



*Marking 25 years of the committee system in the Legislative Council*

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Proceedings of the C25 Seminar  
Marking 25 years of the  
committee system in the Legislative Council  
20 September 2013

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**PROCEEDINGS OF THE C25 SEMINAR**

**MARKING 25 YEARS OF THE COMMITTEE SYSTEM  
IN THE LEGISLATIVE COUNCIL**

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**At Parliament House, Sydney, on Friday 20 September 2013**

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**The Seminar commenced at 9.30 a.m.**

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**UNCORRECTED TRANSCRIPT**

## WELCOME

**Mr DAVID BLUNT, Clerk of the Parliaments:** The Hon. Don Harwin, President of the Legislative Council, the Hon. Jenny Gardiner, Deputy President, Reverend the Hon. Fred Nile, Assistant President, former presidents the Hon. Max Willis, the Hon. Peter Primrose, the Hon. Amanda Fazio and Dr Meredith Burgmann, current members of the Legislative Council and Legislative Assembly, former members of the Legislative Council, including many distinguished former office holders, former clerks and visiting clerks, and parliamentary staff, about whom I will have more to say shortly, other distinguished guests, colleagues and former colleagues, good morning, and welcome to the C25 seminar.

My name is David Blunt. I am the Clerk of the Legislative Council, and it is my great pleasure to be your master of ceremonies today. In just a moment I will introduce the Hon. Don Harwin, President, and invite him to officially open today's proceedings. Following Mr President's remarks, I will introduce our keynote speaker, Bret Walker, SC. There will then be an opportunity for questions and comments following Mr Walker's address. First, a few housekeeping remarks and one initial acknowledgment. I particularly acknowledge my colleague, Ronda Miller, Clerk of the Legislative Assembly. I acknowledge her for a number of reasons, not the least of which is that she is the current chair of the New South Wales branch of the Australasian Study of Parliament Group [ASPG]. I thank the ASPG for their support as co-sponsor of today's seminar and remind everyone that the ASPG brings together members, parliamentary staff, academics, and other stakeholders with an interest in scholarship concerning the institution of Parliament. If anybody here is not yet a member of their relevant State or Territory branch of the ASPG, I urge you to join today. Whilst acknowledging Ronda, I also acknowledge another colleague, Rob Stefanic, Executive Manager of Parliamentary Services, and thank him and his deputy, Julie Langsworth—both former committee directors of great distinction—for the support of the Department of Parliamentary Services and your staff for today's seminar.

At the end of this session at approximately 10.45, we will move upstairs to the Fountain Court area for morning tea. The remaining sessions for the day will be held in the Macquarie Room. Staff will guide you to the Macquarie Room. At the conclusion of the seminar this afternoon, everyone is welcome to join us for refreshments on the Roof Top Garden. Once again, directions will be given. As neither House is sitting today, there should be no noisy division bells interrupting us. In the extremely unlikely event of an emergency, the evacuation procedure from this venue is to proceed back out into the foyer and up the stairs, back into Macquarie Street or via the disabled access ramp out to Macquarie Street. Again, please follow the directions of staff in such an event. Hansard will be transcribing today's proceedings and the transcript will be available on the website next week. Because Hansard is transcribing the proceedings, whenever you are asking a question or contributing from the floor, please use the roving microphone and identify yourself. The final housekeeping message is that all mobile devices should, of course, be kept on silent, lest Mr President calls you to order, and the Usher of the Black Rod will have to intervene.

Don Harwin was elected as the twentieth and youngest president of the Legislative Council of the upper House of the New South Wales Parliament in May 2011. He was first elected to the Legislative Council in May 1999 and re-elected in March 2007. Between 2003 and 2011, he served as Opposition Whip in the Legislative Council following in the last footsteps of the Hon. John Jobling. From 2002 to 2006 Mr Harwin was a member of the Sesquicentenary of Responsible Government History Project Committee; from 2006 to 2012 a board member of the State Records Authority, and is current patron of the Australasian Study of Parliament Group, New South Wales branch. Mr Harwin has a longstanding interest in and professional connection with all matters concerning the electoral process, including the redistribution of electoral boundaries. During his time in the New South Wales Parliament, Mr Harwin has served on numerous committees, including the Select Committee on Electoral and Political Party Funding as deputy chair, the Joint Standing Committee on Electoral Matters, the Privileges Committee of the Legislative Council, the Legislation Review Committee, and he now chairs the Procedure Committee as President. I now invite Mr President, the Hon. Don Harwin, to officially open today's seminar.

