislative Council elected by the people, I will pay it”. You cannot go into a referendum and argue subtleties.

There were also moderating factors in Wran’s mind. Bipartisan support was widely seen as a prerequisite for a successful referendum. Historically, those who are uncertain have tended to vote no. The Liberals would have been able to run a ‘we support the principle but not the method’ argument, pointing to the list system as undemocratic. This may have deterred enough voters to defeat the Government’s proposed changes. It would certainly have led to a tough fight. John Evans’ view is that Wran

realised that if he was going to get a system of popular election for the Legislative Council then he needed to compromise. There was no way that the people could have been persuaded to accept a system of election for the Legislative Council where a certain percentage of votes was going to be discarded. I could see that from my research with the Select Committee, and other people could see that it was not going to be popular with the electorate.

The managers for both houses assembled on Tuesday 31 January in room C255 at 2.15pm. Evans has a clear memory of the occasion:

It was an upstairs room in the old Legislative Council building and, being January, it was stinking hot, as the rooms were not air conditioned.

It was a room right upstairs, down the back from the Chamber. Geoffrey Luton was the Serjeant-at-Arms and I was the Usher of the Black Rod. We were there in full regalia attending the free conference, but because it was so hot all the members discarded their coats.

Two formidable adversaries squared off against each other. Neville Kenneth Wran was one of the most outstanding politicians NSW has produced. A superb strategist and communicator, Wran was charismatic before the term became a cliché. He combined the forensic and oratorical skills of a top QC with a Balmain boy's grasp of the vernacular. Veteran Labor MP and Minister Harry Jensen, who was one of the Assembly managers, observed that he had never seen anything to match the brilliance of Wran's performance at the free conference.¹¹

Sir John Bryan Munro Fuller was a grazier, but politics was in the blood as he was the nephew of NSW Premier from 1922-25, Sir George Fuller. Becoming a Country Party MLC in 1961, Fuller was a minister from 1965-76. It is a testament to his ability that when the Leader of the Government in the Legislative Council, Liberal AD Bridges, died in 1968 he was replaced by Fuller rather than a Liberal MLC. Fuller was quiet and gentlemanly in manner but also tough and astute. Les Jeckeln has commented that Fuller 'had a sharp mind and was a master politician. I felt that he had a political nose and could run rings around many others'. Jack Hallam has described Fuller as 'a great stand-out member of the house. I hold him in the highest esteem: dignity, expertise, representing his constituency'.



¹¹ The comment was made to Terry Sheahan, ALP MP for Burrinjuck 1973-88 and a senior minister in the Wran and Unsworth Governments. See 'Reflections of a minister' in T Bramston ed., *The Wran Era*, Federation Press, 2006, p234.

These two consummate strategists played the hands they had been dealt with adroitness. It was a game of bluff, brinksmanship, offer and counter-offer. On a number of occasions the free conference seemed to be heading for deadlock but at the last moment one or the other would produce a compromise that kept the negotiations alive. John Evans recalled that ‘on the whole, they had civil exchanges’ although ‘a couple of times a little bitterness came out’. It was ‘not heated but it was assertive deliberation’. Max Willis, who was a participant, described the proceedings as ‘polite’ and ‘gentlemanly’: ‘There was no sledging at one another. There were a couple of terse comments now and again, but on the whole it was very civilised’.

According to Evans’ notes, Fuller and Wran ‘adopted a hard line from the start. At one time the Premier remarked that he was not here to be questioned’.¹² Wran opened by saying the undemocratically elected upper house had rejected a bill for its reform put forward by the popularly elected lower house. What did the Opposition managers propose to do about it? Fuller countered that the Council had rejected the bill after the Select Committee had recommended a constitutional convention as the best way of achieving reform. Wran replied that the Committee was a sham and categorically refused to have anything to do with a constitutional convention. There was no precedent in NSW for dealing with constitutional reform in this way. The free conference had been called to consider a disagreement over the Bill not a constitutional convention. The Premier bluntly asked if the Opposition was prepared to allow the bill to go to a referendum as soon as possible. Fuller observed that, whatever happened, the Constitution would allow a referendum to be held. An early stalemate loomed. Fuller then backed away from the brink by abandoning the constitutional convention and putting forward a compromise:

- The first Council election to be held simultaneously with the next general election

¹² Although no formal record of the free conference was kept, two accounts exist. John Evans made notes at the end of each day’s proceedings. The Coalition managers kept a detailed record which was circulated in a limited edition. Max Willis has revealed that it was based on shorthand notes taken by Sir Asher Joel, a Country Party manager who had previously been a journalist, ironically with the Labor Daily. This account is based on those documents. Copies of both are held by the Legislative Council.

- The system of voting to be full preferential as used in the Senate
- Two Liberal MLCs who had recently filled casual vacancies to stay in office until their terms expired. This would have the effect of giving the Coalition two more continuing MLCs than the ALP.

Wran requested a short adjournment to consider Fuller's proposal.

The conference resumed at 4pm. Wran went on the offensive and asked the Opposition to drop its first and third proposals. Fuller said he would concede only the point about the two MLCs continuing in office. Wran asked if the Opposition managers would be prepared to consider optional preferential voting. Fuller indicated that they would be. The Premier then asked if the Opposition would support a yes vote at a referendum if an agreement was reached. Fuller sought an adjournment to consult with the Coalition leadership in the Assembly. When the conference resumed at 6pm, Fuller stated that, if a compromise was reached, the Opposition would support passage of the bill through both houses and not oppose it at a referendum. He stressed that he was speaking for the Parliamentary Parties only and could not commit the Party organisations. It was now Fuller's turn for brinksmanship and he concluded the session by saying that there was no more room for compromise – the only thing still on the table was full or optional preferential voting. The conference adjourned until 2.35pm on Wednesday 1 February.

Wran commenced the next session by saying that, in his view, there were two issues in contention: when the first upper house election would be held and the voting system to be used. He accused the Opposition of being preoccupied with the fear that Labor would win a majority at a Council election and legislate for new boundaries. By contrast, the Government's main concern was a democratically elected upper house. Having fired off this salvo, the Premier more moderately suggested that the first issue be put aside until a compromise could be reached on the method of voting. He rejected full preferential and instead proposed a combined list and optional preferential system. Wran argued that this proposal answered all the criticisms that had been levelled at the list system.

If the Opposition accepted it he would be prepared to compromise on the timing of the first Council election. If not, he would go ahead with a referendum under the deadlock provisions.

Fuller replied that the Coalition was opposed to the ‘obnoxious’ list system, as were the people. Evans recorded that at this point ‘the first sign of any bitterness crept into the discussion when the Premier interjected remarking that Sir John Fuller could not speak for the people’. Fuller responded sharply, asking Wran to ‘afford him the same silence as he had done for him yesterday’. He then stated that the managers for the Council had only been authorised to negotiate on an optional preferential proportional system but would consider the Premier’s proposal. The conference adjourned at 3.10pm until 5pm. When proceedings resumed, Wran outlined his proposed voting system in more detail. If a vote was cast for a group, it would be preferential for candidates in the group as listed. If electors did not wish to vote for a group, they would be able to vote preferentially for individuals. It would be compulsory to vote for ten candidates and optional after that. Fuller asked about the Premier’s attitude to simultaneous Council and Assembly elections. He replied that he had never been sympathetic but both sides would have to give something. The conference adjourned for the day.

