

LEGISLATIVE COUNCIL

ORAL HISTORY PROJECT

At Sydney on Thursday 7 July 2016

The discussion commenced at 10.30 a.m.

PRESENT

Mr David Blunt
Dr David Clune
The Hon. John Jobling

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

Mr JOBLING: I had been in country New South Wales for quite a number of years and in 1969 I had attempted to win the Federal seat of Paterson as a Liberal after Allen Fairhall retired. I eventually lost to the Country Party candidate, Frank O'Keefe. So I was blocked from going anywhere federally; could not get into the State lower House. We had several of the Liberals come through prior to 1983 who asked was I interested in the Legislative Council. The answer was: Yes, I was. So I duly nominated and went down to a preselection with exactly one vote in my pocket and we had 32 candidates. They reduced it to 20 after one cut, and then in the second cut I fortunately got in on that—I told them a fairy story based on the union movement in Newcastle, relating back to the troubles that were happening with the CFMEU in the coalmines.

We started at 8.00 p.m. and did not finish until nearly 5 o'clock the next morning. I was lucky; that was just enough to break the tension and so I managed to win a reasonable spot on the ticket. I wanted to become involved and contribute back. I thought I had something to offer and I believe you needed to put something back into the community so I was very, very pleased at that stage and quite honoured.

Dr CLUNE: When you commenced your term in 1984 what were you expecting? How did your experience meet the reality of what was there?

Mr JOBLING: I am not sure that I really knew what I was expecting. To be perfectly blunt about it, I doubt that any new member has really any concept of what is going to happen. They believe they are going to change the nation with the wave of a wand in the first three or four years and, of course, it never happens.

It was very interesting inasmuch as you had to do your own research, your own work and your own writing—in fact, if you wanted to type anything up and you could not type you had a great problem. We had five amanuenses handling 45 members. We were the last of the fully elected new system MLCs that came into the Parliament. You could see what former members, many years ago, in the Legislative Council would have been facing here in Sydney because they needed their own resources and staff to do the research and typing. It was fairly primitive in terms of the resources you had. If you were not a self-starter you did not have a chance. There was to be a change in subsequent years when the numbers in the House were reduced and a number of our members left. We lost three members and we were down to 42. It was a very interesting time.

Dr CLUNE: Looking back on the changes in 1978 what was your attitude to the reform of the Council?

Mr JOBLING: I did not have any great problems with it. I thought it was probably the smartest move that had been initiated in a long time—to make the Council a fully elected House as opposed to something like the British House of Lords. Some of my colleagues that were still there from the previous Council, I know, were not happy. They argued the Liberal Party and the National Party—it would have been the Country Party in those days—previously had complete control of the House and having agreed to this structure they had given away probably in perpetuity their likelihood of having control. And that it is how it turned out, rightly or wrongly, with the proportional preferential voting system. It is generally, I suspect, unlikely that any major party will have control of both Houses or, if so, it will be a rarity. I think it is a good thing.

Dr CLUNE: You were in the last group of elected members. The House was obviously in a process of transition. How do you think it was changing in 1984?

Mr JOBLING: Things were beginning to change in 1984. 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.

Dr CLUNE: I imagine the type of member coming in was also changing?

Mr JOBLING: Yes. Many of the new members had professional qualifications, plus the ability to comprehend, to understand and to speak. Some of the previous members were really top drawer, particularly if you look at some of the very highly qualified people in senior positions—I make no bones about that—but we were beginning to change to what I would call a base with a better representation of the population.

Dr CLUNE: Do you think the proceedings became more partisan?

Mr JOBLING: Ultimately, yes. I think the House, to a degree, began to change from what was basically, when I arrived, a fairly independent House. It would disagree with the Assembly, disagree with some of the amendments, put in some of its own amendments that the Assembly may not have liked. We were not bound by the joint party room meeting. That has now, of course, completely changed and it has become quite partisan.

Dr CLUNE: The House is supposed to be a House of review—that is its function. How effective was it in that role when you became a member of the Legislative Council and did that change?

Mr JOBLING: When I first came in—of course, it is a long time ago—trying to work out what was and what was not possible was quite difficult. By the time I had left I was part of the priority and policy committee that would set legislation. It became a lot more partisan and a lot more political—particularly as the lower House and the Leader would want to have their way. The Leader would try and insist that the Legislative Council do exactly what he wanted. I remember on several occasions telling him the answer was "No", which did not go down terribly well I can assure you.

On one occasion I even said "No" to the Leader at our party conference down in the old Masonic Centre. I said, "Look, you are wrong." We argued about it. I said, "I will give you two choices: I am prepared to go up on stage now and argue it with you and I will tear you to pieces; or if you would like to leave it until tomorrow you can ring me up and apologise, tell me I was right and you are not going to pursue it." That is exactly what happened. Of course, I got the evil eye for quite a while after that. That, in fact, came home to roost when we produced the State Development Committee report, which eventually got leaked and held back, and we put Brian Pezzutti in, changed 24 words and the thing became the Bible. I went back to being chief Whip.

Dr CLUNE: What are your views on the Council committee system, its effectiveness and how it developed?