## OPENING

**The PRESIDENT:** I commence by acknowledging the Gadigal clan of the Eora nation and its elders and thank them for their custodianship of this land upon which we meet. Ladies and gentlemen, it is great to see so many familiar faces and so many friends. I am only going to single out two people: Ann Symonds and Peter Topura. I am told that Ann has been going through a rough patch over the past few weeks. It is great that Ann is out of hospital; we really appreciate her making the effort to be with us today.

**The Hon. ANN SYMONDS:** You might regret it.

**The PRESIDENT:** Order! I am almost sure that I will regret some things today but it is all in the cause of recording our history. Our good friend Peter Topura, Director, Procedure Office, House of Representatives, Autonomous Region of Bougainville, is perhaps the person who has come from furthest away. The Autonomous Region of Bougainville is one of our twinned Parliaments. We will be hearing from Peter after lunch and—having had a sneak preview—I am sure it will be very entertaining.

It gives me great pleasure to open today's proceedings. Today we mark the twenty-fifth anniversary of the modern committee system in the New South Wales Legislative Council. Anniversaries provide an opportunity to look back on our achievements but, more importantly, they also provide a valuable opportunity to contemplate the future. And so today, as well as sharing our memories of the accomplishments of the Legislative Council's committees, we will focus on a vision for committees beyond 2013. Bicameralism developed in the Westminster tradition when upper Houses were established as a response to the democratic impulses of the masses. Upper Houses were seen as a check. Today upper Houses have their value in particular from the work we do as members of parliamentary committees. Parliamentary committees have become an essential feature of our work. As political scientist Professor Reuven Hazan said in 2001, the contribution of committees is "of incalculable value, and no Parliament would be able to operate without them." That is certainly true in terms of the enduring value of our House.

Committees operated in the Legislative Council long before 1988. In fact, the first select committee was set-up shortly after the Legislative Council was established in 1824, and it is interesting to note that many of the issues that concerned the colony's political class in the mid-nineteenth century would just as easily resonate with people today. Members of our current State Development Committee, which has just completed an inquiry into water storages, might be curious to compare notes with the committee on the tunnel for conveying water to Sydney. That committee was established in 1833 to track progress on a pipeline to deliver fresh drinking water from Lachlan Swamp in Centennial Park to the city. The pipeline took more than 10 years to build, by which time another select committee had been set up to investigate why it was taking so long to finish it, as well as to explore additional sources of fresh water for the city's growing population.

Committees have always been controversial. The 1844 Select Committee on Education provides a fascinating glimpse into the education debate at a time, when less than half of the colony's children were receiving any form of schooling. It was so controversial that even the witnesses were split. Apparently the witnesses were not only hopelessly split over which system of education should be adopted, they even disagreed about which version of the *Bible* they should swear the traditional oath on. Times have moved on and our modern committee system is what we are celebrating and evaluating today.

Yesterday I had the pleasure of launching an excellent monograph entitled, "Keeping the Executive Honest: the initiation of the modern Legislative Council committee system", by the former parliamentary historian, the redoubtable Dr David Clune. A complimentary copy has been included in your seminar bag. Dr Clune's monograph is the first instalment of the Legislative Council's Oral History Project. The monograph draws on Dr Clune's interviews with five of our former colleagues who played a significant role in the birth of the modern committee system, several of whom are in the audience today: Max Willis, Elisabeth Kirkby, Ron Dyer, Lloyd Lange and John Hannaford.