The sixth session commenced at 12.30pm on Thursday 2 February. Fuller stated that the Opposition managers rejected Wran’s combined list/preferential proposal as too complicated and confusing. It would become a *de facto* list system. However, in a genuine spirit of compromise, the Coalition would agree to an optional preferential system where an elector was required to vote for a minimum of 15 candidates, the number to be elected. Fuller concluded that this was as far as he was empowered to go. Evans noted that the Premier ‘seemed a little nonplussed. He had very little to say other than that the Government would require time to consider the statement. It did appear that Sir John Fuller had placed the Government in a “take it or leave it” situation and a deadlock seemed quite inevitable’. The conference adjourned until 3pm.

Wran opened the next session in a conciliatory mood. Jettisoning his hybrid list proposal, he said that the Government would agree to optional preferential on

two conditions:

- Voters were required to fill in ten squares rather than 15
- That votes were formal until they became informal. In other words, if an elector voted one, two, three, three, and then on to ten, the votes for one and two were formal but the rest informal.

Both of these provisions would minimise informal voting. If agreement could be reached on this, the Premier would concede the Opposition's demand for simultaneous Council and Assembly elections. Fuller suggested an adjournment until Monday. Wran objected, arguing that such a lengthy break would be unwise when agreement was close. It would be impossible to keep the details from the media. He was pleased that all of the managers had maintained confidentiality but a leak had appeared in yesterday's *Sydney Morning Herald*. Wran claimed it had come from the Opposition. It was agreed that there would be a short recess.

The conference resumed at 4.45pm, with ten or 15 compulsory votes the only sticking point. Wran argued that it was pointless to force electors to vote for more than ten candidates as it was unlikely any party would elect more than eight. The need to fill in 15 squares would increase the informal vote. After some debate, in which other managers participated, Fuller agreed to ten. The deal was done. As with all successful negotiations, both sides had something to take away from the table. In his notes, Evans described the atmosphere as 'convivial':

Sir John Fuller then expressed his delight that the conference had been conducted in a spirit of compromise and referred to the fact that the constitutional provisions had at least proved worthwhile. The Premier expressed his pleasure at the spirit which had been evident during the discussions. He also referred to the constitutional provisions for resolving deadlocks. The Premier and Sir John Fuller shook hands.

Proceedings were adjourned at 6.25pm. Two final sessions took place on 2 and 8 March to tie up loose ends and finalise details.

The procedure adopted to implement the agreement was that the Council asked the Assembly to return the Parliamentary Electorates and Elections (Amendment) Bill. The upper house then rescinded its earlier rejection and made the necessary amendments. The Bill was returned to the Assembly which agreed to the changes on 8 March.

Country Party Leader Leon Punch was attacked within his party for supporting the compromise agreement. He backed off and adopted the equivocal position that that he would not advocate either a yes or no vote.¹³ Jenny Gardiner has commented:

Leon Punch came to this pragmatic moment when he was saying to the Central Executive of the Party, “Are we going to put resources into the no case? Well, how do you do that? How do you say we are going to oppose democracy?” It was a very profound moment ... It is true that we did not really put resources into it ... He reckoned that no matter how it was dressed up, campaigning for a no vote would amount to telling people they should continue to have no say in the election of one of their houses of Parliament —hardly a progressive democratic position.

Max Willis believes that, as the Liberal Party ‘got behind reform’, the Country Party’s foot-dragging ‘made little, if any, difference’.

On polling day, 17 June 1978, the reform proposal was resoundingly passed: 85% of those who voted were in favour. According to Antony Green’s analysis (see Appendix Two), the yes vote was 89% in ALP seats, 85% in Liberal seats and 72% in those held by the Country Party.

¹³ P Davey, *The Nationals: the Progressive, Country and National Party in NSW 1919-2006*, Federation Press, 2006, p264.

Who outsmarted whom?

On 14 February 1978, *The Bulletin* published a detailed article about the free conference by Malcolm Turnbull. He concluded that the negotiations ‘left the Opposition triumphant’ as it had not only forced the Government

to back down, and in the process removed the stigma of being opposed to direct, democratic elections, but had ensured the next election would be fought on the old boundaries ... A tiny swing could tip Wran out. It is hard to see why Wran chose to compromise. While the list system was unpopular it would have probably won at the polls, albeit narrowly. In order to avoid the risk of losing a referendum he now runs the risk of losing an election.¹⁴

In reality, the groundswell of support for Labor in the electorate made the boundaries irrelevant. On 15 July 1978, the ALP won a by-election in Eric Willis’ old seat of Earlwood with a swing of over 8%. Wran held an early election on 7 October 1978 and won a massive 63 of the 99 Assembly seats. Labor’s large vote enabled it to elect nine Legislative Councillors, giving it a total of 23 of 43 seats in the upper house. The Government controlled the Council for the rest of its term. Wran subsequently legislated for ‘one vote one value’ and entrenched it in the Constitution. A redistribution was held before the 1981 election. On the new boundaries, although the Government’s primary vote fell 2% it won six more seats.

However, there is an element of hindsight in this assessment. Milton Cockburn, a member of Wran’s Ministerial Advisory Unit at the time, has observed that when the free conference took place ‘no-one really had any idea how well Wran was travelling’:

There is no doubt he was popular but the majority was only one. I recall him returning from a day’s campaigning for Ken Gabb in Earlwood and he said trying to get Labor votes in that electorate was like “chiselling granite”. After the by-election win, things changed and, of course, it led to the calling of the early election.¹⁵

¹⁴ M Turnbull, ‘How Wran was outflanked on upper house reform’, *The Bulletin*, 14.2.1978.

¹⁵ Email to the author, 2.5.2016.

Jack Hallam has said of the referendum, Council election, redistribution scenario:

I do not think Wran would have gone down that road but I can understand why Fuller and the Liberals would think he might ... They would have been nervous about allowing any opportunity for Neville: “Well, maybe he will and maybe he won’t”. The key point from their point of view was that he would have had the option, so why would you trust him? That was their perspective and it makes perfect sense.

By forcing Wran to abandon the list system, the Opposition made a more tangible gain. In terms of the exaggeration of majorities and the discarding of votes below the quota, Labor’s preferred method of voting had its questionable features. Max Willis has said of the list system:

We were not about to have that because we knew that the Labor Party was on the upswing and that, come a popular election, we would be the losers. We were anyway, but we thought—and I think it has proven so since—that in order to have any true element of democracy you could not have a lower house elected by optional preferential and an upper house elected by what was effectively first past the post. That was designed to give the government of the day, whoever it was, a majority very quickly in the upper house.

Another gain for the Opposition was that the thorny issue of upper house reform, which had been a long-time cause of division in the Liberal Party and the Coalition, was finally resolved. The more enlightened elements in the Coalition realised that reconstitution was inevitable and that the challenge was not to avoid it but to manage it. According to Willis:

Notwithstanding the intransigence of the Country Party to reform, the wiser amongst them —people like John Fuller and Adrian Solomons —realised that this was a stance that could not be maintained. So we ended up after our own consultations with a counter move to what the Government was proposing. The mechanisms through which we went

were with that objective in mind. The proposal we ended up with at the end, agreed to by the Government, was not one developed on the spur of the moment, it was developed quite early in the joust.

Hallam's assessment is that

Fuller's major compromise was to accept reform, because the conservative position in the Council was to leave it as was. If they thought they could have obstructed the change I am sure they would have. But I think Fuller recognised that there was a change within the electorate at large, so they were going to have to accept an elected upper house ... It was 1978 and it was a reasonable proposal. I think Fuller and his colleagues intelligently realised that they had to make some adjustments, but they were not prepared to go to the full extent the ALP wanted. So they came to a compromise ... Fuller acquitted himself with distinction in negotiations, and I believe he stayed on for that purpose only. He was the most capable person on the Opposition side in the Council to have managed that on their behalf.