Mr JOBLING: When I first came in—this is in 1984—committees were basically dominated by the Assembly, they ran most of them. The Joint Standing Committee on Road Safety, Staysafe, had a number of people from the Council. When we got to Government in 1988 we introduced the two basic standing committees, Social Issues and State Development, and made sure they worked, with supporting staff. At that stage the chairs of the two standing committees and myself as the Whip for the Coalition actually got staff. That became quite a radical change as we had the ability to do things and make sure that things happened correctly. The committees are in fact, the main way the Council has changed, the strength of the Council.

The standing committees were basically always controlled by a government chairman and had a government majority. This meant that, no matter what, you could be reasonably assured of what the committee was going to do. The Independents, of course, could present an independent report, which the Government could completely ignore if it wished.

When we were in opposition in 1995, one thing struck me: as a Minister or a senior office holder, were you sure that you were always told the facts and had you asked the right question to be told the facts? This led me to thinking that if certain things came up in a committee and a bureaucrat was asked correctly, the Minister might get a terrible shock. So it became a matter then of what question you are asking. I then proceeded to work on my Leader and the Premier on the grounds that there was a possibility here for the Legislative Council to set up—between three and five was my initial thinking—general purpose committees, individually covering a whole host of government activities. The concept was that they would be chaired by a non-Government member, and that the Government would not have a majority on each of the committees, so that something that was out there that the Government was ducking could be brought up. What I noticed about the scrutiny of the budget was a lot of the Ministers were basically lazy and a lot of the Opposition shadows had not really thought through the questions they needed to ask. So this started to put some pressure on them.

Dr CLUNE: The general purpose committees had a self-referencing power, did they not?

Mr JOBLING: Yes. They had three powers. They could have a reference from the Leader of the House or a Minister, a reference by the House, or a self-reference. I remember sitting down with John Evans and we were talking this through. It was not dissimilar to the Senate. We used quite a bit of the Senate structure to bring this into being. The one fear I had was that the committees could go into excess and the costs of running and staffing them would become unreasonable.

I initially convinced my people it was a good idea and it saved them being caught in the "Yes, Minister" situation, so we got the general purpose committees through. For most of the time they were well accepted. I believe it was about four or five years ago when the Government actually put their own member in as chair for most of them, which I thought was most unfortunate. It has gone back now to the way it was.

We had trouble getting members to come along and to perform, mind you, with only 42 members, dividing them up, so two or three members for this, two or three members for that. It became quite an impost on a lot of the members, particularly those based in the country, but the committee work was and still is, I believe, the long-term future. We need the Legislative Council to ensure that we do not finish up in what I call the Queensland situation where there is no challenging, and you can go and knock down the Palais dance hall at 3 o'clock in the morning and nobody can say anything about it.

I preferred and tried to get through the structure they had in the Senate where you could have a hearing on a fairly unlimited time or a whole day, and if one group or party really wanted to ask a series of questions, they could continue to pursue very specific topics. I have to say, the ALP in the Senate were very good at this. John Faulkner and his colleagues used to be very, very effective in asking questions. It was almost as if you were a batsman. The first 20 balls were fairly simple; you could swat them away. It was the twenty-first that rose savagely under your armpits and hurt like hell and exposed your weakness.

This is still a problem. I got my people to agree that we should change it but, for some incredible reason, when we put it to the House the Labor Party did not like the idea and nor did the crossbenches. Frankly, it was the crossbenches that stood to gain the most from this. It is still a matter I would hope may actually come to pass so time can be extended, the same as I would like to look at the block time allocation on the committees where you have 20 minutes, 20 minutes, 20 minutes in a rotating form. It can be very, very difficult to establish a line of questioning. My example was that, at that stage, we were looking at some of the problems in the police force where they had lost a large number of Glock pistols. I did not want to ask 50 or 60 useless questions about the rest of the police. I would have liked to take two or three items such as that and concentrate—get all the appropriate people in and question them severely as to why this happened, how that happened, what are they doing to fix it. That is what I had hoped to drive the general purpose committees into. There is still work to be done there, in my humble opinion.

Mr BLUNT: On the subject of committees, I recall that you came back fairly recently as an expert witness in a nursing inquiry. What was the experience like and what observations do you have about your interaction with the committee system from the other side of the table?

Mr JOBLING: It was rather nice to be on the other side of the table. In fact, I came back as a member of Leichhardt Municipal Council on two occasions, once with an official speaking part relating to nursing and aged care facilities. I think the chairman had good control of it. There was still some interplay between the various participants—the Independents, Labor and the Coalition—which tended to be a little bit disruptive. Watching that and some other hearings where I sat in just as a matter of interest, I think it was working fairly well. I think it tends to get generally to the answers. You have to bear in mind a lot depends on the officer that is advising the committee and are the questions sufficiently broad enough to ensure they get a balanced approach for both sides to dig out the facts. It was quite good to watch and it was doing what it needed to do. They are the two things that you have to watch: that it is sufficiently balanced so that both sides have got a fair go, and the timeframe. I do not mind the same question being asked 10 different ways by three people on that side if need be. That is good. That is how you find out. It really does work wonders by asking it a slightly different way.

Dr CLUNE: You had a lot of experience as both Government Whip and Opposition Whip. Would you like to talk about your experiences and your thoughts on that role and how you performed it?

