

LEGISLATIVE COUNCIL

ORAL HISTORY PROJECT

At Sydney on Friday 10 May 2013

The discussion commenced at 10.00 a.m.

PRESENT

Mr David Blunt
Dr David Clune
The Hon. Elisabeth Kirkby

Mr BLUNT: I will commence by saying a few words by way of introduction and to set the scene. Ms Kirby, we are extremely grateful to you for making the time available and travelling to be here today. We are also extremely grateful for your preparedness to share your memories and reflections on your time as a member of the Legislative Council with a particular focus, on this occasion, on the establishment of the committee system, given that we are preparing for the celebration later this year of the twenty-fifth anniversary of the modern committee system. During this program we will be interviewing five former members who each had a key role in the establishment of the committee system. We interviewed Ron Dyer last Monday. Ron chaired the famous Select Committee on Standing Committees of the Legislative Council. Next month we will be interviewing Lloyd Lange, who was a progenitor in relation to the moves to establish the committee system. We will also be interviewing Max Willis and John Hannaford—John Hannaford was the member who moved the motion for the establishment of the committees. Each was the initial chair.

The first question is: What was the Legislative Council like at the time that you were first elected in 1981?

Ms KIRKBY: When I was elected I met a previous member of the Legislative Council, a male member, who was very surprised that a woman had been elected, particularly from a minor party. That upset him terribly because he regarded the Legislative Council as the best club in Sydney. I am afraid that was the atmosphere. The men came in at 4 o'clock and chatted for a bit, then they went to the bar and then they went to dinner—that was a great night out for them. But, you see, it was only really part-time then, it was nominated. It was 1978 when the first members were elected. I came in the second batch in 1981 but it wasn't until 1984 that the House was fully elected. Of course once you got MLCs elected you then had to make them do some work and that was when things started to change, but at the beginning it really was an old boys club.

Dr CLUNE: How effective, if at all, was the Council as a house of review? How did you see it change in the subsequent years to your election as it became full-time?

Ms KIRKBY: I would think at the beginning it was probably totally ineffective as a house of review. I would say probably it had very little power. It is a question I can't answer definitively because I don't know what the public expected and I don't know what the parliamentary leaders of that time expected.

Dr CLUNE: What about in terms of amending bills, for example? Can you remember hostile amendments to bills being carried?

Ms KIRKBY: Of course, after the change of government when Mr Greiner was first elected. One bill in particular was the one in which Minister Fahey was invited to the Upper House to discuss the amendments I was introducing. I had 302 amendments to the industrial relations legislation that Mr Fahey was trying to pass. I don't believe that had ever happened before.

Mr BLUNT: Yes, and my understanding is that the provision hasn't been exercised since. We've not had a Minister from the Lower House called to come in and answer questions about a bill, and be there during the Committee of the Whole stage ever since. But the provision still exists.

Ms KIRKBY: It was a very long and detailed debate. Minister Fahey did not, in fact, in the end accept all the amendments I was putting forward, but it made a significant difference. It did tone the bill down and make it not so hostile against the worker. To have a debate like that was of great value because it was conducted with great courtesy on both sides, with reasonable arguments for and reasonable arguments against. Sadly I think that is vanishing. Whether he or his advisers had gone through my amendments beforehand and said, "Look, these are okay. Don't argue about them. Just accept them and get on with it" I don't know. But the debate was conducted with courtesy and respect to both points of view.

Mr BLUNT: Of course, we are talking about the period after the 1988 election when the new government of the day did not have a majority in the Legislative Council. I would like to continue this discussion—because I think it is a fascinating one—about those processes of very intense and careful scrutiny of legislation that we saw during that period. This was a period when you and your colleague Mr Jones, and Reverend Nile and Mrs Bignold, the four of you, had the balance of power.

Ms KIRKBY: Yes. Even after Richard Jones resigned from the Democrats and became an Independent, it didn't alter the balance of power situation. Occasionally, he would not support my view. That was one of the reasons, of course, he resigned. But then, equally, Mr Nile did not always support the view of the ruling party. His agenda, particularly in those days, was totally different to the agenda of what I would describe as a mainstream party. He was totally committed to his Christian values.

Dr CLUNE: You did not have much in the way of staff or resources then. How did you cope with the huge workload? How did you read a bill, understand it, and formulate your amendments?

