

LEGISLATIVE COUNCIL

ORAL HISTORY PROJECT

At Sydney on Tuesday 2 February 2016

The discussion commenced at 11.00 a.m.

PRESENT

Mr David Blunt
Dr David Clune
The Hon. Max Willis

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

Mr WILLIS: I suppose I should say that I sought to become a member of the Council rather than the Assembly because when I came to Sydney, aged 17, to go to university I lived for the first two years with my brother, Eric. He was the member for Earlwood and I very rapidly learned that a member of the lower house, if he was diligent and hard-working, as my brother was, never had any privacy. In those days they did not have electorate offices and, of course, they had no support staff and people would knock on their door night and day. How members of the lower house in those days put up with it I am not quite sure. Years later, when the idea developed in my mind that I might come into Parliament, I said, "No, not the Assembly; I will go into the upper house." The other factor was that, at that time, 1970, I was the principal of a thriving law practice. I was not in a position, and I was not motivated at that time, to give myself up to being a full-time member of Parliament so I felt that the best contribution I could make if I wanted to be a legislator was in the Legislative Council.

As to the actual mechanism of how I became a member, in those days the Liberal Party selected its candidates for triennial elections or vacancies in the upper house by an electoral college which comprised all the Liberal members of the Parliament, both upper and lower houses, sitting as a selection committee. So it was a rather fierce and formidable selection committee that we had to appear in front of, and it did not take me long to learn that the selection that occurred on each occasion was pretty much predestined. Anyway, the first attempt I had was for a triennial election—the preselection was either late in 1969 or very early in 1970. I said to my brother that I was pleased that of the 52 or so members of Parliament who were Liberals, I had been able to have personal discussions with something like 35 or 40 and that 28 or 29 had said they would vote for me. He looked at me rather sagely and said, "Did they tell you they would give you their first preference vote?" I replied, "I don't remember." He said, "Well that is the important vote." Anyway, to cut a long story short, I learnt my first lesson in hard party politics when I did not get the preselection.

Then, in due course, several months later, there was a casual vacancy in the upper house and this time I stood again and won it. I do not know, but I would not be surprised if my brother had some influence in the matter. In those days it was not uncommon for people—and the Hon. John Holt was a classic example—to stand three, four, five, six, seven, eight times before they finally got the nod to become a member. Anyway I was elected to fill that vacancy, which I took up in the September of 1970. My term started whilst I was on honeymoon in Rome and I took up my seat as soon as I got back.

Dr CLUNE: What were you expecting when you commenced your term and did the reality meet the expectation?

Mr WILLIS: It is very hard to say what I was expecting. I had, of course, a very great interest in politics. This was largely influenced by my brother, who was 14 years my senior and in many ways my little father—and is still my hero in many ways. I had a great interest at law school in constitutional matters and legal history—they were my favourite subjects. From age 17 I became a member of the Earlwood Young Liberals, which was my brother's creation. At one stage I was the president of that Young Liberal branch, which was the first in Australia I might add, and John Howard, who is three years younger than I am, was the vice president. Then I went on to more senior positions in the party and I became a conference president and I became a delegate to State Council and so on. Of course, I worked in all the election campaigns, particularly the campaign in 1965 which brought the Askin Liberal Government to office and my brother into the ministry—at that time he was the deputy leader of the Liberal Party.

I suppose over those years of political apprenticeship and, of course, as a practising lawyer, I developed an interest in becoming a legislator but I cannot honestly say that I came into the Parliament with some burning zeal to right some wrong; it is just that I had the desire and I was well established in my professional life. I wanted to make a contribution and to be part of the action so to speak.

Dr CLUNE: How did you find the Council when you arrived? What were your first impressions?

Mr WILLIS: It was pretty much as I expected it to be. My first impression was that it was very relaxed—a bit noblesse oblige. One was not expected to rock the boat—it was not the kind of thing one did in the Legislative Council. It was a very gentlemanly place and, of course, I was the second-youngest member. The only other member who was younger than I was Clyde Packer, who was a year younger. I think I am on record as saying in my valedictory speech that our combined youth reduced the overall age of the Legislative Council by quite some years.