What did Wran give and gain? He conceded the chance of a redistribution before the next election, and hence the possibility of more favourable boundaries. However, it seems highly likely that Wran traded off something he was never committed to. The Premier realised that a referendum, Council election, major electoral legislation, a redistribution, and a general election between June 1978 and mid-1979 presented close to insuperable difficulties because of timing and logistics. It would have tested the voters' patience and probably caused a backlash because of the transparently political nature of the exercise and the extra expenditure involved.

Wran's second concession was abandonment of the list system. By accepting optional preferential, he lost little in reality. The briefing document prepared for the Premier in advance of the free conference advised that if Labor won 50% of the vote, under the list system it would win eight or possibly nine of the 15 seats and under optional preferential, eight. It recommended Wran drop the list

system for optional preferential.¹⁶ The requirement to vote for ten candidates only and the ‘formal until informal’ provision would keep the informal vote to manageable proportions. The optional preferential proportional scheme as agreed to by Wran virtually guaranteed the Government control of the Council after the next election if it polled 50% or more of the primary vote.

In sum, Wran gained bipartisan backing while giving away little. Although some have questioned the value of Liberal support, at the time Wran was very conscious of the electoral damage the crisis-ridden Whitlam Government had done to the ALP. His over-riding goal was to show that Labor could govern in a stable, competent manner. Wran could have refused to compromise and used the deadlock provisions to have a referendum. However, he would have faced a bitter campaign in which he was stigmatised as a wrecker of the Constitution. Jack Hallam was heavily involved in the referendum as an ‘advance man’ for the Premier and became ‘quite close to him’:

The referendum turned out to be a low-key event. I can remember on one occasion sitting next to Neville. I had organised the meeting, we had had the speeches and we sat down. He did not often talk much, but on this occasion he said, “I didn’t think it was going to be this easy”.

Milton Cockburn agrees:

We all underestimated how easy the referendum would be. My recollection is we thought we would win, but it would be a small majority, because of the innate electoral conservatism over referenda. None of us envisaged anything close to the yes vote.¹⁷

The compromise gave Wran all he needed plus the image of a statesman-like reformer allowing the people a voice in the election of the upper house.

¹⁶ ‘Legislative Council Reform: comments on various systems of electing members of the Legislative Council’, [Briefing document prepared for the Premier, 1977?], NSW Parliamentary Archives, A536.

¹⁷ Email to the author, 2.5.2016.

After reconstitution

Most of those interviewed believe that the 1978 reconstitution improved the quality of membership and proceedings in the Council. However, Michael Egan, Leader of the Opposition in the Council 1991-95 and Leader of the Government 1995-2005, has reservations. He believes that the Council is not as effective as it could be because of a lack of bipartisanship:

If it is to be a house of review then it has to be non-partisan, and that is not the way that things developed either here or in the Senate. I suppose one role the Council does fulfil is that, by having some time between legislation going through the lower house and going through the upper house, it provides opportunities for the public, the media, interest groups and others to scrutinise legislation and to kick up a fuss if they want to get things changed. I do not really think that the legislative process in the Council works as it should, or could—but that would mean that you would have to have an ethos of non-partisanship. It does not exist in the Australian environment; it does more so in the United Kingdom.



Michael Egan

According to Ron Dyer, Egan's Deputy from 1995-2003, the reformed Council is an effective legislative institution:

I would never see it as appropriate for the upper house to take over the budgetary role of the Legislative Assembly. However, in regard to all non-money bill matters, it is appropriate to say that the Legislative Council is useful—it justifies its existence, and I would never see it as a good thing to abolish the upper house. Were that to happen, there would not be any delay mechanism. You would not have detailed consideration of various policies via parliamentary committees, and you would not have that cautionary second look at contentious legislation, which I think is very important.

Max Willis has observed:

The changes were gradual as the members from the old system faded away and the new members came in. From the time the house was fully constituted by elected members, its complexion changed very significantly. By the time I became President there was not much of a vestige of the old atmosphere surviving ... It became a much more party-dominated, partisan place—less nuanced, more black and white, and more combative in its debating process. Of course, after 1988 and the introduction of standing committees—and I had a lot to do with that—it started to evolve what is now a quite sophisticated committee system. We knew that this should be the Council's role and encouraged that evolution.

John Evans' view is that the fully-elected upper house became

more assertive in using its powers, for example, by appointing committees. It was then that the Legislative Council became much more active in amending bills and returning them to the Legislative Assembly. There are records that will show the increase in that work—the number of bills that the Council amended and returned to the Assembly. We had processes for disagreement and select committees to draw up reasons.

There were occasions when some bills never went any further once the Legislative Council insisted on its amendments.

The nature of the membership of the upper house changed, according to Les Jeckeln:

I think that there was more talent coming into the Legislative Council and it was a different kind of talent. A number of members had been trade union secretaries who had come up through the ranks and were able to address a crowd or a meeting. They were able to speak volubly, and in some cases they would speak at the drop of a hat and go on for 20 minutes or a half hour for whatever reason. But it was totally different to examining legislation or the higher requirements of being a member of parliament. In general, the new membership took a far greater interest in legislation than in the early years of my time on the staff. But they were a different type of member; they seemed to have a purpose different to some members in the 1950s and 1960s.

Ann Symonds agrees:

When I first got in there, the Council only sat from 4.30 in the afternoon and usually for a couple of hours. The Labor people were trade unionists who spent their time at work and were free to come in at 4.30, and the lawyers on the Liberal side finished in court and came in at 4.30. There was a different rate of pay for the upper house, it was a small sum – much smaller than the Assembly. Things changed rapidly with the election of the Council by the people. There was a different type of MLC coming in. There were more career-minded people, so it changed the atmosphere of the place.



A particular change was the increasing number of women in the upper house. Lis Kirkby was an Australian Democrat MLC from 1981-98 and Leader of the Party during that period. She has commented:

The fully-elected Legislative Council introduced a new element on both sides of politics. There were more women, and I was very impressed by the calibre of the women elected ... They were all women of talent who used their education and training in the service of the Parliament as well as their party. Their intellect and integrity was outstanding, not always matched by that of their male colleagues. Although these women were loyal to their parliamentary colleagues, they were not uncritical of party policy.

Kirkby has said of the changes in the Council that flowed from the 1978 reconstitution:

I believe that the democratically elected government has a right to put its policies forward and to legislate its policies, but I do think it needs to be held to account and prove its case, not just have the upper house as a rubber stamp. There is certainly more debate now and, of course, there is



Elisabeth Kirkby

the ability to send legislation to a committee, which did not exist before. Committees can call witnesses to present different points of view. I believe it is essential that there is a brake on government.

The 1934 reconstruction of the Legislative Council ultimately resulted in a house that was stable to the point of somnolent. If not a complete wrong turning, it did lead into a *cul de sac*. The 1978 reconstitution, by contrast, initiated a revitalisation. Democratic election led to a rejuvenated house of review, with enhanced powers of scrutiny and an energetic and efficient committee system.¹⁸ Connecting the Council with the people gave it legitimacy and purpose. The ramifications are still unfolding.

¹⁸ On the development of the committee system see the first monograph in this series, D Clune, *Keeping the Executive Honest: the modern Legislative Council committee system*, Legislative Council of NSW, 2013.

Select Bibliography

T Bramston ed., *The Wran Era*, Federation Press, 2006.