Ms KIRKBY: When I think of the very beginning, I was strongly supported by members of my party, because, as you know, we had no staff. We had amanuenses who came from the typing pool, and however good natured they were, they were very rigid that they could not offer you any advice. They were there to type, word for word, what you had written. I don't quite know how many months I had been there before I personally employed, out of my salary, a personal assistant. And I had a personal assistant until the time I retired, even after we had been given staff. Obviously, government had decided that if you have got crossbenchers holding the balance of power, you had to give them reasonable assistance; otherwise, they would never cope with the workload. But at the beginning it was impossible, and the government certainly would not have allowed any of its members to do detailed investigation of any piece of legislation. They would have rely on the party Whips and also on the party room meetings.

Dr CLUNE: Did you have a network of academics or other advisers you could draw on to help you with legislation?

Ms KIRKBY: No, not academics, but policy advisers from the party. At the beginning the Democrats were very strong. Certainly in New South Wales we owed a great deal to the collapse of the Australia Party because a lot of well informed members of the Australia Party became Australian Democrats and they would talk to me about various bits of legislation and explain how they thought it would work, or how damaging it might be or how

good it might be, so it was not from purely academic sources, it really was from party resources.

Dr CLUNE: Did the government provide briefings for you at that stage, if you wanted one?

Ms KIRKBY: I think what briefings were provided were to say, "This is what we want to do and you follow us." It wasn't a detailed examination of what they wanted to do. It was an exposition of their position.

Dr CLUNE: What was it like when you first arrived, being one of the few crossbenchers and one of the few women in the Legislative Council?

Ms KIRKBY: I do not know that I expected that it would be particularly easy and, if you remember, we were still fighting for women's liberation. It was a privilege to be in a position where you were a woman in Parliament, so there was great support I think across party lines for the few women there. As more women were elected, particularly in 1988, the women became quite close, irrespective of party politics, so you always felt supported, you did not feel you were being attacked because of your sex.

Dr CLUNE: Who were the women that you were particularly close to?

Ms KIRKBY: Probably Virginia Chadwick most of all. I had stood for Assembly seats in the Cessnock area and Virginia came from west of Lake Macquarie so I had known her before. She was elected in 1978 but I did not succeed in getting a Lower House seat. Then Ann Symonds, when she was elected, and Jenny Gardiner from the National Party. So I did—and still do—have friends across party lines. Of course, all of the women were very close and I think in some cases that upset members of the Labor Party because they remembered Kath Anderson. Apparently when she was ALP Whip she never allowed her female members to talk to female Liberal members. You did not do it. And she ruled the women with a rod of iron. Labor members used to say, "Kath wouldn't allow that if she was here", but it had collapsed by the time I was elected, you see, so we were friendly across party lines.

Mr BLUNT: What do you think was the role of the Australian Democrats in the period that they were represented in the Legislative Council?

Ms KIRKBY: As you know, when Don Chipp formed the Democrats, the reason he formed them was "to keep the bastards honest". This was the guiding advice: that it was most important to look at legislation to see whether it was going to be for the benefit of the community or not, and to vote accordingly. At the beginning, I think all of us did that. Because I was the first Democrat to be elected in New South Wales, there was a lot of support from Canberra—Senator Chipp and Senator Mason. Senator Mason came from New South Wales anyway. In fact, he had been my boss when I was at the ABC when he was in the talks and features unit of the ABC. That was enormously helpful to have their support as well.

For most of the time I was alone. You see, Richard Jones was elected as a Democrat but then, according to what Richard told me, he was invited to lead The Greens and he believed that was closer to his beliefs so he decided to resign. I certainly did not think he would lead The Greens and I was quite right but he sat there as an Independent. Subsequently, when we

still had an upper House ticket, it was never successful until Arthur Chesterfield-Evans was elected after my resignation.

Dr CLUNE: I have heard it said that when holding the balance of power the Democrats were prepared to listen, to do deals, to be convinced by arguments.

Ms KIRKBY: That started initially with Don Chipp. Being an ex-Liberal, that was the way he wanted to operate. It certainly was carried on later by Janine Haines. I think it started to vary a bit when Janet Powell became leader. Of course, towards the end, federally the whole thing imploded on personal differences. It was personal rivalry. It was not anything to do with policy. That is the tragedy.