Our sitting hours were not onerous, except towards the end of the session. We came in here at 4.00 two days a week and we left the place at about 9.00 at night, had dinner and went home. On Thursday we sat at 2.00 and we got up at 6.00. As for committee work, I was put on the Subordinate Legislation Committee, chaired by Colonel the Hon. Sir Hector Clayton, who ran the thing as a one-man band. He knew the whole process inside out. He had gargantuan knowledge of regulations and the support of one of the biggest law offices in Sydney to help him and it ran very smoothly.

One was not expected to rush in to make one's maiden speech. I remember Sir Hector met me in the courtyard one day and said, "I hear you're making your maiden speech, Willis." After about a year I was slotted in to make my maiden speech in the budget session. He said, "Hmm, bit early, you know. I didn't make mine until I'd been here three years. It takes three years to get to know the place." These days, of course, people cannot wait to make their maiden speech. But that was the kind of atmosphere. Everyone was very kindly to me on both sides of the House. I made my maiden speech and got plaudits all round. All the much older members were very accommodating, very kindly. There was little political backbiting. It was, as I said, quite noblesse oblige.

Dr CLUNE: How effective was it as a house of review?

Mr WILLIS: I think it was very effective, but in a different sense to what the House is today as a house of review. It was effective because most of the members on both sides were really experts in their field. There was nothing people like Sir Edward Warren did not know about the coal industry and the industries allied to it. He only ever spoke on that subject and when he spoke everybody listened. So if there was any kind of legislation relating to the coal industry which required amendment the Government took notice of him, whether it was a Labor government or a Coalition government. Mac Falkiner—the doyen of the Falkiner wool family—spoke if there was anything to do with wool or rural matters. He was a man whose whole life had been spent in that industry and he knew it backwards. For anything on labour and industrial relations you had Fred Bowen, who was the President of the Trades and Labor Council, and John Darling, the Director of the Employers' Federation.

People tended to be at the peak of their life or their vocation or their industry. They made very wise and practical contributions. Very often these revisions to legislation, in my observation, occurred behind closed doors. Ted Warren would take the Minister aside and say, "Look, you can't do this," so an appropriate Government amendment would be introduced. He would not stand up on the floor and hammer the hell out of the Minister and then move an amendment. That was the way it worked. For its time and because of its composition I think it was effective, but in a quite different way to now.

Dr CLUNE: What was your approach to your role as Leader of the Opposition?

Mr WILLIS: I became leader of the Liberal Party and Deputy Leader of the Opposition in 1976 to Sir John Fuller. Theoretically, the Liberal Party could have claimed the leadership being the major Opposition party, but I had enormous respect for Sir John Fuller. After consultation with the leadership of my party I said I would be quite amenable to serve as his deputy until he retired, as he was due to at the subsequent election. That is how I became the deputy and he remained as Leader of the Opposition. I must say we had an absolutely wonderful working relationship. I learned a great deal from him about what being Leader of the Opposition was all about. Even though he had never before been the Leader of the Opposition he had a vast knowledge of the Parliament and its workings and all the ramifications of government.

When I took over in 1978 it was the beginning of a completely new era. The House was then emerging from the reforms after the referendum and, although the majority of members were still continuing from under the old system, there was now a new batch of popularly elected members. So it was the beginning of the House becoming more partisan. Although some of the gentility of the place was maintained, there was increasingly an element of combativeness. This was particularly so because the Wran Government, once it had obtained its majority in the upper house as a result of the 1978 election, started to introduce its reform measures. Many of these we in the Opposition were expected to oppose tooth and nail, and we did.

I might say the Government in the upper house was represented by only one Minister, the late Paul Landa, who carried an enormous burden. I am sure that contributed to his early demise. Also it gave us as an Opposition, which had collectively a lot more experience than Landa, an opportunity to hammer him and we did. It was during this period, under my leadership, we developed the tactics of pack attack, if I could use an expression. We had our shock troops. We had Sir Adrian Solomons, who was a superb debater and a very good,

bright mind; we had me, of course; we had Bob Rowland Smith, who was the leader of the National Party and my deputy; we had people like Lloyd Lange and Virginia Chadwick.