Mr JOBLING: Yes. I think it is a little bit like going to a rugby game and at the end of the game everybody remembers the winning side and the losing side, and if more than five people think the referee did

something wrong the chances are you had a very large family there. You are not there to be the centre of attraction; you are there to make it work and to negotiate. When I first came in I noticed a number of things. I noticed that you made your own private arrangement for a pair with the other side, and nobody knew where the hell you were or you were not. I thought that was crazy. Ministers or the Leaders are exactly in the same situation. I noticed there was no recording of pairs either, and that is something I introduced into *Hansard*.

I took the view that if a Whip cannot count he does not last very long. If we go back to a former Labor Whip, poor old Barney French, he got to that stage. In fact, it was with Ann Symonds who said to Barney, "Will you get me a pair? I am going to be away." This is before we got it down tightly. Barney forgot. Come the next day I said, "No I did not grant a pair. I do not know where she is. I was not told." There was a humongous flap in the Chamber. They were having a go at me and I let it go because we went out to lunch. I sent a message back to their Leader and I said "I think you had better withdraw the suggestions, otherwise I'll put the rest of the story on the table and I don't want to hurt Barney. I like the guy." They withdrew it and he resigned as Whip. The answer is he forgot.

I always wanted to keep one up my sleeve in case one of my Ministers forgot, or was late getting there or something else, and it worked many times, I tell you. I would talk with the Labor Whip each day and we would discuss if we wanted a pair and why. Just to go and see your grandmother or you wanted to go and see a film or there was a party meeting on, was not an acceptable reason. I always insisted my people give it to me in writing: when they were going, where they were going and what time they wanted a pair for.

Probably the funniest incident was when Robert Baron Rowland Smith, as you recall the Minister for Sport and Racing, applied for a pair to go to the races for the Hawkesbury Cup. I looked at this, and I went and saw my counterpart and we agreed. But I knew there was a dinner on, and it was pretty tough in the House at that stage with the legislation we were dealing with. I rang the particular course and said "What time do you need him from?" They said "Until about 5 or 6 o'clock" So I granted the pair until 7 o'clock, which meant he could not go to the dinner that night. He discovered this about three or four weeks later and came in to berate me. The audacity of not giving it. I said, "The truth of the matter is you were needed to present the cup. You were needed to be seen there. You were needed there to promote the Government but you were not needed for the rest and I needed you here because we were short on members." Off he went.

Probably three or four of my ministerial colleagues from time to time for some reason got involved in something, did not hear the division bells, did not do many things, and I managed to save them because I had a spare up my sleeve. It relied on, first, deciding I was going to go to see the other side. Second, it relied on them agreeing to it. Finally, I would return in writing to them: your pair from this to that at this and that is approved. There was no "I thought you said this" or "I thought you said that". It saved an awful lot of people, as I laughingly used to say, hastening into the Chamber in extremely short pants. I later worked out the pager system that we eventually set up could work down beyond the Wentworth Hotel, beyond David Jones going the other way, and down to about the Town Hall. I knew that in five minutes they could run and get back.

One of the other things that as a Whip I started to look at was the speaker's list, who spoke and for how long. We would determine who would speak and if I needed extra ones, how long they might like to speak for. Occasionally something would come down from the Premier that said "I want you to keep this going" or "I want you to keep control of this until after lunch or after dinner" or whatever it was. I would wander up to the speaker—assuming it was ours, I really could not do it to theirs no matter how many times I wanted to—and hand over one of two notes. One would say, "Brilliant speech. Keep going until I tell you to stop." You are standing next to them and they would look at this, and you would see their mind drain, their face go pale. The answer was I said, "I don't care if you recite *Three Blind Mice* in Latin starting at the end and going to the middle simultaneously: just keep talking." Equally I had a note for our members on the bench if they could think of anything to pass it up. The other interesting one was when you suddenly wanted to stop and go to something that was more urgent. The member might have only just begun and that note was: "Slight variation. I am sure it was a wonderful speech. You have a maximum of two minutes to conclude. Keep it in your drawer, change the date, and re-use it some other time." Members got used to this after a while. It meant that you could control your speakers, you could control the time. It would occasionally backfire but very, very rarely.

I remember one time Virginia Chadwick was in the House dealing with a bill after dinner. We were waiting on one to come across from the Legislative Assembly. I did not know how I was going to get it through first read the next day. I had a look at the House, and this is not a disrespectful comment, the Opposition did not have many there. The Opposition did not have anybody I thought who was going to be sharp. So I said to Virginia, "I want you to wind this speech up and adjourn it to a later hour of the sitting. Then I want you to pick

this bill up and deal with it." She looked at me as much to say, "You're nuts". But I said, "Look, pick it up, introduce it, take it through the necessary bits to get the first read through, introduce the second read and seek the leave of the House to incorporate your second reading speech in *Hansard*." She said, "But I don't have the second reading speech." I said, "Well they won't know that." If the worst comes to the worst, apply the Fred Nile tactic: read the leave of the bill and then adjourn it and go back to the other one. She, in fact, did this and it worked brilliantly. The comment she made—and having been able to work with the Ministers pretty well, and we were both from up in the Hunter area—she said, "Jobbo, you bastard. I've got sweaty palms." Normally there would be more time to do this, we could both put our case to the upper House Leader. I would put mine and if the Minister did not want to do it they would put theirs. The Leader would determine and whatever he determined was fact.

Another arrangement that I had—and I guess I have never disclosed it until now—was an understanding with the Leader and the Premier that if I said no to a pair that was that. If a member objected vehemently, the suggestion was that they go and speak to the Leader. Only once in all the time I was there did they ever contact me and ask for a change because of something that neither of us had expected to happen. They would listen to them, sympathise with them, and tell them they would go and talk to me and try and convince me but it was still my call. A bit naughty, I suppose, but it did work rather well.

