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LEGISLATIVE COUNCIL

ORAL HISTORY PROJECT

At Sydney on Thursday 11 February 2016

The discussion commenced at 11.00 a.m.

PRESENT

Mr David Blunt
Dr David Clune
Dr Elisabeth Kirkby

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

Dr KIRKBY: I joined the Democrats in 1977, shortly after the Party's formation, and was number two on the Democrats Senate ticket in 1978. I then stood for the lower house seat of Cessnock, a totally unwinnable seat for anybody except the Australian Labor Party. In the meantime I had been voted under the Australian Democrat Rules number one for the Senate ticket for 1980. I was leant on to stand down, first, because they thought I was too old and, second, obviously because I was a woman.

So I did stand down and, though I was asked to stand for the Legislative Council in 1981, by this time I'd had several elections and I thought: "I don't know why I am doing this. However, I'll do it; I'll give it a go and see what happens and if it doesn't work, well then that's it, I'm off, I'm going to do something else." However, I stood for election and it came down to preferences for the last seat in the Legislative Council. The two contenders for the last seat were Bronwyn Bishop and me. Of course, the Democrats were a very small party and we did not have very much money or very many members who could be scrutineers.

I was absolutely amazed, as the count went on, that members of the Liberal Party, who shall be nameless, came to me and said, "Don't worry. We're looking after you." Then about two days before the announcement of the final count one of them came to me and said, "You can claim victory. You have won the seat." I was very tentative and said, "No, no. I've got to wait until the official announcement. I will look so stupid if it is not correct." So I waited and indeed I just scraped in, which at that time was an enormous plus for the Democrats. It was also the start of the very interesting period in the Legislative Council when it was moving from an indirectly elected to a fully elected House.

At that time, I had met socially some members of the Legislative Council who had come in under the old system. One of them, Clyde Packer, said to me at a social function, "Oh, it's a waste of time, you know. It's just the old boys' club. They never really do anything." So I thought, "Oh dear." Of course, when I was elected in 1981, it certainly still was an old boys' club. I mean, we never sat until four o'clock in the afternoon and then you frequently broke for dinner and I honestly do not think there was a great deal of really important legislation that was ever discussed at length and certainly it was not sent to committees.

I do not think there was review of legislation in those days as there is now. As a member of the International Commission of Jurists [ICJ] I get copies of the Joint Legislation Review Committee publications and it seems to me that they make, on occasion, very sensible recommendations that nobody takes any notice of. That is very sad, but at least they are on the record. As a member of the ICJ I think we are getting slightly impatient about the fact that the Committee is not given the ability to promote its recommendations. As you know, the president of the ICJ committee is John Dowd, a former Attorney-General and a long-serving Liberal member of the House.

Dr CLUNE: What was your approach to your role as the Leader of the Democrats in the Legislative Council?

Dr KIRKBY: I was there by myself under the old system when you were given an office and a desk and an amanuensis. The amanuensis system, as it was then called, was a very strange one. These poor women—and I think it was implicit in their employment contract—just took down shorthand notes of what you might want to say and then handed you back what they had typed up. You had no personal staff. It was extremely difficult to keep abreast of the legislation. There were members of my party who had very strong views about various things and would bring both their professional expertise and their ideas to me, but they could not help me to implement them. Les Jeckeln, who was the Clerk when I was first elected, gave me useful advice about the House, but I had no personal staff to offer policy advice or assistance. So in order to get your ideas into some logical cohesion you really had to depend on your party and whatever assistance you could get from people with authoritative knowledge.

I remember once saying to Michael Kirby, "If I am going to do this job then I think I had better get a law degree." He said, "Oh, no, for heaven's sake, don't do that. You do not need a law degree—it will only make things more complicated; you need a degree of common sense." When the upper house was fully elected, members were entitled to staff and resources and you got stronger support, but before that it was not very easy to make reasoned comments on any piece of legislation. So one just hoped one was doing the best one could, but it was a difficult period.

Dr CLUNE: What do you think were the main achievements of the Australian Democrats in the Legislative Council?

Dr KIRKBY: I will have to be honest and say that I do not think the Democrats achieved what we should have achieved or might have achieved if we had been a bigger party. For example, we never had the number of members that the Greens have at the moment. There was also conflict between Richard Jones and myself. He did not always wish to follow what I believed was the right course of action and eventually he resigned from the Democrats. I think that was a very sad situation. It was not unique; it happened between Fred Nile and Marie Bignold.

I think a major achievement was the industrial relations legislation in the early Greiner Government. For that legislation I introduced some 300 amendments. The Minister came and sat in the Legislative Council, and I believe that had never happened before, and debated all these amendments. He accepted some of them but obviously not all, because the Government had its own agenda. It was determined to break what it considered to be the excessive power of the unions. I think that ameliorating that legislation was one of my biggest personal successes.