E Chaples, H Nelson and K Turner eds., *The Wran Model: electoral politics in NSW, 1981 and 1984*, OUP, Melbourne, 1985.

D Clune and G Griffith, *Decision and Deliberation: the Parliament of NSW, 1856-2003*, Federation Press, 2006.

L Jeckeln, 'Reform of the Legislative Council of NSW', *The Table*, No 47, 1979.

L Lovelock and J Evans, *New South Wales Legislative Council Practice*, Federation Press, Sydney, 2008.

M Steketee and M Cockburn, *Wran: an unauthorised biography*, Allen and Unwin, 1986.

M Turnbull, 'How Wran was outflanked on upper house reform', *The Bulletin*, 14.2.1978.

K Turner, *House of Review?: the NSW Legislative Council 1934-1968*, Sydney University Press, 1969.

K Turner, 'Some changes in the NSW Legislative Council since 1978', in Reid, GS ed, *The Role of Upper Houses Today*, Proceedings of the Fourth Annual Workshop of the Australasian Study of Parliament Group, University of Tasmania, 1983.





Appendix one: extract from referendum statistical returns

LEGISLATIVE COUNCIL REFERENDUM

17 June, 1978

Constitution Further Amendment (Referendum) Act, 1930

(Constitution and Parliamentary Electorates and Elections (Amendment) Bill, 1978.)

I have caused to be submitted according to law to the electors qualified to vote for the election of Members of the Legislative Assembly, the question –

“Do you approve of the Bill entitled ‘A Bill for an Act to provide for the election of Members of the Legislative Council directly by the people?’”

Herewith are submitted for presentation to Parliament, statistical returns showing the votes recorded for “Yes” and for “No”-

The aggregation of these returns shows the following to be the result of the vote:

Number of votes recorded in favour of the bill (YES) 2 251 336

Number of votes recorded not in favour of the bill (NO) 403 313

Number of ballot-papers rejected as informal 69 727

W.R.CUNDY,

Electoral Commissioner.

The Honourable W. F. Crabtree, M.P.,

Minister for Lands and

Minister for Services.

LEGISLATIVE COUNCIL REFERENDUM

Number of Electoral Districts 99

Date of Writ 12th May, 1978

Day of polling 17th June, 1978

Writs returnable by 11th July, 1978

RESULT OF REFERENDUM

Votes in favour of the Bill 2 251 336

Votes not in favour of the Bill 403 313

Margin in favour of the Bill 1 848 023

Percentage in favour of the Bill 73.21%

ENROLMENT AND VOTING

Total enrolment 3 075 105

*Votes cast 2 724 376

**Percentage voted to enrolment 88.54%

* Includes votes accepted under Section 106.

** In arriving at the above percentage, Section 106 votes have been excluded from the number of votes recorded.

BALLOT-PAPER

CONSTITUTION FURTHER AMENDMENT

(REFERENDUM) ACT, 1930

Electoral District for which voter is enrolled:—

Directions to Voter

The voter should indicate his vote as follows: —

If he approves of the Bill he should place the number “1” in the square opposite “Yes” and place the number “2” in the square opposite the word “No”.

If he does not approve of the Bill he should place the number “1” in the square opposite the word “No” and place the number “2” in the square opposite the word “Yes”.

Submission to the Electors of a Bill

Do you approve of the Bill entitled “An Act to provide for the election of Members of the Legislative Council directly by the people?”

YES

NO

Appendix two: analysis of the referendum vote by electorate by Antony Green

LEGISLATIVE COUNCIL REFERENDUM

SUMMARY OF TOTALS AND PERCENTAGES FOR EACH DISTRICT

	Votes				Percentage			
	Yes	No	Informal	Roll	Yes	No	Informal	Turnout
Albury	18 148	4 182	457	22 787	81.3	18.7	2.0	87.4
Armidale	15 038	7 074	937	23 049	68.0	32.0	4.1	89.5
Ashfield	24 481	3 372	770	28 623	87.9	12.1	2.7	84.3
Auburn	26 727	3 109	842	30 678	89.6	10.4	2.7	89.6
Balmain	24 548	2 089	432	27 069	92.2	7.8	1.6	83.9
Bankstown	26 944	3 093	625	30 662	89.7	10.3	2.0	90.4
Barwon	14 359	5 304	343	20 006	73.0	27.0	1.7	87.5
Bass Hill	26 837	2 734	625	30 196	90.8	9.2	2.1	90.7
Bathurst	17 989	4 038	415	22 442	81.7	18.3	1.8	91.1
Blacktown	28 277	2 959	970	32 206	90.5	9.5	3.0	90.3
Bligh	19 577	4 951	848	25 376	79.8	20.2	3.3	76.5
Blue Mountains	20 070	3 145	614	23 829	86.5	13.5	2.6	90.0
Broken Hill	15 128	1 378	2 124	18 630	91.7	8.3	11.4	87.8
Burrendong	16 413	5 482	774	22 669	75.0	25.0	3.4	91.1
Burrinjuck	15 017	4 631	617	20 265	76.4	23.6	3.0	92.1
Burwood	20 281	4 107	640	25 028	83.2	16.8	2.6	87.8
Byron	15 187	6 762	1 519	23 468	69.2	30.8	6.5	86.8
Campbelltown	36 171	3 959	976	41 106	90.1	9.9	2.4	89.9
Canterbury	26 043	2 775	776	29 594	90.4	9.6	2.6	82.4
Casino	13 822	7 533	420	21 775	64.7	35.3	1.9	91.3
Castlereagh	14 060	4 252	866	19 178	76.8	23.2	4.5	87.8
Cessnock	21 021	1 800	547	23 368	92.1	7.9	2.3	94.4
Charlestown	28 792	3 173	650	32 615	90.1	9.9	2.0	92.6
Clarence	17 482	8 046	2 003	27 531	68.5	31.5	7.3	88.9
Coogee	23 593	2 782	670	27 045	89.5	10.5	2.5	81.0
Corrimal	26 575	2 858	534	29 967	90.3	9.7	1.8	91.2
Cronulla	25 887	3 724	407	30 018	87.4	12.6	1.4	89.0
Davidson	23 302	3 530	499	27 331	86.8	13.2	1.8	89.0