The modern committee system was very much a product of the 1978 constitutional reforms that led to the Legislative Council becoming a directly elected, full-time legislature. These reforms fuelled a new sense of purpose in the Legislative Council and a determination to head off periodic calls for its abolition. Unless the Legislative Council was made an effective institution, it would be difficult to resist the pressures to abolish it. Members such as Max Willis felt that committees could help revitalise the Legislative Council and looked towards the Senate's relatively new committee system as a model. Lloyd Lange believed that a committee system could "restore some meaningful degree of parliamentary check on executive government of whatever

persuasion." And John Hannaford thought committees would be instrumental in ensuring effective community engagement to tackle challenging policy issues.

With support for a committee system mounting, the House appointed the Select Committee on Standing Committees in 1985 to investigate and report on a structured system of standing committees. The "committee on committees" as it became known, ably chaired by Ron Dyer, recommended establishing four standing committees: a committee on subordinate legislation and deregulation; another to examine State development; a third to inquire into social issues; and a fourth committee with the quaint title of "country affairs". While the report received bipartisan support, it was not until after the election of the Greiner Government in 1988 that the Legislative Council appointed the first two standing committees: the Standing Committee on State Development and the Standing Committee on Social Issues.

According to John Hannaford, the decision to only fund two of the proposed committees can be traced to nervousness on the part of senior public servants about the "danger" that stems from allowing those committees to exist, and the costs associated with their establishment.

So it would be another seven years before the Standing Committee on Law and Justice was set up following the election of the Carr Government in 1995. Two years later, in 1997, the five general purpose standing committees emerged. This was the final step in the establishment of the modern committee system as we know it today—a system that has conducted more than 300 inquiries into most facets of life in New South Wales. I pay tribute to my predecessor the Hon. John Jobling for his role in undertaking some of the ground work that led to the motion in which the House established those committees.

According to the Hon. Max Willis, community engagement is at the heart of an effective committee system. Reflecting on the Legislative Council Standing Committee on Social Issues inquiry into adoption information, of which he was the inaugural chair, he recalled, and I quote:

... it was all personal, real-life people, their job, their anguish. It couldn't but help engage you.

He also noted a strong emphasis on bipartisanship. Max says again in the monograph, talking about how the members all made:

... a very genuine, positive effort to be impartial, objective, to listen to the weight of evidence, weigh it up and come to a conclusion based on the evidence ...

I am pleased to say that the tradition of bipartisanship and community engagement in Legislative Council committees is alive and well. You only have to tune in to members from all sides of the House debating committee reports on Tuesday afternoons to know that these values persist. You will hear comments like this one from my dear friend and colleague the Hon. Trevor Khan about a recent inquiry into the use of cannabis by people with a terminal illness. He said:

In a sense, I was a reluctant participant. It is a fraught subject and, quite frankly, I thought that little good would come from the inquiry. I was wrong. Unbeknownst to me, all the committee members approached the subject in a moderate and thoughtful way and the issue did not become politicised ...

A number of you were here yesterday for the debate we had in the Legislative Council, where a number of current members added to those remarks made by the Hon. Trevor Khan a couple of weeks ago. For example, my colleague the Hon. Robert Brown in talking about the coal seam gas committee made this comment:

The one thing I took away from that committee was a sense that the people who gave evidence at the hearings of that committee were grateful that they as ordinary citizens had a chance to have their say. ... But being able to sit in front of a committee of the Parliament and to address one's concerns directly to a formal parliamentary body, to have those concerns recorded for posterity in *Hansard* and to have one's submission honestly considered is of enormous importance.

The Hon. Peter Primrose, one of my predecessors as President of the Legislative Council, talked about his time on the Legislative Council Standing Committee on Social Issues, and in particular the inquiry looking into hepatitis C. He said:

... it was a success because its members respected the evidence that was given to them. Despite the fact that we had our own perceptions as human beings, members of political parties and people who read correspondence and opinions in the media, the committee went where the evidence took it.

Dr John Kaye, talked about the committee inquiry in 2012 into legislation about election funding that was before the House. He said:

The inquiry resulted in a law that is not perfect, but it is a better law. I believe that should be a model for the future: Where legislation is contentious we should be open to referring that legislation to a committee for inquiry where we can obtain expert advice, examine the provisions of the legislation in more detail and uncover unsuspected or unintended consequences.