Also during the Greiner era there was the issue of changing teacher promotion which the Minister for Education could not get through the upper house. I opposed it, which led to the Premier asking me to go over into his office and discuss the matter with him personally—I think initially to see whether he could make me change my mind. That was a very interesting interview and he was extremely courteous. I went over there with some trepidation because I believed I was probably going to be leant on. But it was not like that at all. He just discussed my views in a courteous manner and accepted them. When I was leaving he made a half-apology to me and said, "I am sorry; I should have talked to you earlier." I was totally gobsmacked by that. It was one of the errors, I would say, of his administration that in the long run did not actually do them very much good.

Dr CLUNE: After that did things change? Did the government brief the crossbench?

Dr KIRKBY: Not in the sense of it being a formal briefing—although I suppose they would call it a formal briefing. We would be invited to listen whilst either the relevant Minister or the Minister's adviser told us in greater detail the implications of a piece of legislation. Of course, in many cases it really was not very valuable because it was doctored information. It was really a selling exercise to promote the Government's point of view.

Dr CLUNE: How did the upper house change when it became fully elected in 1984?

Dr KIRKBY: 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. Consider the Labor women: Meredith Burgmann, Anne Symons, Deirdre Grusovin, Carmel Tebbutt and Janelle Saffin. Patricia Staunton was only a member of the Council from 1995 to 1997, but she went on to achieve much more than would have been possible as an MLC, becoming Chief Magistrate and later Deputy President of the Mental Health Tribunal. I remember Jenny Gardiner in the National Party and Marie Bignold, who was originally in the Nile group but became an Independent. Virginia Chadwick was Minister of Education and later President of the Council, before retiring to take up the position of Chair of the Great Barrier Reef Authority. 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.

There was also the influx of other minor parties and Independents. That meant the Independents more or less had, depending on the legislation and whether there was a very strong feeling about the legislation, to work together. And that was difficult because of the vast gulf that existed between me as a Democrat and Fred Nile as a conservative religious member. So it was most unlikely that Fred Nile and I would agree on anything. And so it was with some of the other crossbench members that I worked with. But if you differ from someone ideologically that does not mean you do not respect their opinions. It was really about having meetings and working out the points on which you agreed. It was not making the decision to manipulate the government and put it under pressure; it was just trying to find out what things you agreed on and what things you did not.

Dr CLUNE: Since 1988 no party has had a majority in the Council. Do you view this as a positive development?

Dr KIRKBY: I think it is a very positive development. 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 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.

Dr CLUNE: As a key crossbench member, what principles guided you in that role?

Dr KIRKBY: To promote my party's policies and to support legislation only if I honestly and truly believed that that it would be in the best interests of the people. Importantly, there was a principle in the Democrats that we would never vote for retrospective legislation. That unfortunately has gone by the board now.

Another Democrat principle, which Don Chip insisted on, was that even if you had the numbers in an upper house you would never block supply. In a way, looking back on it, that was perhaps rather naïve because there are so many ways that a government can present things and get things through by suggesting they come under the heading of supply when in fact they do not. But it was a good working principle, not only for me but also for my colleagues in South Australia, which was the only other State Parliament where we had significant representation.

Mr BLUNT: Looking at the records, we see your name connected with a number of procedural reforms during the 1980s and 1990: the requirement for the government to produce a list of unproclaimed legislation, procedures for debate on disallowance motions and the establishment of the general purpose standing committees and the estimates process that led up to the general purpose standing committees. Would you like to reflect on any of those matters?

Dr KIRKBY: I believe they were of enormous advantage in preventing the government from going to extremes and were a great step forward in fostering a democratic Parliament. I do not think at the time I realised quite how revolutionary it all ended up being. Before that point it had been believed that the upper house of a parliament was really just to be a rubber stamp.

Dr CLUNE: Who were the members of the Council that impressed you most during your career?

Dr KIRKBY: Virginia Chadwick, John Hannaford and John Tingle come to mind. Lloyd Lange was a very impressive person. There were some members of The Nationals that I had great respect for, one being Duncan Gay. Doug Moppett, who came from western New South Wales, was able to remind members from the Hunter Valley or from the South Coast of the problems faced by people who lived far from Sydney. I remember with respect and affection Ann Symonds and the now deceased Paul O'Grady. Because of my background in theatre and television I had many friends who eventually suffered and died as Paul did. I greatly admired his attitude, the way he managed his condition and the way he died.