	Votes				Percentage			
	Yes	No	Informal	Roll	Yes	No	Informal	Turnout
Drummoyne	24 308	3 311	857	28 476	88.0	12.0	3.0	88.9
Dubbo	19 697	5 005	345	25 047	79.7	20.3	1.4	90.9
Earlwood	26 137	3 531	756	30 424	88.1	11.9	2.5	91.1
East Hills	27 109	2 864	527	30 500	90.4	9.6	1.7	92.4
Eastwood	24 708	4 868	422	29 998	83.5	16.5	1.4	90.2
Fairfield	27 275	2 606	919	30 800	91.3	8.7	3.0	87.6
Fuller	25 291	3 359	483	29 133	88.3	11.7	1.7	90.0
Georges River	27 092	3 367	434	30 893	88.9	11.1	1.4	91.2
Gloucester	18 514	5 398	836	24 748	77.4	22.6	3.4	91.1
Gordon	19 158	6 755	410	26 323	73.9	26.1	1.6	86.7
Gosford	27 440	3 696	558	31 694	88.1	11.9	1.8	89.6
Goulburn	16 778	3 990	319	21 087	80.8	19.2	1.5	87.6
Granville	24 064	2 618	1 350	28 032	90.2	9.8	4.8	89.9
Hawkesbury	27 759	5 962	649	34 370	82.3	17.7	1.9	88.1
Heathcote	27 783	2 451	450	30 684	91.9	8.1	1.5	91.3
Heffron	26 097	2 699	583	29 379	90.6	9.4	2.0	85.4
Hornsby	26 701	4 702	918	32 321	85.0	15.0	2.8	89.1
Hurstville	24 743	3 563	1 383	29 689	87.4	12.6	4.7	90.1
Illawarra	30 998	2 844	486	34 328	91.6	8.4	1.4	90.5
Kirribilli	16 745	3 748	991	21 484	81.7	18.3	4.6	78.4
Kogarah	27 195	3 299	582	31 076	89.2	10.8	1.9	89.0
Ku-ring-gai	22 065	5 954	371	28 390	78.8	21.2	1.3	87.0
Lake Macquarie	27 685	2 925	483	31 093	90.4	9.6	1.6	92.1
Lakemba	26 356	2 892	1 508	30 756	90.1	9.9	4.9	87.6
Lane Cove	22 342	4 904	505	27 751	82.0	18.0	1.8	85.4
Lismore	15 542	8 023	534	24 099	66.0	34.0	2.2	90.4
Liverpool	29 210	2 777	990	32 977	91.3	8.7	3.0	88.8
Maitland	21 934	4 042	714	26 690	84.4	15.6	2.7	93.7
Manly	22 809	4 258	486	27 553	84.3	15.7	1.8	85.5
Maroubra	24 942	2 760	1 120	28 822	90.0	10.0	3.9	87.5
Marrickville	27 537	2 151	436	30 124	92.8	7.2	1.4	82.0
Merrylands	28 877	3 295	1 112	33 284	89.8	10.2	3.3	89.8
Miranda	26 538	3 350	446	30 334	88.8	11.2	1.5	90.9
Monaro	18 238	2 951	992	22 181	86.1	13.9	4.5	84.4

	Votes				Percentage			
	Yes	No	Informal	Roll	Yes	No	Informal	Turnout
Mosman	18 630	5 078	1 172	24 880	78.6	21.4	4.7	83.7
Mount Druitt	28 028	2 753	1 112	31 893	91.1	8.9	3.5	89.6
Munmorah	27 987	2 943	1 023	31 953	90.5	9.5	3.2	91.2
Murray	14 157	3 126	442	17 725	81.9	18.1	2.5	80.7
Murrumbidgee	17 059	3 529	377	20 965	82.9	17.1	1.8	88.6
Nepean	30 089	5 025	393	35 507	85.7	14.3	1.1	89.9
Newcastle	22 260	2 075	430	24 765	91.5	8.5	1.7	90.4
Northcott	24 562	5 282	1 489	31 333	82.3	17.7	4.8	89.5
Orange	18 595	4 855	402	23 852	79.3	20.7	1.7	92.1
Oxley	17 011	8 134	389	25 534	67.7	32.3	1.5	91.4
Parramatta	26 212	3 160	466	29 838	89.2	10.8	1.6	88.6
Peats	30 566	3 877	484	34 927	88.7	11.3	1.4	90.3
Penrith	30 969	4 107	505	35 581	88.3	11.7	1.4	89.6
Phillip	22 358	1 850	619	24 827	92.4	7.6	2.5	78.1
Pittwater	21 685	4 057	566	26 308	84.2	15.8	2.2	84.7
Raleigh	15 841	7 750	445	24 036	67.1	32.9	1.9	92.0
Rockdale	24 600	2 733	816	28 149	90.0	10.0	2.9	87.7
South Coast	24 842	4 350	561	29 753	85.1	14.9	1.9	90.2
Sturt	13 031	6 387	624	20 042	67.1	32.9	3.1	90.8
Tamworth	17 244	7 316	807	25 367	70.2	29.8	3.2	91.1
Temora	12 474	6 050	256	18 780	67.3	32.7	1.4	91.1
Tenterfield	12 626	6 067	707	19 400	67.5	32.5	3.6	89.7
The Hills	26 466	3 873	422	30 761	87.2	12.8	1.4	90.7
Upper Hunter	18 747	5 089	1 177	25 013	78.6	21.4	4.7	92.5
Vaucluse	19 819	4 082	583	24 484	82.9	17.1	2.4	79.8
Wagga Wagga	16 202	6 471	403	23 076	71.5	28.5	1.7	89.6
Wakehurst	24 880	3 797	1 044	29 721	86.8	13.2	3.5	87.2
Wallsend	31 360	2 984	832	35 176	91.3	8.7	2.4	93.6
Waratah	26 272	2 470	379	29 121	91.4	8.6	1.3	92.7
Waverley	19 720	2 694	730	23 144	88.0	12.0	3.2	79.8
Wentworthville	29 584	3 190	589	33 363	90.3	9.7	1.8	91.0
Willoughby	20 752	4 488	732	25 972	82.2	17.8	2.8	85.6
Wollondilly	23 512	5 449	416	29 377	81.2	18.8	1.4	90.4
Wollongong	24 708	2 471	853	28 032	90.9	9.1	3.0	89.0

	Votes				Percentage			
	Yes	No	Informal	Roll	Yes	No	Informal	Turnout
Woronora	27 452	2 814	688	30 954	90.7	9.3	2.2	89.5
Yaralla	24 051	3 609	526	28 186	87.0	13.0	1.9	89.2
Young	15 549	5 568	413	21 530	73.6	26.4	1.9	92.1
Totals	2 251 336	403 313	69 727	2 724 376	84.8	15.2	2.6	88.6

Category (Seats)	% Yes	% No	% Informal	Turnout
Central Zone seats (66)	88.0	12.0	2.8	88.1
Country Zone seats (33)	76.4	23.6	3.0	90.0
Labor Party seats (50)	89.2	10.8	2.6	88.8
Liberal Party seats (30)	84.8	15.2	2.6	88.6
Country Party seats (18)	72.1	27.9	3.1	90.4
Independent seats (1)	85.1	14.9	1.9	90.2

Highest Yes percentages – Marrickville (92.8), Phillip (92.4), Balmain (92.2), Cessnock (92.1)

Lowest Yes percentages – Casino (64.7), Lismore (66.0), Sturt (67.1), Raleigh (67.1)



Appendix three: the free conference managers

Legislative Council Managers

- **Hon Sir John Fuller:** Born 22 September 1917 – death 31 January 2009. Member of the Legislative Council representing the Country Party 1961 – 1978. Served as Minister for Decentralisation, and Planning and Environment. Held the position of Vice-President of the Executive Council and Leader of Government in the Council 1968 – 1976. Prior to entering the Council, Fuller worked as a stockman and jackeroo, was a wheat, wool and cattle farmer, and also served as a councillor of the NSW Graziers' Association. At the time of the free conference he was the Leader of the Opposition in the Council.



- **Hon Max Willis:** Born 6 December 1935. Member of the Legislative Council representing the Liberal Party from 1970 – 1999. He was Leader of the Opposition in the Council 1978 – 1981 and President 1991 – 1998. Willis was the first Chair of the Standing Committee on Social Issues. He was a solicitor and a long-serving member of the Australian Army Reserve. At the time of the free conference, Willis was the Deputy Leader of the Opposition in the Council.



- **Hon Thomas Sidney McKay:** Born 1 October 1909 – death 5 January 2004. Member of the Legislative Council representing the Liberal Party from 1966 – 1978. He was the Chairman of Committees 1969-78. Prior to entering the Council, McKay was a barrister. He served in the Australian Air Force during the Second World War and was a prosecutor at the Rabaul war crimes trial in 1947. At the time of the free conference he was the Chairman of Committees.