The Hon. Helen Westwood, again talking about the committee system, said:

I will say that I have found the committee system to be of immense value in its capacity to examine issues in more forensic detail than would be possible if the matter were only to be debated in the House.

During my involvement with committees I have seen members swayed and moved by the enormous amount of information, evidence and personal experiences that have been conveyed. I have no doubt that many members have had to readjust their preconceived ideas and philosophies based on the evidence and submissions put before them. I know that I and other members have left some committee inquiries with different views than we held at the beginning, which has been due to the quality of the information that we have received.

Finally, one of our newest members, the Hon. Niall Blair, a member of The Nationals and Chair of the Legislative Council Standing Committee on Social Issues, talked about the value of the committee system and of committee inquiries travelling around New South Wales as a way of Parliament being engaged with and more effectively accountable to communities right across the State. He echoed what a number of other members have said to me, and indeed something I think the Hon. Max Willis has said in the monograph. He said:

It is fair to say that my desire to enter politics was not driven by social issues. It is fair to say that I was not driven to join the National Party predominantly by social issues in my personal circumstances. When I look back now and reflect on my position and what I do in this place, I am every day thankful that I have been assigned to the Legislative Council Standing Committee on Social Issues and honoured to be chair of that committee.

That speaks the world of the way a new member sees our committee system in action and the role it is playing. Legislative Council committees in their manifold guises are now an essential part of the system of parliamentary democracy in this State. It is beyond doubt that they have contributed significantly to the peace, welfare and good government of New South Wales as required by the Constitution. Many students of Parliament argue that State legislatures are incapable of performing their traditional scrutiny function. The robust performance of modern Legislative Council committees shows such arguments to be out of place. And so we should celebrate our past successes not with any sense of hubris, as we have many challenges ahead, but with open and questioning minds so that the Legislative Council committees can continue to contribute to the effective governance of this State for the next 25 years and beyond. It gives me great pleasure to officially open today's seminar.

**Mr BLUNT:** Thank you very much, Mr President. Before I introduce our keynote speaker I would just like to return briefly to some acknowledgements. I have already acknowledged my colleague Ms Ronda Miller, Clerk of the Legislative Assembly. I would like to take the opportunity to very briefly acknowledge the other serving and former clerks who are in attendance today. Firstly, the two former clerks of the Parliament who are here with us today, Mr Les Jeckeln and Mr John Evans.

At the recent Presiding Officers and Clerks Conference held in Canberra in July this year, the Clerk of the Australian Senate, Dr Rosemary Laing, in a typically brilliant paper, stated:

Clerks stand on the shoulders of the reputations forged by their predecessors and peers for non-partisanship, learning, long-service and dedication to an institution.

I heartily endorse those comments and I thank you both, Les and John, for honouring us with your attendance today and for the legacy that you have left. I also acknowledge the presence of the former Clerk of the Legislative Assembly, Russell Grove. Acknowledging Russell's presence here today reminds us that, whilst today we are reflecting on the twenty-fifth anniversary of the Legislative Council committee system, the Legislative Assembly also has a lively committee system of its own. It also reminds us of the tremendous support that the Department of the Legislative Assembly provides for the important joint standing committees of this Parliament, upon which members of both Houses serve.

I mentioned the Clerk of the Australian Senate. Unfortunately, Dr Rosemary Laing has had to send her apologies for today. We do, however, have her colleague the Clerk of the House of Representatives, Bernard Wright, here. Bernard, I note that you have recently indicated your intention to retire later this year. I therefore take the opportunity, on behalf of all your colleagues here, to note the admiration we all have for the calmness and professionalism that you and your team have demonstrated as an example to us all over the last three years—a time that must have been extremely challenging. I also acknowledge the presence of Tom Duncan, Clerk of the Australian Capital Territory Legislative Assembly, and Michael Tatham, Clerk of the Northern

Territory Legislative Assembly, together with all of the other visiting parliamentary staff and our own parliamentary staff, whether from the Legislative Council, the Legislative Assembly or the Department of Parliamentary Services. You are all very welcome here today.