It was the first time that an Opposition in the Legislative Council started developing the concept of tactics and strategy to hold the Government to account and to attack it in those areas that we were expected to, either by our party, our philosophy or interest groups in the community. It was a full-time job for me. So it was an exciting time and it was a very evolutionary time for the Legislative Council and the way it operated, especially from an Opposition point of view. That had not occurred previously.

Dr CLUNE: Was there at times consensus? Were there times when you negotiated with the Government and agreed that certain bills were in the national interest and they would go through?

Mr WILLIS: Yes. We were very conscious of the fact that there still existed in the Legislative Council, as there had in the Council before reformation, very much an attitude that the government formed in the lower house had the right to govern and had the right to legislate its mandate. Especially in the years 1976 to 1978, when we held the majority in this place, there was a lot of agony over a lot of measures—should we let it go through or should we use our numbers? Did the Government have a mandate or did it not? This continued into my period as Leader of the Opposition. There were quite a lot of measures that we did not like but that we did not fight too bitterly about.

Dr CLUNE: Moving on to your Presidency, what was your approach to that role?

Mr WILLIS: In the context of the fact that I always regarded myself as more a parliamentarian than a politician, I regarded achieving the Presidency as a singular honour and a singular challenge. I remember many years before, I was sitting on the front bench beside Sir Edward Warren and Ted Pickering was holding forth about something and doing it very effectively. Sir Edward leant over to me and said, "You know, that young man is going to make a very good leader in the House in due course, and you will make a fine President." And that is the way, in the course of time, it worked out. Whether we met his expectations is another matter.

When I came into the Parliament, and right up until the time I was President, one of the things that offended me was the attitude of superiority adopted by the Legislative Assembly and its staff towards the Council. We were regarded as dinosaurs. There were continual efforts to assert hegemony over the Legislative Council both in terms of the administration of the Parliament and in terms of its rights and privileges, however they might be defined. I felt it needed correction so that there was a mutual respect and equality between the two Houses, both at the member and staff level.

The origin of that attitude I concluded was a long one, and it was partly the fault of the Legislative Council. At the time I became a member, the Council held its ground on two levels: one was the influence of the President, Sir Harry Budd, who was very quiet but a powerful force in the National Party; the other was the Clerk of the Parliaments, Major-General John Stevenson, who was a man with a very, very powerful personality. Between them, they kept the moves for hegemony at bay. So I was influenced by observing this. It might be an unkind thing to say, and it arises out of the Labor Party's attitude towards upper houses—it had a policy that they should be abolished and as a corollary of that was, if you could not abolish them, they should be denigrated at every opportunity—and there had been 24 years of Labor rule in the Government in this State before the Askin Government came to power in 1965.

During the whole of that period, although I was not present in the place, I suspect that the Labor Government's attitude towards the Council was pretty much along those lines—if you cannot abolish it, denigrate it—and, of course, they actually tried to abolish it in 1961. Then the Liberal Government came to office and the Speaker in the lower house was a very powerful personality, Sir Kevin Ellis. His attitude to the Legislative Council was in tune with Labor, "a pox upon the place". He very much sponsored this hegemony of the Legislative Assembly. So when I came to the President's office this was something that I wanted to address. And I think during the term of my Presidency I was fairly successful in doing it. The first opportunity, of course, occurred six months after I was elected when the Queen came to open the Parliament and I made it very clear right from the beginning that all the precedents were to be followed as far as I was concerned and it was my show—nothing to do with the Legislative Assembly. I think this gave the staff of the Legislative Council a considerable morale boost—they had a President who was putting his mark on the place and using this occasion to demonstrate that. I fostered this resurgence of pride in the Council in the Clerks and the other staff and I believe that, in good measure, it worked. It developed into a more equal working relationship between the

Presiding Officers, between the Clerks of the two Houses and the staff generally. That was one of my objectives and I think by and large it was achieved.