- **Hon Dr Roger de Bryon-Faes:** Born 2 October 1914 – death 12 October 2001. Member of the Legislative Council representing the Liberal Party from 1961 – 1981. De Bryon-Faes served as the Government Whip 1970 – 1976 and Opposition Whip 1976 – 81. Prior to entering the Council, he was a chemist and chiropodist. At the time of the free conference he was the Opposition Whip.



- **Hon Dr Derek Freeman:** Born 16 May 1924. Member of the Legislative Council representing the Liberal Party from 1973 – 1984. Prior to entering the Council, Freeman was in private dental practice and was President of the New South Wales Branch of the Australian Dental Association. He served in the Australian Air Force during the Second World War. At the time of the free conference he was an opposition backbench member.



- **Hon Walter (John) Holt QC:** Born 7 May 1929 – death 9 March 2012. Member of the Legislative Council representing the Liberal Party from 1972 – 1984. He served as Liberal Leader and Deputy Leader of Opposition in the Council 1976 – 1977. Prior to entering the Council, Holt was a barrister. In 1982, he was appointed a Queen's Counsel and was a Judge of the District Court 1993 – 2002. At the time of the free conference he was an opposition backbench member.



- **Hon Sir Asher Joel:** Born 4 May 1912 – death 12 November 1998. Member of the Legislative Council from 1958 – 1978. Joel commenced his term in the Council as an Independent but in 1959 become a member of the Country Party. Prior to entering the Council, he was a journalist and served in the Australian Navy during the Second World War. Joel later founded a public relations firm and was instrumental in the establishment of the

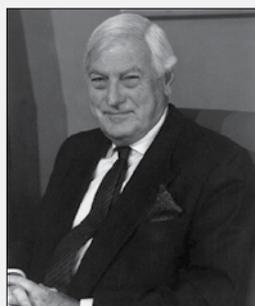


Public Relations Institute of Australia. At the time of the free conference he was an opposition backbench member.

- **Hon Florence (Violet) Lloyd OBE:** Born 17 May 1920 – death 11 February 2013. Member of the Legislative Council representing the Liberal Party from 1973 – 1981. Prior to entering the Council, Lloyd had a career as an interior decorator and was Metropolitan Female Vice-President of the NSW Liberal Party. At the time of the free conference she was an opposition backbench member.



- **Hon Robert Baron Rowland Smith:** Born 15 October 1925 – death 29 June 2012. Member of the Legislative Council representing the Country/National Party from 1974 – 1999. He served as Minister for Sport, Recreation and Racing from 1988-1991. Smith held the positions of Deputy Leader of the Opposition in the Council 1978-1988 and Deputy Leader of the Government in the Council 1988-1991. Prior to entering the Council, he served in the Australian Navy during the Second World War. He later became a wool grower and processor and was Chairman of the Australian Merino Wool Campaign Committee and the Wool Buyers' Association. At the time of the free conference he was an opposition backbench member.

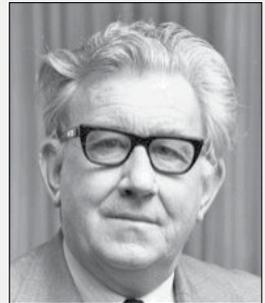
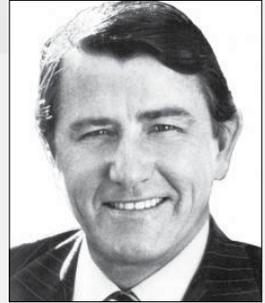


- **Hon Sir Louis (Adrian) Solomons:** Born 9 June 1922 – death 20 December 1991. Member of the Legislative Council representing the Country/National Party from 1969 – 1991. Served as the Chairman of Committees 1988-1991. Prior to entering the Council, Solomons served in the Australian Army during the Second World War. He was later a solicitor and was a member of the Australian Broadcasting Corporation New South Wales Advisory Committee. At the time of the free conference he was an opposition backbench member.



Legislative Assembly Managers

- **Hon Neville Wran QC:** Born 11 October 1926 – death 20 April 2014. Member of the Legislative Council representing the Labor Party 1970 – 1973. Member of the Legislative Assembly for the seat of Bass Hill representing the Labor Party 1973 – 1986. He was Premier 1976 – 1986. Wran also held the positions of the Leader of Opposition 1973 – 1976 and Leader of the Opposition in the Legislative Council 1972 – 1973. Wran was admitted as a solicitor in 1951, became a barrister in 1957 and a Queen’s Counsel in 1968. At the time of the free conference he was the Premier.
- **Hon Laurie John (Jack) Ferguson:** Born 4 September 1924 – death 17 September 2002. Member of the Legislative Assembly 1959 – 1984 representing the Labor Party for the seats of Merrylands (1959 – 1962), Fairfield (1962 – 1968), and Merrylands (1968 – 1984). Served in a number of portfolios, including Ports, Public Works, and Housing. He was Deputy Premier 1976 – 1984. Prior to entering Parliament, Ferguson worked as a farmhand, textile worker, builder’s labourer and bricklayer and was an organiser for the Building Workers’ Industrial Union. He served in the Australian Army during the Second World War. At the time of the free conference he was the Deputy Premier.
- **Hon John Brophy (Jack) Renshaw:** Born 8 August 1909 – death 28 July 1987. Member of the Legislative Assembly 1941 – 1980 representing the Labor Party for the seat of Castlereagh. Served in a number of portfolios including Treasury, Local Government, Highways, Public Works, and Housing. He was the Deputy Premier 1959 – 1964 and Premier 1964 – 1965. Renshaw was Treasurer once again 1976 – 1980. Prior to entering Parliament, he was a farmer and businessman. Renshaw was an alderman on



Coonabarabran Shire Council from 1937 to 1944 and served as the Shire's President 1939 – 1940. At the time of the free conference he was the Treasurer.

- **Hon Peter Cox:** Born 4 December 1925 – death 6 October 2008. Member of the Legislative Assembly 1965 – 1988 representing the Labor Party for the seat of Auburn. Served in a number of portfolios, including Transport, Mineral Resources and Energy, and Housing. Prior to entering Parliament, Cox worked as a public servant for the Department of Motor Transport. He served in the Australian Army during the Second World War. At the time of the free conference he was the Transport Minister.



- **Hon Patrick Darcy (Pat) Hills AO:** Born 31 December 1917 – death 22 April 1992. Member of the Legislative Assembly 1954 – 1988 representing the Labor Party for the seats of Phillip (1954 – 1981) and Elizabeth (1981-1988). Served in a number of portfolios, including Industrial Relations and Local Government. He was Deputy Premier 1964 – 1965 and Leader of the Opposition 1968 – 1973. Prior to entering Parliament, Hills worked as an engineer and was active in the Amalgamated Engineering Union. He served as the Lord Mayor of Sydney 1953 – 1956. At the time of the free conference he was the Industrial Relations Minister.



- **Hon Frank Walker:** Born 7 July 1942 – death 12 June 2012. Member of the Legislative Assembly 1970 – 1988 representing the Labor Party for the seat of Georges River. Served in a number of portfolios, including Attorney-General and Housing. Prior to entering Parliament, Walker was a solicitor. He became a barrister in 1976 and a Queen's Counsel in 1981.

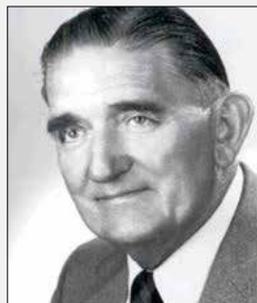


Walker was a member of the House of Representatives 1990-96. At the time of the free conference he was the Attorney-General.