Mr BLUNT: Looking back with the benefit of hindsight, what do you believe was the legacy of the time in which the Democrats were represented in the Legislative Council?

Ms KIRKBY: I think—or I hope—that because we were not trying to be negative, we were trying to examine legislation to see that it was not damaging and that it could be supported, it allowed us to both introduce amendments and also to discuss in greater depth the legislation that was being proposed, whether it was by the Coalition Government or the Labor Government of the time. How far we succeeded, I do not know. Being part of it makes it difficult to say. But certainly that was what we were trying to do.

Mr BLUNT: You moved the motion to establish the estimates process as something that would be done by the Legislative Council as opposed to the joint estimates committees that had operated during the period of the Greiner and Fahey Governments?

Ms KIRKBY: Yes. I was the instrument and I certainly supported it, but I am perfectly certain that I did not initiate it. I cannot remember why I was picked to do it. I can only assume it was because obviously there was some feeling on the part of Government and the Opposition that they could not do it and I was regarded, possibly, as being a moderate.

Dr CLUNE: The estimates committees were originally an initiative of the Independents who held the balance of power in the Assembly in the Fiftieth Parliament.

Ms KIRKBY: Yes, that would have been an initiative of John Hatton, Peter Macdonald and Clover Moore. Earlier you asked, "Where did I get support from?" There was enormous support for the Democrats from the Lower House Independents, particularly from John Hatton.

Mr BLUNT: You had a good relationship with John Hatton?

Ms KIRKBY: He was very, very, very helpful. Because of his standing as an Independent of integrity, it was very useful.

Mr BLUNT: From 1991 to 1995 we had the joint estimates committees initiated by the three Independents in the lower House. In 1995 and 1996 we had the estimate committees operate just as Legislative Council committees at your initiative. Then, in 1997, the general purpose standing committees were established as five permanent committees. John Jobling, as Opposition Whip at the time initiated that motion. They also had the ability to self-refer matters to the inquiry. I think what was in mind at the time was that an issue might come up

during the estimates process. The committee might feel that this is something that requires detailed investigation so the committee might self-refer. For instance, we saw this play out a couple of years later—I think the year after your retirement.

In 1999 in the lead-up to the Olympics. I recall sitting there with the general purpose standing committee conducting the estimates hearing with the Olympics Minister. An issue arose about the distribution of tickets. There was a concern that there had been tickets for the rich, I think the newspapers called it. At the end of that estimates hearing the committee met and in due course resolved to conduct a specific inquiry into that matter and did that over a number of months. One of the key differences between those general purpose standing committees and the standing committees was that the numbers were such that the Government did not have a majority. Often there was a non-government chair and also the general purpose standing committees had the ability to self-refer matters. However, I think that in the brief period between their establishment and your retirement they really only did the estimates. Looking back, we certainly feel that that was a major step in the development of the committee system and, indeed, the role of the House.

Ms KIRKBY: The fact that a committee could have an independent chair and could self refer was a huge leap forward.

Mr BLUNT: Do you have any particular recollections or memories of the work of the estimates committees as committees of the Legislative Council in those years during the 1990s?

Ms KIRKBY: As soon as the estimates committees came in you did have some more control. I can remember looking at points in the budget and being concerned about what would be the result of various budget measures. However, I have more recollections of the work I did on the social issues committees than I do on the estimates committees.

Mr BLUNT: Could we go to the social issues committee then? We interviewed Ron Dyer earlier this week about his work chairing the select committee on standing committees that recommended a standing committee system in 1986. Of course, those recommendations were, in part, taken up in 1988 by Premier Greiner with the establishment of the social issues committee and the State development committee. You were one of the initial members of the social issues committee, I understand. Can you talk us through those early days of initial inquiries and the committee finding its way?

Ms KIRKBY: It was during the children of imprisoned parents inquiry that we went round prisons in New South Wales and also interviewed the inmates' families. I had never been in a New South Wales prison before and, I mean, the conditions and the situation particularly in Goulburn were horrifying, really horrifying. I did not believe in a mostly civilised twentieth century society you kept people imprisoned under the conditions that they were imprisoned under. We went to Bathurst after the riots when things apparently had improved, which made you think, "God, what was it like before?", because it did not seem to be an improvement to me. And of course I did meet some very tragic families. Whatever the imprisoned parent might have done, the result for their family and particularly for their children was not very pleasant to contemplate.