Then there is the question of members wanting to cross the floor—in our party you can. We may have had a joint party room and they expressed this but they would then have to come to me and tell me the reason. I would then call our people together so that we all knew. They would make the point that they wanted to do this and, of course, they would proceed to do it. I would offer them the option of a pair if they wished to speak to it and not vote against it or, alternatively, I could try and find them a pair to not come at all. If that happened, I would have to be looking to see how I could somehow get rid of one of the Opposition numbers.

On the pairing structure it could only be the Coalition and the Labor Party; I could not pair with an Independent. The Labor Party had the same principle; they accepted that. Obviously it works because, when we went out of government, Dorothy Isaksen—the new Labor Whip—rang me and said, "What do I do? How do I do it?" I said, "I will help you all that I can except when it comes to getting the numbers for a vote, then I will do my darnedest to make sure you have got five and we have seven." The classic statement!

If the two sides do not trust one another, it can be chaos. I know there was a time when one of the Labor members, Peter Primrose, had a university exam and we had a vote to elect the President. I said to the Labor Party, "No, I cannot pair you for that one." That created a degree of angst, but the point was this is a voting matter for the whole House, it is not controlled by one party or the other or the Government. Whilst they were unhappy about it, that was the only time I specifically pulled rank and that created a little bit of a kerfuffle, to say the least.

Other bits that went with the job were making sure your members came to the committees and keeping track of whose turn it was for a parliamentary trip. We tried to balance the numbers because there were always a lot more Liberals than Nationals. We had one of the Nationals as my deputy, which meant I could occasionally get out. The advantage we had in those days was that the Government and Opposition Whips had offices down beyond the President's room, which meant that when the House was sitting you could move down there and if need be, if something was happening, you could get in the Chamber within 15 or 16 seconds to fix it.

Another incident that comes to mind is that on one occasion one of our colleagues had been swimming *au naturel* with his girlfriend in the swimming pool after hours. When I heard about it, I said, "Oh, you know there is a security camera there?" I said, "If the other side sees that, you are dead." So we were able to deal with that. One of my other colleagues who was looking at a possible bankruptcy came to me—because they understood that that was what they needed to do—and I was able to talk to other people and solve the problem for him, so he continued to be a member.

The Whip needs to know where his or her members are, chase up bills from the other House, have control and make it work and deliver what the Leader and the Premier need to get through. But if one House is moving its work faster than the other it is always a problem. You watched carefully in relation to quorums—sometimes you could be a nasty person with that just to upset the other side who were having lots and lots of special guests in. The press gallery Christmas party at one stage created all sorts of havoc because the Greens had I think about 40 or 50 amendments which they kept moving one after the other. The division bells were endless and you just could not go anywhere.

One of the jobs I had was of briefing new members about what to do. You have got to teach a lot of new members that they have to be very careful and understand what they are saying. Occasionally they suffer from an acute attack of foot-in-mouth disease, which is often deadly. With the greatest respect to my dear old mate John Johnson I said: Be very careful of him. He has the best system that I know of extracting a little bit here and a little bit there. The guy is unbelievably cluey. He will tell you that your colleagues have said this, is that so? And you say "yes" so that he knows it's so. Or "The Minister said this" or somebody said that, or "What do you think?" Before you realise it he knows the whole basis of what is being plotted. He was very good at that.

From 1991 to 1995, in both Houses we were virtually a minority government. This led to some very interesting situations. In the Assembly, the Independents could move a bill 90 degrees and when it got to the Legislative Council, bless their little souls, they could move it another 90 degrees, so you had a bill that was 180 degrees away from what you wanted to do. So you had to be able to pick that and stop it. You had to go and negotiate with most of the Independents and talk them through things, see what amendments they wanted and what amendments they would have. It did not always work. There were some Independents who you thought you had but if you did not get to them just before they sat down in the Chamber you would say to the Leader, "I think I have got the numbers but I don't trust so and so". About 4½ minutes into the sand they would get up and walk over to the other side.

It was a matter of making sure people were there, the program ran on schedule, the bills got dealt with on time, and you did not get bluffed into not dealing with the work. I did sit the House twice beyond 24 hours. That always worked very well. In one particular instance Fred and Elaine Nile were going to filibuster for hours and as we came back after dinner I said, "Fred I hope you have had a good meal and I hope you have got a strong bladder." Neither of them lasted very long, about 1½ to 2 hours between them. There were some bills that just did have an urgency and had to happen. It was a pity and I looked occasionally at the staff who you could see quietly wilting with almost a sharpened stick under their chin to keep them smiling at you.

The big thing as Whip I found useful was looking at the standing orders and working with the Clerks. As Whip it is important that you know when you can object and when, if need be, you can move dissent from the chair's ruling—which the chair hates, of course, particularly if they are not one of yours. I succeeded in that twice. You normally can get a compromise so you don't have to do it, because it is not a motion that I particularly liked using. The same as I declined to use, except on the one occasion, the motion that the person be no longer heard. I do not think that is proper but I accept that it needs to be there. Other than that one occasion, I declined to use that motion and had some strong arguments with some of my colleagues who thought that we should.