- **Hon Donald Day:** Born 19 February 1924 – death 18 May 2010. Member of the Legislative Assembly 1971 – 1984 representing the Labor Party for the seats of Casino (1971 – 1981) and Clarence (1981 – 1984). Served in a number of portfolios, including Agriculture, Primary Industries, and Industrial Development. Prior to entering Parliament, Day worked as a fitter and turner and later established a car dealership. He served in both the Australian Army and Air Force during the Second World War. At the time of the free conference he was the Minister for Primary Industries.



- **Hon Henry (Harry) Jensen:** Born 12 June 1913 – death 27 August 1998. Member of the Legislative Assembly 1965 – 1981 representing the Labor Party for the seats of Wyong (1965 – 1973) and Munmorah (1973 – 1981). Served in a number of portfolios, including Local Government, Planning, and Roads. Prior to entering Parliament, Jensen worked as an electrician. He became an organiser for the Electrical Trades Union and was a delegate to the Trades and Labor Council. He became Mayor of Randwick in 1954 and was Lord Mayor of Sydney 1957 – 1965. At the time of the free conference he was the Minister for Local Government.



- **Hon William Frederick (Bill) Crabtree:** Born 31 May 1915 – death 12 July 2001. Member of the Legislative Assembly 1953 – 1983 representing the Labor Party for the seat of Kogarah. Served in a number of portfolios, including Lands, Services and Police. Prior to entering Parliament, Crabtree worked for the NSW railways. He subsequently became an office-holder in the Australian



Railways Union and then private secretary to the Hon Clive Evatt MLA 1947 – 1953. At the time of the free conference he was the Minister for Lands.

- **Hon Sydney David (Syd) Einfeld:** Born 17 June 1909 – death 12 July 1995. Member of the Legislative Assembly 1965 – 1981 representing the Labor Party for the seats of Bondi (1965 – 1971) and Waverley (1971 – 1981). Served in a number of portfolios, including Consumer Affairs, Co-operative Societies, and Housing. Prior to entering Parliament, Einfeld served in the House of Representatives as Member for Phillip. He was Vice-President of the New South Wales Jewish Board of Deputies, President of Executive Council of Australia Jewry and on the executive of the Australian Jewish Welfare and Relief Societies. At the time of the free conference he was the Minister for Consumer Affairs.





Appendix four: biographical details of the interviewees

- **Les Jeckeln PSM:** Born 29 September 1926. After serving on the ministerial staff of the Hon FP Buckley MLC, Jeckeln joined the Legislative Council in 1954. He served as Usher of the Black Rod 1966 – 1971, Deputy Clerk 1971 – 1977 and was Clerk of the Parliaments 1977 – 1989.
- **John Evans PSM:** Born 18 May 1947. Evans served on the Legislative Council staff from December 1971 to July 2007. His first position was as Clerk of Printed Papers. From there he progressed to Usher of the Black Rod and subsequently Clerk Assistant and Deputy Clerk. He became Clerk of the Parliaments in 1989. Following his retirement, Evans was appointed Parliamentary Ethics Adviser in June 2014.
- **Jack Hallam:** Born 10 September 1942. Member of the Legislative Council representing the Labor Party 1973 – 1991. Served in various portfolios, including Agriculture, Fisheries and Decentralisation. Hallam held the positions of Leader of the Government in the Council from 1986 – 1988 and Leader of the Opposition in the Council from 1988 – 1991. Prior to entering parliament he was a farmer.
- **John Hannaford:** Born 21 January 1949. Member of the Legislative Council representing the Liberal Party 1984 – 2000. Served in various portfolios, including Attorney-General and Health. Held the positions of Leader of the Government in the Legislative Council 1992 – 1995 and Leader of the Opposition in the Legislative Council 1995 – 1999. Hannaford was the first Chair of the Standing Committee on State Development. Prior to entering parliament he was a solicitor.



- **Max Willis:** Born 6 December 1935. Member of the Legislative Council representing the Liberal Party 1970 – 1999. Served in a number of positions including Leader of the Opposition in the Legislative Council 1978 – 1981 and President of the Legislative Council 1991 – 1998. Willis was the first Chair of the Standing Committee on Social Issues. Prior to entering parliament he was a solicitor.



- **Michael Egan AO:** Born 21 February 1948. Member of the Legislative Council representing the Labor Party 1986 – 2005. Served in various portfolios, including Treasury, Energy, and Gaming and Racing. Held the positions of Leader of the Opposition in the Legislative Council 1991 – 1995 and Leader of the Government in the Legislative Council 1995 – 2005. Egan was also Member for Cronulla in the Legislative Assembly 1978 – 1984. Prior to entering parliament he worked as a public servant, for the Australasian Meat Industry Employees' Union, and as an adviser to the Commonwealth Minister for Housing and Construction and Aboriginal Affairs, Les Johnson.



- **Elisabeth Kirkby OAM:** Born 26 January 1921. Member of the Legislative Council representing the Australian Democrats from 1981 – 1998. Kirby served as the NSW Parliamentary Leader of the Australian Democrats 1981 – 1998. She was a long-serving member of the Standing Committee on Social Issues and served on many other committees. Prior to entering parliament Kirkby was an actor.



- **Ann Symonds AM:** Born 12 July 1939. Member of the Legislative Council representing the Labor Party 1982 – 1998. Symonds was a long-serving member of the Standing Committee on Social Issues. She was the Deputy Chair when it was established in 1988 and became Chair in 1995, holding this position until her resignation in 1998. Prior to entering Parliament she was a teacher. In 1974 Symonds was elected to Waverley Municipal Council, becoming the municipality's first female Deputy Mayor in 1977.



- **Ron Dyer OAM:** Born 11 April 1943. Member of the Legislative Council representing the Australian Labor Party from 1979 – 2003. Dyer served as Minister for Community Services, Aged Services, and Public Works and Services. He was also the Deputy Leader of the Government in the Legislative Council 1995 – 2003 and Chair of the Standing Committee on Law and Justice 1999 – 2002. Prior to entering parliament, Dyer was a solicitor and later a member of Ron Mulock's ministerial staff.



- **John Jobling OAM:** Born 21 April 1937. Member of the Legislative Council representing the Liberal Party from 1984 –2003. Jobling served as the Government Whip (1988 – 1995) and Opposition Whip (1995 – 2003). He was also the Chairman of the State Development Committee in 1995. Prior to entering parliament Jobling was a pharmacist.



- **Jenny Gardiner:** Born 16 October 1950. Member of the Legislative Council representing The Nationals from 1991 – 2015. She became Deputy Leader of the Party in the Council in 2003. Gardiner was a member of the ICAC, Privileges and Electoral Matters Committees and served on a number of General Purpose and select committee inquiries. She was Deputy President and Chair of Committees from 2011 – 2015. Prior to entering parliament, Gardiner was the General Secretary of the NSW Branch of the National Party from 1984 – 1991.





Appendix five: Legislative Council of NSW: timeline of major developments

1823: the colonial Council – The Legislative Council of NSW was established in 1823 to give the colonists a voice in their government. Australia's first legislature, it had limited powers and was representative in a theoretical sense only. The Governor presided over the Council, which consisted of no more than seven or less than five residents of NSW appointed by the Crown. Six years later this was increased to between 15 and ten members.