What was even probably worse was the inquiry into aged care and nursing homes. We went around nursing homes in New South Wales and that too was an eye opener to see the

way people were tied into chairs and being fed. It was just walking through the door and there was an indescribably awful smell. I hope it has improved. There was also the inquiry into hepatitis C and I am still connected with the hepatitis C council. That I think was very, very important.

There was a joint select committee inquiry into electoral voting systems I was on. We went to America and went round the American States. We went to Canada, we went to Montreal, Quebec, and to Vancouver looking at the different types of voting they had, which were different in every State. There was no common denominator of how you voted. Of course, that was a very, very interesting exercise and it certainly made you realise how superior Australian voting systems were, at least in the casting and counting of votes. Whether or not you agree with proportional representation or you agree with first past the post, in terms of the actual conduct of the election you became convinced we were far ahead of anything they were doing in America or Canada.

Maybe all that was achieved was that it strengthened support for our system. We were not going to learn very much from overseas experience, or particularly American overseas experience, or American practice. They did not have anything to tell us. Having said that, you could put an argument that the fact that the committee existed at all, and matters were being discussed was valuable because different points of view were being raised, but that does not mean to say that the views of the committee were in fact accepted. They were then in the public arena. But how much influence did they actually have on the government of the day?

Mr BLUNT: There is a range of things you have raised there that I would like to tease out if I could, just starting with the last one, your observations about that joint select committee and the study tour to the United States. If I recall correctly it was quite a large delegation from the committee—five, six or even seven members. It may be interesting for you to know that we haven't had a Legislative Council committee travel overseas for more than 10 years, for good or ill.

Ms KIRKBY: I notice in the debate in the Legislative Council one of the speakers suggested that it would not be necessary for members of the committee to travel overseas because all they were doing was looking at legislation that affected New South Wales. I thought, "Well, that's a silly remark", because until you know how things operate in other places how do you know how you can improve it for your place?

Initially I think for the Upper House committees they had decided it would be a very, very bad thing to allow State parliamentarians to travel overseas. Obviously it was going to cost a lot of money, and it was thought they might get bad publicity and they didn't want that.

Mr BLUNT: I take it with that visit by the joint select committee you felt that it was a valuable exercise?

Ms KIRKBY: I thought it was most valuable and certainly has made me individually understand, say, the result of the election in Florida with the hanging chads and so forth.

Mr BLUNT: Some of those other inquiries you talked about, for instance, the one into the children of prisoners and the prison visits that you undertook, by that time you had been a member for perhaps 10 years, but as an individual member you had not had the

opportunity to visit prisons so that your work as a member of the social issues committee opened up other avenues.

Ms KIRKBY: The other thing I looked at was the treatment drug offenders in prisons in Great Britain. I went to a women's prison outside London and then I went to two male prisons in Scotland. One was in Glasgow. I looked at the treatment of drug offenders there. This was all part of the AIDS debate and the transmission of AIDS through needles and so forth. I sat with a group of prisoners who had been brought in for drug offences who were being instructed by the prison officers in the safest method of injection. They had decided they were not going to break their addiction—it was not possible. They could at least help them to inject themselves in the least harmful manner. I think that is what happens in our drug injecting room in Kings Cross, which is why I supported it when it was first brought up.

Mr BLUNT: The social issues committee inquiry from those days that people talk about frequently is the initial inquiry into past adoption practices, the one that resulted in the contact system being opened up. Do you have recollections about that inquiry?

Ms KIRKBY: I was certainly in favour of it because I abhorred the practice that I discovered, of young women having their babies taken away from them at birth and never being allowed to see them. I didn't learn that through the select committee. My husband was a gynaecologist at Crown Street Hospital and when he first came to the university medical department in 1965 he was horrified to discover that that was happening in Australia, or in a city hospital in Sydney. That was something I learnt through his work, not through the committee system here.

Dr CLUNE: Would you like to talk a bit about the select committee on hospital waiting lists which you chaired?