My other objective was that the role of the Legislative Council and its status should be more forcefully, openly and enthusiastically projected to the community at large. In this way I was instrumental in developing a very close relationship between the Legislative Council, which then flowed on to the Parliament generally, between the consular corps, the other instruments of government, the judiciary. It is rather a difficult thing to define precisely. Part of it, for example, was that after a while, when this message started to get through, I was approached by people in Canberra: would we, here, assume the role of surrogate hosts for visiting foreign visitors? They footed the bill but, after all, Sydney is the gateway to Australia and the de facto capital of the nation, and I played surrogate host and in the process I brought the Speaker and the whole Parliament into it. This was largely a movement which, I flatter myself, I started and which progressed very successfully. The word spreads: the Legislative Council is no longer a geriatric repository for useless people; it does have a role; it is part of our community.

Also as part of that I was very strong on bringing school groups into the Parliament, not just to visit the Legislative Assembly but the whole Parliament, including the Council. Speaker Rozzoli and I worked very well at this. Here we had this marvellous facility, all these wonderful dining rooms which were relatively unused so we adopted a policy that we would encourage charities and not-for-profit community organisations to use the facilities of the Parliament for their functions and conferences. This spread very quickly throughout the community and I think was instrumental in lifting the profile of not just the Legislative Council but the whole Parliament.

As part of my projection of this image and the association with the consular corps and connection internationally with the Commonwealth Parliamentary Association, we developed a huge internationally acclaimed success, the twinning arrangement with the Parliament of the Solomon Islands.

The other thing I was particularly motivated about was that when I came to office—and it had been the tradition for a long time—the Parliament was at the whim of the Premier's Department in terms of its resources. I started the movement for the Parliament to be independent. For example, all the staff were not owned by the Parliament, they were owned by the Premier's Department—all secretaries, all the amanuenses were part of the public service. It led to a showdown in the Fiftieth Parliament which occurred through what was known as the Moore-Wilkins report. It was a blatant attempt, to which in some measure Ted Pickering acquiesced, by the executive government to formalise this powerful influence over the resources and running of the Parliament. I can say it was one of the sweetest victories I ever had that we were able to defeat that. It was the beginning of a realisation by government that the Parliament should have its own structure, its own independence, and be the employer of its own staff. Ultimately it should be the master of its own budget, although that still has not been achieved. But that is for another day.

To sum up, it was my objective when I became President, in keeping with the Legislative Council's now wholly elected status, to lift its persona in the public eye that so it was perceived as a very important part of the parliamentary process. Of course, coupled with that was the evolution, which is a more specific thing to talk about, of the committee system.

Dr CLUNE: One of the things proposed at the time of the Moore-Wilkins report was that there be a board of management for the Parliament consisting of members of both Houses. What is your impression of that idea?

Mr WILLIS: It might have looked good superficially but if you looked closely it was still dominated by the government, and that I was not having. As part of that fracas over the Moore-Wilkins report I produced a counter-proposal which pretty much reflects the system you have got now.

Mr BLUNT: I keep a copy of that document handy in my office.

Mr WILLIS: It pretty much reflects what there is now, so some good did come out of the fracas.

Dr CLUNE: What about your role in the House? There has been a long tradition of respected, impartial Presidents.

Mr WILLIS: I made it clear right from the beginning to my party, and anybody who tried to influence me to the contrary, that I was the President first and a party man second. If need be, I would vote against the interests of my party if I had to make a choice between that and being an impartial President who exercised his role in accordance with the traditions of Westminster. I never exercised my casting vote, when it occurred, in a partisan way. The Speakers in the lower house, Labor speakers, were expected to do the bidding of the Premier, no matter how it offended the traditions of the office.

Dr CLUNE: What are your thoughts on the administration of the Parliament arising from your experience as President?

Mr WILLIS: Of course it was under the old system—before the current one with a joint services department—where the sections of the Parliament were split up, by agreement, between the Speaker and the President as to who dealt with the administration of which. On the whole, I think it worked quite well. It was clumsy and departmental heads would try to play one presiding officer against another or one Clerk against the other; the latter was more frequent than the former. That usually ended up being sorted out between the two presiding officers. I had very good relations with both Speaker Rozzoli and his successor John Murray.