I was impressed by the first member of the Greens, Ian Cohen, although initially I regarded him as an unlikely politician. The relationship between the Democrats and the Greens has always been fraught because some of our Democrat senators, like Senator Spindler, were very anxious to have a negotiation that would mean the parties would merge. The Democrats were the result of a merger between three different centre parties. Bob Brown was always determined that if there was to be a merger it would be on their terms, not ours, so it never happened. I think it was a tragedy that it did not happen. I am very glad to see now that the Greens, after Bob's retirement, are developing perhaps a stronger ability than they had before. I think it is most unlikely that they will ever be a party of government. Perhaps if there had been a merger between Greens and Democrats the blending of the centre position with a strong emphasis on environmental matters would have seen the formation of an important new party.

Johno Johnson was President of the Council when I was first elected. The proceedings of the House were conducted with greater decorum than in the Legislative Assembly or the current House of Representatives in Canberra. Perhaps this was because there were so many members with legal training: Ron Dyer, Bryan Vaughan, Stephen Mutch, Sir Adrian Solomons. They were prepared to argue their position and reply to a counter-argument rather than rely on verbal abuse. Roy Turner was a staunch member of the Australian Labor Party of the old school. Jim Samios from the Liberal Party represented the many migrants who had come to Australia from Europe after World War Two and were known collectively as 'New Australians'.

I have left the ministers that I recall the most vividly to the end. I mentioned earlier my battle with John

Fahey, as Minister for Industrial Relations, in that mammoth debate in the Legislative Council, which also involved Jeff Shaw from the ALP. Ted Pickering, as Minister for Police, introduced changes to the NSW Police. Jack Hallam was a respected Labor Minister who was in office in my early years in Parliament. The Minister I remember most vividly is Paul Landa, a parliamentarian whom I had known before I was elected. I have just re-read the speech I gave in the House after Paul's tragic death at the age of 43 in 1985. If you read that speech, you will understand why I respect Paul so much. Since reading that speech again, my respect for him has been enhanced and not diminished; in the current state of politics in Australia, at both state and Federal level, I can't think of one member of either Parliament who would demonstrate Paul's courage and integrity. Paul marched against nuclear war on Palm Sunday, as I did, in the company of Patrick White and Arthur Gietzelt. Are there parliamentarians in 2016 from the Australian Labor Party or the Liberal and National Parties who would have the guts to follow his example? Today, it appears that political pragmatism has triumphed and pragmatists have no moral compass.

Mr BLUNT: What are your reflections on the actions that you saw take place in the Chamber in relation to the House asserting its power to order the production of documents that led to the Egan cases?

Dr KIRKBY: It was obviously a vitally important part of the development of the Legislative Council and has given this Parliament the ability to exercise legal restraints on the government of the day to a greater extent than any other State Parliament. I would venture to say, in some ways a greater power than that of the Senate.

Mr BLUNT: As a key crossbench member, can you recall members of the Opposition or the Government seeking to persuade you about what you should do in relation to the votes on this matter?

Dr KIRKBY: It is really interesting that, in relation to this or any other matter, I never, at any time in the whole of my period in the upper house, felt that I was being put under undue pressure by either the Government or the Opposition. Whether it was because they believed, "One Democrat, what is the point? It is not going to change anything", or whether it was because they thought, "There is no point in talking to her", I don't know, but I never felt I was being put under pressure.

Mr BLUNT: What is your assessment of the Legislative Council and its role today? What are your thoughts on possible future reforms to make the Legislative Council more effective?

Dr KIRKBY: I think that all the changes that have been made have been of great advantage to the Council, to the powers of the Council. I also believe that the most important work that was done, and is still being done, is by the committees.

I think the changes that now need to be made are not so much about the Council but to the preselection of candidates by the various political parties. As long as the Labor Party believes that Sussex Street is the place where you get your new members from, the rigid control of head office will continue. I think that it really goes to the way the two major parties in New South Wales have developed over the last 50 years. I doubt if the Liberal Party in, say, the 1970s or 1980s, was as strongly under the control of financial interests as it is now, and I certainly do not think that the Labor Party was so strongly influenced by Sussex Street. We seem now to have entered an era where to be a member of Parliament you have to start off as a party apparatchik. I do not think that was the same in the 1980s. It is very sad that this has been allowed to happen.

Mr BLUNT: Thank you, that was extremely valuable, particularly your reflections on the circumstances that brought you into the Legislative Council, on the Council that you found when you became a member, and the process of change during the 1980s. On behalf my predecessors, on my own behalf and on behalf of the staff of the Department of the Legislative Council, who continually read your name with regard to precedents and the procedural developments in the Legislative Council, I thank you for the valuable contribution that you made during your time as a member for the people of New South Wales.

Dr KIRKBY: Thank you, I've enjoyed it. I hope it has been of use.

Discussion concluded.