It is now my great pleasure to introduce our keynote speaker. Bret Walker was admitted to the New South Wales bar in 1979 and appointed Senior Counsel in 1993. Bret is one of Australia's pre-eminent counsels. Over the years he has provided invaluable advice and has also represented the Legislative Council in a number of important constitutional matters, most notably in the Egan cases in the Court of Appeal and the High Court of Australia in the late 1990s. Bret has also provided advice to my predecessors and to me in relation to a number of matters with respect to the powers of committees. The topic of Bret's address today is "Inquiry powers in an era of executive dominance". Please welcome Bret Walker.

## KEYNOTE ADDRESS

**Mr BRET WALKER, SC:** Thank you very much for the honour you do me by inviting me to speak this morning. I hope my comments will convey something I can summarise at the outset—my appreciation and respect for the work done by the committee system of the Council, and in particular the attention and energy to the efficacy of that system that I have been privileged to witness on behalf of presiding officers, chairmen and clerks and their staffs.

I also have to say—bearing in mind what has been described in introducing me—that I was both honoured and greatly stimulated by the experience of advising the presiding officers in the *Egan v Willis* and *Egan v Chadwick* chapters of constitutional history in New South Wales. One theme for my remarks is to warn that although what I do for a living, what usually I advise about, and what I was doing in those cases, can be described as litigation—that is, the applications of the techniques of law and legal argument—as I have said more than once to my parliamentary clients, it is of cardinal importance that the Houses do not leave the fate of the content of their powers, upon which the reality of their existence depends, to the adjudication of the judges. Facetiously, you should not assume that all the judges are as good friends of the Houses of Parliament as this particular Senior Counsel is!

In his valedictory remarks, John Hannaford, who I am delighted to see here this morning, put it characteristically succinctly and plainly:

The use by members of the effectively designed committee structure, together with the clearly established power of this Chamber to secure executive accountability through the production of papers to the House, is the way to satisfy the public that this House is a proper bulwark of democracy.

That is plain speech, but not afraid to reach the grand heights. And if constitutional analysis of the existence and exercise of powers of our legislative chamber cannot reach grand heights then there is a major problem—one that Mr Hannaford was talking about in the same speech in which he warned of the existential threat to the upper House were it not to satisfy the public in some such fashion.

So, in visiting the last quarter century, particularly in relation to orders for production of State papers, it seemed to me appropriate to start with a reminder of a world that never came into existence and which I hope will never come into existence—the world that was contended for by the arguments that were run and lost by the executive in *Egan v Willis*. These are the arguments, according to the summarised note in the Commonwealth Law Report—accurate, if compressed. The Solicitor General put the following proposition:

In so far as the Legislative Council scrutinises the workings of the Executive—

I interpolate that it is wonderfully subtle to introduce such a proposition with the expression "in so far"—

it acts as any person is entitled to do.

by now the Council is on the level of the man in the street—

but it is not one of its functions, merely a usage or convention.

Then the wooden stake was driven further:

Even if it had such a function, it was not reasonably necessary for its proper exercise that the Council have power to compel the production of documents.

It is worth dwelling for just a brief while on the consequences for accountability—to use a modern expression—the consequences for the Council and the consequences for the public interest had that been accepted by the High Court.

In the course of argument, as I recall, and as the Commonwealth Law Report notes in the note of argument, Gummow J reminded everyone of that which was thematic in the reasons both in the Court of Appeal and in the High Court. We were not talking about a subordinate legislature in a far-flung corner of the British Empire. Yes, of course, we are talking about a body which is legally and historically a continuing emanation of just such a creature, but times have changed—not least through Federation and the Australia Acts—or, as Gummow J is reported as noting during the Solicitor General's submissions:

The Australia Acts removed the colonial context. The earlier decisions—

which were about the inferior legislatures of New South Wales, Barbados, Newfoundland et cetera—

involved the construction of prerogative instruments—

Royal charters, letters patent—

not Constitutions.

Another theme that I wish to emphasise is that this is about constitutional power, not statutory power. Of course, the Parliament—the tripartite Parliament—can enact legislation for all sorts of powers of inquiry, including production of documents and compulsion of evidence. But we are talking about that which is inherent constitutionally in a House of Parliament that is not at the mercy of what houses similarly controlled in political terms see fit to grant by way of legislative powers from time to time—that which comes about because you are a House of Parliament.