I did pass on to Don Harwin, who succeeded me, a very large folder of ifs, buts, wheres and whys of what I had done and why I had done it, with a footnote that said, "I thought you might find this interesting. It is all yours now. You can agree, disagree, throw them out or do as you wish. It is your call but just for your own background this is why I did certain things." I was never given anything like this and it had never been done before. I think it is imperative that these sort of positions have some sort of background to go with them. I am not sure with the succession of Whips how it goes on our side now; I am pretty sure the other side has never done that. I am pretty sure that their Whips were never given the latitude that I initially was given. I argued for it on the grounds that Ministers had enough to do without worrying about the administrative side. I think that is probably still the way it should be.

The Whips need to be the eyes and ears of the Leader and Ministers, and the eyes and ears of the members who have got grumbles. You are the sounding board both ways, so you have a pretty fair idea of what is going on. The only other thing is that, in those cases, you need to be the perfect Chubb safe.

Dr CLUNE: What is your view about the rise to prominence of the crossbenches, the pluses and minuses and how did it affect your life as the Whip?

Mr JOBLING: One person said to me, "If you are going to succeed, you have to be able to sell ice blocks to Eskimos and have bigger banjo shovels for the devil to move coal." The problem I have with single issue crossbenches—whilst they argue that the proportional vote is the only way to go and they are representing a percentage of the people out there—it is normally only a very small percentage and they come in about one issue. Sometimes if it is a critical vote and the House is evenly divided, they can demand all sorts of things for their vote and hold the State to ransom, on the basis of what they want.

To be fair, the best exponent I ever encountered of that was Bob Brown in Tasmania. He was quite brilliant at extracting millions of dollars for Tasmania for his vote. If you said no, it meant that he could hold up or destroy something that was intrinsically important for the progress of the State or the nation. That problem is still there. Some of them, where you have got more than one, will not vote the same way, which makes it interesting. You have literally got to talk to all of them. You cannot assume that Joe X or Fred Y will vote for the Government or vote against the Government. It just does not work. They get very annoyed about it.

In the early stages, we tried inviting some of the crossbenches to the Coalition party room so they could hear the amendments we were proposing, et cetera. It probably worked for about six months. Then they began meeting with the other crossbenchers and, knowing what we wanted or needed, they would work up their amendments, which could be absolutely contrary to what we were looking for, so we had to cease that. We did not necessarily tell them all of what we were proposing because they could not be trusted. It is sad.

You know, it is a difficult one. The concept of independence is good. But how many do you have and what is their purpose for being there? Are they there to disrupt or simply push one idea and every time it comes up say, "I want, I want", like Oliver Twist and his begging bowl? I do not see a simple answer to that.

Dr CLUNE: What are your views on the balance between the Government's right to legislate and the House's right to review the work of the executive?

Mr JOBLING: I think that the review function is the way the House was set up and structured to be. The concept there is reasonable, I think—if it works properly. I have always held that in the first term a new Government may well come in with a rather large mandate and majority. They need in that first term a little bit of a leavening to ensure that without the experience they do not go off at tangents that are crazy. In the second term normally they would lose a percentage of that majority and come back to not a very big majority. I think at that stage common sense has come in and I believe then that perhaps they have the right to be able to pass through a lot of their legislation. Normally in the third term, if you look at the State's history, you tend to have a change of government, and so you go back to stage one. Interestingly, when bills originate out of the Legislative Council and go to the Legislative Assembly, it becomes the House of review, although I do not think they have ever grasped that idea.

You have the option, of course, of considering and sending a bill back to the originating House. This can happen a couple of times before you withdraw the bill and try to bring it back at a later date. Generally, most of the legislation gets passed—80 per cent or 85 per cent. I suppose it is in keeping with the commonly argued 80:20 rule where 80 per cent is pretty easy and it is the 20 per cent you have the disagreement about. In the latter case, is a matter of negotiation—if you cannot get it through, you have a think about it, undertake more discussions, see what amendments you can put in and if you can come to a reasonable compromise. I have always had the view, and argued it with Ministers, that 80 per cent of something is better than 100 per cent of nothing. Just to be bone-headed on either side produces the 100 per cent of nothing.

Dr CLUNE: There is a tendency now not to introduce bills if it looks like they will not get through the upper House.

Mr JOBLING: That is a short-circuiting progress. I would rather take it to a position where I know what the other side is really objecting to, and then put it on the record. If you want to genuinely negotiate it through, you know what your difficulty is and your problems really are, rather than the hearsay or somebody going on the front page of the "Daily Terror" and making an allegation which, of course, sometimes is totally untrue. I come back to: you know what the main objections are and why and how people are objecting. If you ever want to get some of that bill through you know what is happening. Some bills involve such a massive change, you only get them through like water dripping on a stone. You get 20 per cent of it now, and maybe another 20 per cent, then maybe another 20 per cent and with the passage of time people will see the benefit and you will eventually get there.

Dr CLUNE: In your career in the Legislative Council who are the members that impressed you the most and why?

Mr JOBLING: Ted Pickering impressed me. I must say I always got on well with him. He had a lot of forward-thinking ideas when we came in. He had thought through the changes that we needed to introduce. Ted, unfortunately, always had the problem that he had a bit of a bull-at-a-gate syndrome. But he introduced a lot of

new ideas, a lot of thoughts and progressive ideas. We had been out of government for a long, long time and they were sensible enough to be brought in.