Dr CLUNE: Looking back on your career as an MLC what do you think are your main achievements?

Mr WILLIS: The most satisfying achievement was the Social Issues Committee's adoption inquiry, which I chaired. At that time it was the biggest inquiry that had ever been held by a committee of the Legislative Council in terms of written and oral submissions. It ended up producing a unanimous report, which was almost totally accepted by the government. And that was somewhat of a miraculous result. When I sat down at the beginning and looked at the composition of the committee, I thought how am I going to herd this group of cats into any kind of consensus? It included the Reverend the Hon. Fred Nile at one end of the spectrum and people like Ann Symonds at the other. The achievement of it was that, with the assistance of my committee staff, we were able to structure the evidence in such a way that for everybody, no matter which end of the spectrum, the evidence became so compelling that, being reasonable people as they all were, they had to come to the same consensus opinion. I was enormously proud that I was able to guide the committee and structure all the gathering of evidence in such a way that that could be achieved. The importance of that achievement is that it became apparent during the committee deliberations that these laws affected, either directly or indirectly, something like three quarters of a million people in the total population of New South Wales. In terms of its effect on people at a personal, intimate and emotional level, it was a huge achievement. I think that was exemplified by the spectacular success of the ensuing legislation. I would regard that as my number one achievement.

My second achievement would be the more nebulous things I spoke of earlier that I sought to achieve as President of the Council concerning raising the status of the Council to a level of equality. And, as part of that, the Egan and Willis case, which we will come to shortly, was the epitome of that exercise. I think that pretty much sums it up.

Dr CLUNE: In terms of the 1978 reconstitution of the Council, what was your personal attitude to reform and what was the attitude of the Liberal Party?

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

Dr CLUNE: What are your thoughts on about the actually process of reform and how it was handled in the upper house?

Mr WILLIS: Bearing in mind that Sir John Fuller was the leader and I was his deputy, in hindsight I think it was handled with consummate adroitness and political subtlety. Notwithstanding the intransigence of the Country Party to reform, the wiser amongst them—people like John Fuller and Adrian Solomons—realised that this was a stance that could not be maintained. So we ended up after our own consultations with a counter

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

Dr CLUNE: The heart of it was the free conference of managers at which you were present. What are your recollections of the free conference, in terms of the atmosphere, the negotiation and the interaction between Fuller and Wran?

Mr WILLIS: It was very polite, it was very gentlemanly, and there was no sledging at one another. There were a couple of terse comments now and again, but on the whole it was very civilised.

The most important thing that we set our face against was the list system of voting. The list system was quite obviously a first-past-the-post system. It effectively meant that the overwhelming majority of seats would go to the major party that won the election. We were not about to have that because we knew that the Labor Party was on the upswing and that, come a popular election, we would be the losers. We were anyway, but we thought—and I think it has proven so since—that in order to have any true element of democracy you could not have a lower house elected by optional preferential and an upper house elected by what was effectively first past the post. That was designed to give the government of the day, whoever it was, a majority very quickly in the upper house. So we said that we had to have a system similar to the Senate at the time. We wanted a minimum 15 votes and we ended up agreeing to 10. There was an attitude abroad at that time in both parties that no-one other than a major party could ever achieve more than 6.25 per cent of the vote, which was the quota. That was proven quite wrong. I am sure that Neville Wran in his wildest dreams never anticipated that at the first election Fred Nile would get one and a half quotas—and neither did we.

It has always surprised me that Neville Wran did not have the political courage to call our bluff and go for a referendum on his list system. In my view he would have won because the people out there who vote are not terribly interested in whether it is first past the post, preferential, optional, proportional or whatever. But if you go out there and say to them, "We are giving you a right to elect"—you the people—"this unelected House of Parliament", they would say yes. I remember attending a party meeting in a blue ribbon Liberal area on the North Shore. After I had made my plea about this terrible list system, one gentleman at the back of the room stood up and said, "If the list system is the price I have to pay to have the Legislative Council elected by the people, I will pay it." You cannot go into a referendum and argue subtleties. It always surprised me that Wran ever agreed to this compromise. In my opinion he would have won the referendum hands down without it.