It led, of course—another grand level of rhetoric that requires to be looked at somewhat sceptically—to the readoption, through *Egan v Willis*, of the vision of the Houses of Parliament as not merely places in which legislation is the product, but where scrutiny and accountability—antecedent to, but also subsequent to, legislation, and observing of administration—is the task. The label "the Grand Inquest of the Nation", as you all know, has 17th and 18th century roots, but it has been given a modern and very important set of teeth by the decisions in *Egan v Willis* and *Egan v Chadwick*.

There is a critical thing about *Egan v Chadwick* that I think is insufficiently remarked upon when talking about the extent of the rule of necessity by which these powers to compel papers were being assessed by the judges, all of whom I think were respectful of and deferential to the parliamentary function involved. The important thing to remember is that the doctrines of legal-professional privilege—a creation of and a creature very dear to judges—as well as public interest immunity—also a creation of judges as a matter of deference to overriding public interests—were adjusted so as to remove any impediment to the compulsory production of State papers. Of course, as those decisions and subsequent conduct show, there can and should be great care taken in the procedures of the chambers or committees to preserve the confidentiality or restricted access or limited use of papers with appropriate sensitivity. The record, I am told, shows that has never been departed from. It has never been breached. It has never been shown to be unsafe.

But legal-professional privilege obviously involves a relation between client and solicitor which is of course disturbed by the relation. The neatness of that is simply unavailable when one is talking about the accountability chamber, the Executive, and all on behalf of the electors and people of New South Wales. What is the secret of legal advice to the Executive which can properly, according to the function of accountability, be kept from those who are to hold the Executive to account? That was a very important victory for the rule of necessity in this area. It is necessary to be able to see the legal advice in order to understand and be well informed about the reasons for, justifications of and legitimate criticisms about the administration of government. It is necessary that there be access at the highest level, subject to Cabinet, to documents which in a court of law would be subject to a claim of public interest immunity. Because, again, how else can accountability proceed? It is very important, however, to note that exception: Cabinet.

As you will hear me conclude this morning, it is the law that Cabinet documents or, as the judicial phrases in their various mutations have it, that Cabinet minutes, Cabinet papers or the like—that is a lawyers' phrase you should be nervous about—are a category which according to a previous generation were automatically immune from production in judicial proceedings. That comes about by what in my view has been an insufficiently examined analogy that has made them be regarded as automatically immune as a result of the majority decision of the Court of Appeal in *Egan v Chadwick*. The main proposition I want to suggest to you is that that is an extremely dubious and problematic state of the law. However, if it is the state of the law in an area which has been, I regret to say, pronounced only by judges there are problems to which I will come arising from our constitution.

Justice Priestley in *Egan v Chadwick*, very importantly it seems to me, bottomed his dissenting view concerning Cabinet documents on two propositions. One was very fundamental and the other was by way of what might be called a comparative of functionality. Let me explain. The fundamental one was that government in New South Wales is carried on by the Executive on behalf of the people of New South Wales as their representatives; not as their governors or rulers. Or, as I would put it, there is no king behind the counter. It is

simply the people's representatives and it is the government of the people by their representatives that is accountable, as executives, to non-executive members in Houses of Parliament. Responsible government is another facet of the same proposition by which the representatives, according to a ballot on the floor of the popular Chamber, will make or break the government. All of that comes importantly between the lines of our remarkably terse Constitution about such matters to which I will briefly return soon. That is the fundamental element that Justice Priestley based it on. What in short is the special aspect of Cabinet documents which could keep them from the compulsory power hitherto declared for State papers to be produced to a House committee given that it is after all in the name of and for the people and through their representatives that the account is being held?

The second point, the one of comparative functionality, was to remind the reader that when the judges have spoken about the judges' power to compel the production of papers for the administration of justice in courts of law, Cabinet papers in Australia, according to the High Court, are not in a special automatically immune category. They too will be subject to a balance in the particular case as to whether their production ought to be required given the particular weight or press of the interests of justice in a case. An example is whether their production is necessary for the presentation of the defence of a criminally accused person. If they are, under our present understanding of the law they could be forced to be produced.