John Hannaford is the other person who probably impressed me the most—very thoughtful, very careful of what he said. Hannaford and I got on extremely well. I could almost think like him, and I think he could almost think like me, which may have been an advantage or a disadvantage. I decline to decide which one it was. He was well-balanced, neither Right nor Left, and was prepared to listen to both sides of the argument.

When Mike Gallacher was fairly new as Leader I went to great lengths to ensure that he understood the wheres, whys and hows of it. I like Duncan Gay, the Nationals Leader. I could not help verballing him in my valedictory speech because he reminded me, as I said, of sitting at the Gare du Nord watching this weather-beaten old Breton fisherman with a face carved of stone. I said the only thing that is missing here with Duncan is the Gauloises and his Calvados to drink. He knew how to do brinkmanship brilliantly, with a little bit of luck with one leg hanging over. He always managed to bring it back. At the same time, I described him as a marshmallow and a pussycat—he really was quite a softie.

Probably nobody has ever said this but everybody talks about all the friends that they make in Parliament. You make a lot of acquaintances, both when you come in, going up the tree, and you discover a lot are there with a big knife trying to get you on the way down. Anybody who can actually leave the Parliament after about 20 years and say they have got five good friends is very, very lucky—real friends; not acquaintances, not users, not backstabbers. It may be cynical, but one tends to become that after looking at a lot of things for a long time.

Dr CLUNE: What were your major achievements during your career in the Legislative Council?

Mr JOBLING: I think probably getting the new members up to speak and become a full member within two to three weeks of the House sitting. There was the recording of the pairs in *Hansard*. It meant we had control of the numbers and understood that we were not suddenly going to be short on the floor. With the recording of the pairs, you knew who was away and it made the record more correct. If somebody had a real problem with an issue, they could speak against it and then if they wished to I could pair them and they could say, "I wanted to vote for it but that evil Whip paired me". The development of the two initial standing committees and driving them to do the work was pretty important. Also getting the general purpose committees up and running and working as estimates committees. They are probably the principal ones.

At one stage I was the most northern Liberal past the Hawkesbury. There were only Virginia Chadwick and myself as Liberals in the Hunter. We then had a few more but we seem to have gone back to a rather delicate situation again. Listening to your constituents who would come and talk to you was important, and being able to succeed in sometimes correcting things that were wrong. There were always a number of those. I used to always believe you had to listen to everyone. I used to say to the new members you will hear 100 complaints or get 100 letters, 99 of which are either pure activist or bone crazy but it is that hundredth one you need to listen to and act on because they are dead right and if you do not you are in trouble.

One thing I thought I succeeded in was setting up trust between the Ministers of both Houses and myself, between me and the Leaders of the Labor Party, and the ability to negotiate with the Independents, particularly in our House, and, if need be, even to go and talk to the lower House. When I first came in I knew all the Labor Ministers from my involvement in the Hunter and many other things. In those days I was politely told, "You can't go and talk to them." I said, "Why not? How else will I know what they are thinking?"

There was the committee I was on to look at the running of the dining room and other similar things. For example, looking at the question of buying the wines and ensuring that the list in the NSW Parliament had 98 per cent or 99 per cent New South Wales wines and 1 per cent or 2 per cent only of exceptional wines from other States; it is the national Parliament that has a cross-section.

The other thing I think that was important was the position we had to take in *Egan v Willis* and *Egan v Chadwick* to establish the powers and structure of the Legislative Council. There are some unique powers, even the power to have a particular judge come before us. I thought our House was going to vote to dismiss him but they didn't, and that surprised me. When you look at the budget, it is quite clear in section 5A of the Constitution that even if the Legislative Council disagrees with changes to the annual budget and wants to send back an amendment, the Government can take that budget to the Governor and it gets passed. One of these days I suspect you will have a challenge where there is a change by the Council to the budget relating to a new item. I

have grave doubts whether the existing 5A covers it. One of these days that is going to happen and I shall watch, if it happens in my time, with great interest.

Mr BLUNT: That is a very good point because section 5A of the Constitution Act has never been the subject of a matter that has gone to court; section 5B has in *Clayton v Heffron* in the attempt to abolish the House in the early 1960s. So there are some judicial statements about how to interrupt section 5B, but section 5A has never gone to court. That is a very good segue to the second half of the interview, which is in relation to the so-called "Egan cases". You have spoken about the work that you did in the creation of the general purpose standing committees during the period from 1995 to 1999.

Mr JOBLING: Michael Egan was not happy and nor was the Premier.

Mr BLUNT: That was also the period when the Egan cases took place. At the outset did you ever think that the Government's resistance to the Council's assertion of its power to call for State papers would end up before the High Court?

Mr JOBLING: Frankly, I did. The reason I say that is, whilst it had never been tested as such, there were clear signs from Michael Egan previously that they did not want to table papers. There had also been previous signs from our own Government under Greiner and Fahey. The public servants had to make sure that they took off all the yellow Post-It notes that were on requested documents, and they would selectively give you what was there. This, of course, became the case in the Lauer-Pickering inquiry where they sent in boxes of documents but no index as to what was in each box. I think we had about 20 or 30 boxes. There was this wall of not knowing where to go and look for things.

Mr BLUNT: I think I recall members of that committee wheeling trolleys to and from the committee room.