Dr CLUNE: So the Opposition achieved a victory by watering down what he wanted?

Mr WILLIS: Yes, and in large measure that was our strategy.

Dr CLUNE: The other thing that seems to have been a big factor was redistribution, because Wran could not have a redistribution under the current legislation. There was apparently a fear in the Coalition that if he got control of the Council he would legislate for a redistribution. The Coalition wanted to keep the same boundaries as 1976 for the next Assembly election.

Mr WILLIS: That was much more a fear of the Country Party than it was of the Liberal Party. Do not forget that there was a very considerable weighting of electoral boundaries in favour of the Country Party. That did not worry the Liberal Party.

Dr CLUNE: The Country Party, in the form of Sir John Fuller, agreed to the compromise. However, it then reneged and campaigned against it at the referendum.

Mr WILLIS: Yes, but pretty ineffectively.

Dr CLUNE: That must have been difficult for Fuller having negotiated the agreement.

Mr WILLIS: It was very difficult for Fuller. It was, in many ways, a futile gesture because the Liberal Party got behind reform. The Country Party's opposition made little, if any, difference.

Dr CLUNE: What do you recall as the main changes in the House after the reconstitution?

Mr WILLIS: They were gradual as the members from the old system faded away and the new members came in. From the time the House was fully constituted by elected members, its complexion changed very significantly. By the time I became President there was not much of a vestige of the old atmosphere surviving. There was, of course, to the extent that it was, and still is, a more gentlemanly place than the other House. But it became a much more party-dominated, partisan place—less nuanced, more black and white, and more combative in its debating process. Of course, after 1988 and the introduction of standing committees—and I had a lot to do with that—it started to evolve what is now a quite sophisticated committee system. We knew that this should be the Council's role and encouraged that evolution. In opposition before 1988 we proposed four standing committees in the upper house, and Greiner ultimately agreed to two. In sum, it is nothing like the House it used to be.

Mr BLUNT: Of course, since 1988 no party has had a majority in the Legislative Council. Do you think such an outcome was envisaged at the time of the 1978 reforms?

Mr WILLIS: No. We thought that there might always be a small handful of crossbenchers, but that what would happen would be pretty much what happened in the years from 1933 to 1978; that is, a government would be elected and in its first term it would not have a majority in the upper house. Then, if it maintained or gained more of the confidence of the electorate at the next election, it would achieve a majority in the upper house and be free to implement things that might have been previously blocked or diluted. Of course, that is the history of the rollover effect of the triennial elections between 1933 and 1978. A government inevitably came to office with a hostile upper house. Over that period, about half of the time the Coalition had the numbers in the upper house and half of the time Labor did. We thought—clearly a bit naively—that the new system on which we came to agreement would produce a similar effect, and that there would only ever be a small number—two, three or four at the most—of crossbenchers.

Dr CLUNE: Of course, the 1991 Greiner reforms lowered the quota.

Mr WILLIS: Yes, and I strongly opposed that for two reasons. I argued that if you are going to lower the quota then you should have a cut-off quota, a minimum number of votes to get elected. Oh no, they would not go along with that. I said that you will create more and more opportunities for “mickey mouse” crossbenchers. My advice fell on deaf ears. The Greiner reforms, more than the Wran ones, exaggerated the capacity of insignificant candidates to win a seat, the same problem as in the Senate.

The other reason I opposed the Greiner changes in my party was that I always held the view that a House of 42 was too small, given the amount of work we were building up in terms of committees and other things. There was not enough manpower to go around. It was my view that the House should be always as close as you can get to half the size of the Assembly. They have that provision in Canberra—the nexus between the Houses. I advocated something similar here. But, again, it fell on deaf ears. If you take out the Ministers, the President, the Chairman of Committees and the other officeholders there is not much of a workforce left. And, of course, in the workforce that you do have left there will always be a proportion of members who are not terribly enthusiastic and who do not pull their weight. The burden thrust on the remainder is huge.