Ms KIRKBY: Yes. This was because Bob Carr had said as part of his election promise that he was going to reduce hospital waiting lists. There were three Coalition Members with three Labor and I was the Independent. I was the chair. Although at that time, for particular reasons, the Opposition was happy to support the waiting lists being sent to a select committee, the Government was determined that the select committee would not achieve anything.

I thought the result of the committee was so inconclusive—it did not achieve anything, except to allow the Premier to say, "I have set up that committee to look into hospital waiting lists". On many occasions when we were going through the final resolutions of the committee, they were bitterly disputed between the Labor members and the Opposition members. The result of the committee was, in my opinion, a whitewash. It did not achieve anything because what I thought might be sensible suggestions, which were supported by the Opposition members for whatever reason—maybe only to embarrass the Government, were vehemently voted down by the Government. I had no ability to make them change their minds. I was extremely unhappy about the final report, which certainly did not reflect my personal views about hospital waiting lists.

The thing that really depressed me when I chaired the hospital waiting list committee was the way it was bulldozed to suit the Labor Party at the end. That committee, to me - it was very close to the time of my retirement - was a personal disaster because we didn't achieve anything. The whole problem was just being swept under the carpet, and no bill

actually ever eventuated to reduce the waiting lists. I felt very strongly about that. I was very unhappy about it.

What I would describe as the Government's sabotage of the committee was led by someone who was later a minister and resigned in disgrace. I can remember vividly sitting in the committee room with him almost physically standing over me, certainly vocally standing over me and in personality standing over me. That made me feel, "I've been here 17 years and I'm still not in control of the situation." That may seem a very naïve remark. I am sure many, many Ministers, Prime Ministers, Opposition leaders feel like that every day, but I found it extremely frustrating and disappointing

Dr CLUNE: In general, what is your feeling about how bipartisan or otherwise the work of the committees was?

Ms KIRKBY: Relying on my memory, I think that there was very little bipartisanship. I think, unfortunately, it was fought out on party lines to get political leverage. Sadly, I am afraid it was on many of these issues.

Mr BLUNT: Looking back, how do you see the Legislative Council at the time dealing with the balance between the Government of the day's ability to legislate and the role of the House as a check and balance, as a House of review? Do you think that balance was struck in an effective way or do you think it was skewed towards the Executive getting its way or skewed towards the House holding things up?

Ms KIRKBY: There were big changes that were introduced during my period - the modernisation of the Parliament, the full election of the Legislative Council, the manner of the election to the Legislative Council - but I think I would still have to say the influence on the government of the day was probably negligible. I think one of the biggest things that happened was the abolition of criminality for homosexuality. That was not done by a committee, that was done by Neville Wran, who came back from an overseas trip and said, "The law will be changed", and it was changed.

The changes to gun laws after the massacre in Tasmania—I was a member of that Committee and, until then, knew very little about guns at all. I had no knowledge of the different types of guns and learnt a great deal from Peter Anderson and from Tony Windsor about guns. But I think the changes that were made in New South Wales were made to reflect the changes that were made federally. At least we have got good gun laws in Australia and do not face situation that President Obama is facing at the moment.

It appears to me that there are now deals being struck that allow extreme opinions to have too much power so that the Government can achieve what they want, not to have reasoned discussion. I cannot remember anything quite as obvious as that happening between 1981 and 1998. In the case of the industrial relations bill, there was no negotiation between me and John Fahey along the lines of "If you drop your amendments or you drop certain amendments we will do something for you". Nothing like that ever happened.

I think if you remember what happened with Terry Metherell in the Lower House, the Independents hauled the Government and Greiner over the coals about the Metherell appointment. The Independents asked me if the matter came up in the Upper House would I stand by their position, which I agreed to do. It never came to that because as Premier, Mr

Greiner sent for me and said that he wanted to talk to me about this matter. I was amazed; I didn't really know how to handle it. It was the first time I had had an independent conversation with the Premier of the State. So I went, taking my personal assistant with me because I knew he would be taking notes about our conversation and felt I had the right to do the same. He did not object and I explained very clearly—I hope very clearly—why I believed the way that Dr Metherell had been treated was wrong and certainly if there was a motion of no confidence in the Legislative Council I would have to support it. We were not there very long, Brenda and I, probably maybe 20 minutes, perhaps 25 minutes, and at the end of the conversation he got up and said, "I must apologise to you. I should have spoken to you earlier." My face fell. I was gobsmacked and we shook hands and I left. It was not what I expected was going to happen. It was a very courteous acceptance of my point of view. There was no question of trying to persuade me to his point of view and certainly no suggestion of any quid pro quo. It would appear to me as an outsider, as I am now, that sort of behaviour has been overridden by more overt political manipulation - that is the appearance of what has happened in the last couple of years.