Mr JOBLING: You could not take it away and you could not photograph it. At one stage I had the view that the bureaucrats got told to come and index it, which they certainly did not like at all and fought vigorously against. That has now changed. You also have the introduction, initially of Laurence Street, as a mediator. Some of the things were already out in the public arena but they would argue they were commercial-in-confidence. That was stupid. Michael Egan had a wicked sense of humour. If anybody was going to challenge it, it had to be Michael. It did not surprise me in the least when he sat there looking at poor old Warren trying to remove him. It even went further: Where does he throw him out of the Chamber to? Is it to the front door or is it the street?

It became necessary to test because if that power was not valid, the ability of the Council to question the executive failed totally and secrecy and confidentiality became the order of day. That had been growing under freedom of information: you would get a page with the heading on it and all the rest would be blanked out. Then they decided they would charge you for it, which was another interesting thing. Mind you, the latter was probably reasonable because you had serial litigants who kept wanting phone book after phone book after phone book. They did not ever go anywhere with it; they were just a nuisance. No, I fully expected the challenge to go to the High Court. I thought it was important it did and that it be determined.

Mr BLUNT: What then was your response to the judgments of the High Court in *Egan v Willis* and the Court of Appeal in *Egan v Chadwick*? Do you believe that they were a positive development?

Mr JOBLING: I was pleased with both. *Egan v Chadwick* became the obvious follow-up. As I said, knowing Michael very well, it did not surprise me in the least that he was then going to try an addendum, shall we say, to his failed first attempt. I think the outcome made it very clear about the powers of the House. I think it made it very clear that it had the potential of a true House of review. I think it made it clear that the committees could ask for these things, and therefore be genuinely able to determine a fact rather than having to rely on hearsay or allegations that may or may not be able to be substantiated. That is always a dangerous thing in bringing a finding down—you have got nothing to justify it.

I still think it can be abused. This is a fear I have, where it is a litigant inside the Chamber or a member pushing an activist's or a litigant's political view who can get the numbers and it just creates untold nuisance by having all these boxes put together and brought in here. In fact, there were so many on one occasion I think John Evans had to move out of his office. That is a dangerous situation that can bring the whole thing undone in time. It can come undone in the matter of expenditure for doing the right and proper work of a review and

investigative committee. Looking at it now, I can see a bit of development in that direction which does cause me some worry. Documents are delivered to the House, the committee members may look at them or sometimes have a staffer review them. You cannot photograph them, you cannot take them away and technically quoting from them is a tricky business. There are a few ways you can do it, but it requires a great deal of skill. Normally if there is something refused you can take it to the mediator and, well yes, you may get that document. That does open up a lot of doors. But the difficulty is what do you report to the House? There really is not that much, so back to the 80:20 argument. In a number of cases, with committees being Independent-controlled, I suspect it is becoming a fishing expedition. I might be doing them an injustice but I just have the feeling that sometimes they really have not got anything. So let us get all the papers and when we go through them see if we can find something.

Mr BLUNT: Reflecting particularly on that period on those two decisions in 1998 and 1999 through to 2003, but also looking at things since then, do you think the power recognised by the courts and now regulated by Standing Order 52 has been used effectively by the House?

Mr JOBLING: Standing Order 52 came in after me, but probably it could have come in a lot earlier. Is it effective? I think generally the answer is yes. The important part was to establish that principle. The ability of the Legislative Council in New South Wales is slightly different to many of the other States. There is still a huge potential for bureaucrats to put up the shutters the minute anybody asks for anything. Without being totally unkind, but intending to be unkind a little bit, they are almost like the perfect insurance company when a claim comes in. You deny it at least six or eight times before you get beaten into having to grudgingly make some form of payment. The public servants will give you one page or two pages, but it is the whole story that you need to be able to understand the true picture, not that bit of the picture they have grudgingly given you. Therefore, I think the power is essential. You are going to see it used more and more and it will produce more effective outcomes for transparency.

Mr BLUNT: What are your views on governments claiming legal professional privilege and public interest immunity over certain documents?

Mr JOBLING: I can understand the Government wanting to do that. In fact, that is probably the first fall back position that you have in Government. I would immediately tend to become suspicious of a Government wanting to claim that, because, again, the cynical part of me says, "Now, what is in there they are trying to hide that I do not know about?" You have to stop a bureaucracy or a government doing that. It has started to grow again a bit under the freedom of information legislation. They still tend to say no on a lot of occasions to anything they think is contentious. There is always the time, of course, they should be worried when someone does not take off the yellow Post-It note on an email that is there.

Mr BLUNT: Can you shed any light on the process through which the provision for an independent legal arbiter was arrived at?

Mr JOBLING: That was a long discussion. The question became if something cannot be introduced to break this deadlock, the public servants will put a yellow Post-It on anything they want and say it is Cabinet-in-confidence. Therefore, they can give you nothing and you can find out nothing, and even when you get into Government, the papers will probably be sealed. The question was, what is a legitimate, legal and sensible way of being able to say, "If it really is something that is that much in confidence, fair enough". The question became: what is the basis that would be fair, what was the basis that could deal with this? Quite a number of proposals were looked at. Eventually we started looking at the mediator option, and, therefore, the decision was, the mediator needs to be of judicial standing and preferably of senior judicial standing. That is the basis behind it, in that we could not find anyone else who was sufficiently independent enough, was skilled enough at looking at a lot of these documents, and had no axe to grind. We took the view that that was a sensible way of dealing with it. Yes, it would cost, but it would overcome the problem and so we went down that track. It seems to have worked fairly well. If they classify something as in confidence, there would be a justification as to why. An independent arbiter fitted the bill, from my perspective and from my colleagues' perspective.