Mr BLUNT: 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 WILLIS: I did not so much think it would as hoped it would, and I was delighted when it did.

Mr BLUNT: As President what was your particular take on the matter—as it was being debated in the House, subject to various motions, with references to the Privileges Committee and so on—before it ultimately went to the courts?

Mr WILLIS: My take on it was that since this Parliament had never been moved to legislate in this area, what we had here was uncertain and a bit of a mess and nobody ever quite knew where we were. It was my view that—and I might add within my own party ranks I had been advocating it for a long time—that we should have codifying legislation in this Parliament as exists in other Parliaments of the States and Commonwealth. I found it completely incongruous that under the Parliamentary Evidence Act committees have more power than the House to compel.

Mr BLUNT: A very interesting opinion from senior counsel was tabled in the House on the last sitting day last year that says some very interesting things about the power of committees and the House under the Parliamentary Evidence Act. I am sure you would be most interested in it.

Mr WILLIS: I would be interested to read it. This was just indicative of the mishmash that we had. Any opportunity to have it clarified I regarded as something that should be grasped with both hands—Egan and Willis was that opportunity. Mr Egan did exactly as I would have had him do.

Mr BLUNT: To what extent were the proceedings and the events that triggered Mr Egan's legal actions stage managed to provide such a trigger?

Mr WILLIS: This is a delicate question. In line with my attitude of being a totally impartial and detached President I never got involved—and I never wanted to get involved—with what went on between the Leader of the Government and the Clerk advising him and whoever else got involved in creating the scenario that was ultimately played out. But I think I am reasonably intelligent and astute and politically savvy enough to have a pretty good idea, without knowing exactly, of how things developed, and they developed in a way that I liked. I had no direct part in developing the scenario—and I can say quite honestly that neither the Leader of the Government nor the Clerk confided in me—but you would have had to have been pretty obtuse not to work it out.

When the scenario was played out and it came to its climax and I had to instruct the Usher of the Black Rod to escort Mr Egan from the House, you will note that I gave him a direction that he should be put on Macquarie Street. Now I did that on purpose because I wanted that issue decided by a court, assuming the matter was going to court. The reason I did that on purpose was that I always held the view that what had been the practice in the Legislative Assembly, of excluding members who were ejected from the precincts of the Parliament, was rather silly and childish, especially in the days when they had no electorate office. Really the ejection was from the proceedings of the House not from exercising other functions as a member of Parliament. I did that purposely because if anything was to be tested, I wanted that to be tested and it came out the way that I believe it should have. But I never paid the \$1 fine—Warren Cahill did but I never did. Damages!

Mr BLUNT: What then was your response to the judgements of the High Court and then the Court of Appeal in the subsequent case?

Mr WILLIS: I think Egan and Willis is one of the most important judgements relating to the law of Parliament that has ever come down in any court in Australia. Its effects are not just restricted to the specific issues of the case; the ramifications are far wider, in that it gave the High Court an opportunity to really speak out on the definition and implications of representative government, of responsible government, not just the power but also the responsibility of houses of parliament and their role and interrelationship with the executive government. There is just so much in that judgement that it will echo down the centuries in terms of the law of Parliament in this country—even if tomorrow we enact legislation in this State to cover these things. It is the same, of course, with the Egan and Chadwick case.

I was a bit disappointed in the Egan and Chadwick case in that although it decided on the specific issue there was really quite a divergence of opinion between the three judges on the issue of Crown prerogative - public interest immunity as it's now called. They are all hugely interesting approaches from one extreme to the other—Priestley at one end, Mahoney at the other end and Spigelman somewhere in the middle—but put the two cases together and their consequences are really quite dramatic and long-lasting. I think they were very worthwhile cases and, since those cases, governments of New South Wales, of both political persuasions, have observed faithfully what the court decided. To me those two cases are the epitome of my objective as the President to lift the status of the Legislative Council. They very clearly say that, except as prescribed in the New South Wales Constitution Act, the powers and functions of the Legislative Council are the equal of the Legislative Assembly, without question, and that puts the stamp on what I tried so much to progress.