1843: the blended Council – In 1843, the Council was reconstituted to include an elected element. The new legislature consisted of 36 members, 12 nominated by the Crown and 24 popularly elected, although on a restricted franchise. This Council was the first elected legislature in Australia. The membership increased to 54 in 1851, again with two-thirds elected. The Governor was no longer a member and the Council's powers were increased, although they still stopped well short of self government.

1856 onwards: a house of review – *The Constitution Act 1855* provided for responsible government in NSW, including an elected Legislative Assembly. The Legislative Council became the upper house, with its membership nominated by the Governor on the advice of his ministers. MLCs were initially appointed for five years, then from 1861 for life. There was no upper limit to the number of MLCs and by 1900 the number had reached 75. The Council was intended to be a house of review and a conservative check on the popularly elected Assembly. It could defeat or amend all bills, including money bills, and this soon led to conflict between the houses, for example, over the Cowper Government's land reform legislation (finally passed in 1861). However, the Council's lack of democratic legitimacy as a nominated house and the ability of governments to 'swamp' it by nominating new members meant that, on the whole, it exercised its review function moderately. Conservatives realised that too obstructionist an attitude raised the risk of abolition of the Council.

1861-1900: reform attempts – Conflict with governments led to pressure to reconstitute the Council as an elected house. By 1900, there had been eight unsuccessful attempts to reform either the powers or method of selecting

members of the upper house. Some were not pursued vigorously, as there was a basic consensus in favour of the *status quo*. The most serious conflict came during the Premiership of George Reid (1894-99). In June 1895, the Council defeated the Government's land and income tax bills. Reid went to the polls, campaigning on the issue of the powers of the upper house. After he was re-elected, the Council passed most of the disputed measures and Reid did not persist with his attempt at reform.

1910: the first Labor Government – the advent of Labor governments saw an increase in the intensity of conflict between the houses. Labor legislation tended to be treated more harshly by the Council than that of non-ALP administrations. The Council saw itself as the conservative gatekeeper against what it deemed radical measures. Labor, in turn, was committed to abolition of the upper house. Attempts by various governments to overcome upper house resistance by appointing more MLCs led to the size of the Council reaching a record 125 in 1932.

1925-1927: Jack Lang attempts to abolish the Council – In 1925 the Lang Labor government came to power with a program of social and economic reform. Faced with a hostile upper house, Premier Lang (1925-27 and 1930-32) sought to abolish the Council by 'swamping' it with Labor Party members who would vote in favour of abolition. The Governor subsequently appointed 27 new MLCs. Despite these appointments the bill to abolish the Council ultimately failed as two Labor members crossed the floor to vote against it and another five were absent. In 1926, Premier Lang asked the Governor to appoint a further ten members to the Council, but on this occasion the Governor refused.

1928-1932: safeguarding the Council – Following Lang's abolition attempts and Queensland Labor's 1922 abolition of its upper house, in 1928 a newly-elected conservative government acted to safeguard the Council's existence. This was achieved by amendments to the *Constitution Act 1902* which inserted a new provision, section 7A. This section, which is still in force today, provides that a bill to abolish the Council or alter its constitution or powers must be passed by both houses of Parliament, and approved at a referendum, before it can receive assent. Between 1930 and 1932, the second Lang Government attempted to repeal section 7A, and made a further attempt to abolish the Council. However, the validity of section 7A was upheld by the courts, and Lang's second attempt failed.

1934-1978: the indirectly elected Council – Following Premier Lang’s dismissal by the Governor in 1932, a conservative Government took office with a commitment to reform the Council. In 1934 the upper house was reconstituted into a body elected by the members of both houses voting as an electoral college. The Council’s membership was fixed at 60 with 15 members retiring every three years. The Council no longer had the power to amend or reject money bills. The role was regarded as part-time and MLCs were paid an allowance rather than a full salary. The aim was to produce a less party dominated chamber than the lower house and attract members with a wide range of expertise who were unwilling to become full-time politicians.

1943-1961: further attempts to abolish the Council – Abolition of the Council remained Labor policy after the 1934 reconstitution. There were three further unsuccessful attempts by Labor to reform or abolish the Council in 1943, 1946 and 1959-1961. In 1943 the Constitution (Legislative Council Reform) Bill which sought to reform the Council into an elected body was defeated in the Council. In 1946 the Legislative Council Abolition Bill was defeated in the Council on the casting vote of the President. In 1959-61 the Constitution Amendment (Legislative Council Abolition) Bill passed (after lengthy proceedings in the Parliament and ultimately the courts) and was put to a referendum. The abolition proposal was defeated, with 57.6 per cent voting no. This was the last attempt to abolish the Council.

1978-onwards: the directly elected Council – Labor Premier Neville Wran (1976-86) was committed to popular election of the Legislative Council. A referendum on reconstitution of the Council, supported by the ALP and Liberals, was overwhelmingly approved in 1978. It provided for a House of 45 MLCs directly elected under a proportional representation system, with one third retiring at each general election. The first popular election for the Council in 1978 initiated the transition, and after the 1981 and 1984 polls all MLCs were directly elected. As a consequence, MLCs were paid a full time salary from 1985. In 1987, a group voting ticket system was introduced, which allowed electors to vote ‘above the line’ for a party. Preferences were distributed according to a ticket lodged by the party with the Electoral Commission.

1988-onwards: growth of the committee system – The first Council Standing Committees, Social Issues and State Development, were established, in 1988. This was followed by the establishment of the Law and Justice Committee in 1995. In a further development, five General Purpose Standing Committees were set up in 1997.

1991-onwards: the rise of the crossbenches – Under Nick Greiner (Liberal Premier 1988-92), the size of the Council was cut to 42 and the term of office reduced to eight years. A consequence of these changes was that the quota required for election was lowered, thus increasing the likelihood of independent and minor party representation. The Government's proposals were passed at a referendum held concurrently with the 1991 election. No government has had a majority in the Council since 1988, with the balance of power being held by the crossbenches. From 1999 to 2003, there were 16 Government, 13 Opposition and 13 minor party and independent MLCs.

1996: *Egan v Willis* – On 2 May 1996, the Council found the Treasurer in the Carr Government, Michael Egan, guilty of contempt for failing to table documents in accordance with an earlier order of the house and suspended him. Egan refused to leave and the Usher of the Black Rod was directed to remove him from the Chamber. The Treasurer later commenced legal proceedings in the Supreme Court against the President, Max Willis, and the Usher, challenging the validity of the suspension and his removal from the precincts of the Parliament. In November 1996 the Court of Appeal dismissed the case. Egan appealed to the High Court which dismissed the appeal, and upheld the validity of the Legislative Council's power to order the production of state papers and suspend the Minister for noncompliance with the order.

1998: *Egan v Chadwick* – In 1998, the House ordered further papers to be produced. The Government again refused to table the requested documents, claiming they were subject to legal professional privilege and public interest immunity. The Treasurer was found guilty of contempt and suspended. Egan once more challenged the power of the house to suspend him. In *Egan v Chadwick*, the Court of Appeal held that the Council's power to require production of documents extended to documents for which claims of legal professional privilege and public interest immunity could be made at common

law. However, by 2-1 (Priestley J dissenting) the Court held that the Council could not compel the production of Cabinet documents.

1999: further voting system changes – Concern over the manipulation of preference flows and an unusually large ballot paper at the 1999 Council election led to reforms to the voting system. Group voting tickets were abolished and voters were able to allocate preferences ‘above the line’. Tighter registration requirements for parties were introduced.

Legislative Council of NSW History Monographs:

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

D Clune, *Connecting with the People: the 1978 reconstruction of the Legislative Council*, Number Two, 2017.

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