I probably have what could be described as a very naive attitude to politics. I do not believe it should be adversarial. Obviously there are different political opinions, different political theories. I believe that you should be working for the good of your State or the good of your nation, not for the personal good of your political party. I had two trips overseas looking at different systems. I went to Scandinavia and also to the Parliament in Norway. As you probably know, Norway does not have the Westminster adversarial system. People sit in a semicircle and all members for one region sit in a certain place. So you are sitting with your colleagues from your region where presumably you have the same interests and purpose to look after the constituents. But it is not adversarial to the extent the Westminster system is. I think that is the way it should be. Obviously we are not going to change it, are we?

In America it is even worse. As part of that election system committee trip I went to Washington and sat in on a debate in the American Senate. A Republican Senator and a Democrat Senator were speaking on the same piece of legislation and putting forward the same arguments. In other words, they were from different political parties, but for this legislation they were united in their opinion. I found that extremely unusual. It is not what I expected of the American system at all, but I saw it.

Mr BLUNT: Who are the people you remember most? What is your personal list of members who achieved things and who were impressive?

Ms KIRKBY: I remember some of the early members who were extremely puzzled but friendly towards me, people like Lloyd Lange. If I meet him in the street now he is still extremely warm and friendly, even though he resigned shortly after I came into the House. I remember Ron Dyer vividly, again for his courtesy and detailed knowledge of presenting government business. I do not know how to describe it, but I always remember the volatile—that is the word—Michael Egan as Treasurer. I remember Ann Symonds because in spite of her health problems she was dedicated to and passionate about social issues. Meredith Burgmann was a very capable and well-informed President of the House. Virginia Chadwick I thought was a great Minister, although I did not agree with many of the things that she was bringing forward, but, again, it was done with skill and a sense of responsibility. John Jobling I think was an extremely efficient Whip—really a very amusing person. Jenny Gardiner, if I come to the House and she is still in the Chamber or knows that I am here we have a brief conversation. John Hannaford, a very intelligent legal mind. Patrician Staunton, a very, very

thoughtful member of the Labor Party and highly legally trained. Jeff Shaw, who, again, I thought was an outstanding member. I recall Brian Pezzutti. I remember all those people with great respect even though I did not understand or support many of their political views.

Mr BLUNT: Are there any final observations you would like to make, things that we have not covered in the questions that we have asked, either about the role of the committees and the value of the committees amongst the range of things available to you as a crossbench member during your time as a member, or, indeed, any observations more generally?

Ms KIRKBY: In response to your question: "Does the committee system allow the crossbenches to have adequate participation in the political process?", it certainly did when I was a member of the House. I doubt if you could have done more than we were able to do then.

On the balance between a government's right to legislate and the House's right to review—again, this may be something that seems naïve—the government has, in my opinion, a right to put forward legislation based on matters on which the election has been fought. But it surely does not mean that it has an ability to force through that legislation in a dictatorial manner. It is one thing to make an election promise and quite another to translate that promise into legislation. It is necessary for Parliament, particularly a house of review, to see if the legislation is going to do exactly what it is intended to do.

No government should believe that it has a right to ride roughshod over the views of that house of review because they are elected. A party can get 50 per cent of the vote, and in some cases not even 50 per cent, and still get elected or they go into coalition and take office. The Liberals and Nationals are perpetually in coalition, certainly in New South Wales. So I believe that the house of review has an absolute right to review the work of the executive and what it is trying to do.

I am convinced that the committees were needed, were valuable and they must be allowed to continue and also be allowed to develop in ways that perhaps I do not know about or unforeseen ways that may in future be necessary. I believe a house of review is essential. There is not a house of review in Queensland and I know there have been many moves during the whole of the history of New South Wales to get rid of the Upper House; it is discussed over and over again, decade after decade, and I believe that would be a disaster, an absolute disaster.

The discussion concluded.