Mr BLUNT: In your observation since that time do you think that the power recognised by the High Court and regulated now by Standing Order 52 has been used effectively by the House?

Mr WILLIS: Yes, I do. You are never going to achieve perfection but I think it is as good a mechanism as could be developed, and the way it has been utilised I think has been very commendable. I think the status of the arbiters has been without question, accepted by both sides, criticised only by a few academics,

and by and large it works. In these kinds of grey areas you are never going to achieve the perfect solution because there is always a messy mix of law and politics. I think by and large it is a pretty good solution.

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

Mr WILLIS: Of course they will do it, and they will mostly not do it for altruistic reasons—that is the politics part of it. As various judges have commented, there is not a real comparison between this issue when it is in a court and when it is in the Parliament. The reason is that in a court there is no issue of politics; in Parliament there is always a mixture of law and politics and you are never going to develop a perfect solution for that. It is the kind of thing that you are just going to have to deal with as it happens.

Mr BLUNT: Do you think that the Council should take a more robust approach to the publication of privileged documents and what are your thoughts generally about the process involving the independent legal arbiter?

Mr WILLIS: As a matter of practical politics, the Legislative Council will only ever press its case where it thinks that in political terms it will get away with it. So it should never press its case in a situation where it is not going to get away with it, where the executive is confidently going to stand its ground on political reasons. It is the old story: If you have got a power, you diminish that power if you overuse it; you sustain the power if you use it prudently. I really do not see any alternative to that. I think the arbiter system is as good a mechanism as you will get in this grey and messy area. So far it has worked, because over all the government has respected the opinion of the arbiter. The status of the arbiter has got a lot to do with it.

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

Mr WILLIS: Here again it is essentially a political rather than a legal matter. The proposition put forward by Justice Priestley in *Egan v Chadwick* that no Cabinet papers can be denied is just not practicable, and the attitude of all the other judges in varying degrees supports my statement. There has to be—and I think this is very widely accepted both at the political level and the legal level—an element of absolute confidentiality for Cabinet papers and deliberations. But where precisely the line is will never be drawn; it will be case by case and what will come into play will be more political than legal.

Mr BLUNT: Do you think there would be any value in that definition being tested at a certain point in time?

Mr WILLIS: I do not think it is something that can be defined. It is like trying to define the reserve powers of the Crown: The more you try to define it the more difficult you make it to define.

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

Mr WILLIS: I think the Legislative Council today has matured into a very effective house of review. I do not see much more that can be done to enhance it. Although, as I said earlier, it does need more members to handle the workload, but I think that is pie in the sky because no government coming out of the lower house is ever going to be minded to increase the number of MLCs. It would also be very hard to sell to the community at a referendum. But in that context, the Legislative Council of New South Wales is the second-most sacrosanct House of Parliament in Australia after the Senate. It is the only upper house in the country apart from the Senate that cannot be abolished except by referendum of the people.

Now that it has achieved the status that it has got by virtue of the *Egan* cases, what more do you want? What more can it have? What more can it achieve? It is never going to get power over supply and in my view it should not, but it is as secure, as sophisticated and as well functioning as I think any house of Parliament in this country is. The Legislative Council is perceived in the mind of the community, in my opinion, as being the most important inquisitor of executive government. I think that is a great mantle for the House to have. I am enormously proud that the pebbles that were thrown in the pond so long ago have ended up with the result we now have today.

Mr BLUNT: Mr Willis, can I thank you so much for the reflections that you have shared with us today and that are now recorded for posterity. Just as importantly, on my own behalf, on behalf of my predecessors and on behalf of all of the staff of the Department of the Legislative Council, who take such pride in serving this great institution, can I thank you for your contribution and the legacy or, I should say, the manifold legacies that you have left from your parliamentary career and particularly from your time as President of the Legislative Council, which have been discussed and shared with us in such an impressive way this morning. It has been a great pleasure and a privilege to be able to participate in this interview.

Mr WILLIS: Thank you. It has been my pleasure.

(Discussion concluded.)