Mr BLUNT: What do you make of instances where governments claim Cabinet confidentiality as a means to exempt documents from the power of the House to order their production?

Mr JOBLING: I think there is probably some justification in some cases where something is underway, incomplete, or there are still negotiations being carried out and the final tender has not been agreed to, but eventually all the tender prices will become public. I can understand if they have not resolved it that you

cannot then go back and have a second pseudo tendering option when somebody suddenly decides to put a second one in. For those sorts of reasons, for legal reasons and for national security reasons I can accept that, and if it went to the mediator he would probably rule that way, too, almost certainly.

I think the Government and the bureaucracy will want to claim something is confidential that they do not want out there in public. I do not think that is necessarily the way to go. My attitude is: I am sorry you may not want it out there, it may make you look like a dill. If you have made a mistake, the usual way is to get it out there, announce it as soon as possible and tomorrow it is fish and chip wrapper. The longer you do not sort it out, the more it becomes a growing concern that eventually will do you a great deal of damage.

Mr BLUNT: Should the ability of governments to claim Cabinet confidentiality of documents be tested at some point?

Mr JOBLING: There really should not be a need for it, but I suspect that, like the Egan cases, it will eventually come up sooner or later. It may take somebody who wants to be very stubborn on one side or the other, there may be some peculiar reason as to why it happens, but eventually all these things, if they reach an impasse will come up to be tested in court.

Dr CLUNE: When we talked to Ron Dyer on Tuesday, he was a very strong defender of Cabinet confidentiality on the basis that the system would cease to function if everything that was said in Cabinet could be disclosed.

Mr JOBLING: I can understand that. Most of the stuff in Cabinet is verbal. You get 15 or 20 people sitting around a table and you are coming to a decision and wanting to argue why you did. A lot of the reasoning in arguments may well be able to be kept confidential. But you have got to work out more precisely what is Cabinet-in-confidence because the bulk of it is not. It has long been a government prerogative—and, I can assure you, a ministerial thought—that we should not tell anybody about anything. But you come back to the three legs, the judiciary, executive and the Parliament. If the Parliament is the representative of the people, it is entitled to be asking the questions. I think that more care is needed in what is Cabinet-in-confidence. There are matters that are incomplete, I can go along with that, but there are also lots of matters that are completed, that are about as interesting as watching grass grow. There is the possibility of abuse. It was part of the argument we put for the mediator to deal with this. Documents are either genuinely Cabinet-in-confidence or they are not. It is like the argument of being half pregnant: it is an impossibility. It is either honest or it is not.

Mr BLUNT: What do you see as the most significant changes in the Council during your term?

Mr JOBLING: A major change that has occurred in the Council is the acceptance of having a larger number of Ministers—initially it was maybe one or two at the most whereas now you find you have got four or five. I think the lower House's belief that only they have people of ability is somewhat shattered.

The other change, of course, is the growth of the Independents. It has certainly changed the balance in the Legislative Council. I think it is going to stay that way in perpetuity unless the voting system is changed. I like optional preferential in the lower House but the proportional preferential in the Council is beyond most voter's comprehension. The success of the so-called “preference whisperers” has been extraordinary in the past. Whether that will continue we will have to wait and see. I think that is a worry.

In terms of my Party, a significant change is the move from the Council being totally independent to now virtually having a joint meeting with the Assembly members and a consensus being determined there. Both Houses have a degree of say in who becomes the Premier but up until recently they did not have a say in who became the Leader of the Legislative Council.

Mr BLUNT: What is your assessment of the Council and its role today?

Mr JOBLING: I think the Council has now become established as a genuine, positive House through the Egan cases, through other activities that have been undertaken, and through the committees. I would like to see some changes in the committees' time allocation and their ability to spend more time with specific questioning of a bureaucrat. When the general purpose committees were set up I did not particularly want Ministers there. That is something that needs to be considered, because it is the bureaucrats who will be able to give the background and undisclosed information.

I think the House has probably become more factionalised. I note all the doors to members' offices are closed. When I was there, if a door was closed I wanted to know why. I could walk not only into my own colleagues' or my ministerial colleagues' offices but I could also walk into the Opposition or the Independents' rooms and talk to the people who were there. I suspect that does not happen anymore and it is a lot more difficult to have a friendly working atmosphere to solve problems.

I think the Council is very much here to stay. I don't think it is ever going to be in a situation where any move to abolish it will succeed, and nor should it, because it still is true to its original intention as a House of review.

Mr BLUNT: There is a great deal of food for thought in your entire interview, but particularly in your answers to those last few questions. There are some really interesting points for us to reflect on. It was fascinating. In conclusion, on behalf of Dr Clune and myself I thank you for your preparation for today and the thoughtful nature of your contributions. The time you have given us and the observations you have shared with us are all extremely valuable. More than that, on behalf of the Department of the Legislative Council and on behalf of my predecessors who you have mentioned I take this opportunity to place on the public record our thanks for your contribution to the Legislative Council and to the people of New South Wales.

Mr JOBLING: Thank you, David.

Discussion concluded.