If that is good enough for the administration of justice one asks what is it either of its nature or a priori which says that the accountability of the Executive, one of the bulwarks of democracy, is categorically less important so that not by an ad hoc judgement or a specific weighing of factors in the particular circumstances but that they are automatically immune in every case. Why, to use the language of the judges in Northern Land Council, is it as an absolute privilege that there cannot be production of Cabinet documents. It is here that it is significant that in *Egan v Willis* this matter was not argued. It was left. It is only in *Egan v Chadwick* that we have the decision. We do not have very clear decisions of fact in *Egan v Chadwick*, and it is all the better for that. That has led, as you know, to a practice in the Legislative Council and its committees by which there can be an assessment of claims to this immunity of production by reference to proximity to Cabinet including some related aspects of public interest immunity by a third respected person as an arbiter—it has been Sir Laurence Street—in order to, if I can put it this way, keep this matter out of the courts.

That seems to me to be a very powerful factor for the following reasons. It is to be remembered that the law found by the judges, who do not get to choose their cases and must decide them as they arrive, concerning the content of parliamentary powers is a very peculiar body of knowledge as it is largely composed not of what is to be found in the written Constitution but in the history of what you, the members, have done and are doing. It is critical to recall that that in particular is something which must be appreciated by the judges as not being found in previous decisions just of the judges. Responsible government, said Chief Justice Gleeson, is a concept based upon a combination of law, convention and political practice. The way in which that concept manifests itself is not immutable. It will change by the changing conduct of the participants according to historical circumstances—one hopes. After all, the judges expect the common law to do that as well. It should and must happen, I hope, in chambers such as this Council and its committees.

The importance of that is that responsible government or representative democracy—two facets of the same system of government—are the bases upon which the rule of necessity operates so as to give the power to compel the production of State papers to committees. As the Chief Justice went on to say, the nature and extent of the accountability responsibility, the function, the necessity to serve which gives the power to produce the papers, depends as much upon convention, political and administrative practice and the climate of public opinion as upon rules of law.

It need hardly be said that I think this is unique as a body of information upon the basis of which judges deciding a question of law decide what the law is. The sources include more than simply previously pronounced law. They do not just involve increments yielded by inference and extrapolation from previously announced doctrines of law; the sources also include reference to, close study of and an understanding historically of what has been done and is being done. That, of course, is a very important reason why, to the extent you possibly can, these things should be kept out of court so that practice may develop.

The Chief Justice's emphasis upon what the current circumstances required by way of necessity is one of the reasons, of course, why his Honour was intent on telling the Council that the extent of its powers was therefore not immutable. The question arises as to what impact that has upon the double entrenchment, to which I will come, in relation to the powers of the Council. Of course, the rule is one which may well be unstable in the limits that have been pronounced. The rule for the production of papers involves, as you know, vindication

of laying hands on Mr Egan so as to conduct him out of the Chamber by way of giving effect to a resolution for his suspension. It was a trespass case—trespass to the person. We lost that part of the case where we conducted him further than outside the Chamber and onto the footpath. I did, I confess, as an advocate, try to belittle the importance of that by calling it the "footpath point", but it did not prevent the judges in either court from downing us on the point, albeit under the heading "the footpath point".

But it is to be recalled that that leads to the distinction between the protective power—it might be called the compelling power—of the Chamber: "You are impeding our work by not giving out the papers. You must leave and cease participation until you repent and assist us", that is valid, and punishment: "We wish to put you in the stocks. We wish to pillory you or we will suspend you indefinitely regardless whether you repent tomorrow or next week". That is punishment and that is beyond power—it is not necessary. Especially for myself as a citizen as well as a lawyer, I like being in a society where the rule of necessity will, in such a case, permit suspension to encourage or compel compliance but will forbid suspension by way of punishment. That seems to me to be a well-pitched compromise. But a moment's thought will tell you that one man's protection is another man's punishment and that the sensation of the person suspended may be precisely the same whether the motive of the suspension was protective or punitive.

Instability of that kind, I suggest, casts no doubt upon the existence of the power but threatens the possibility of litigation in the future. I hope, for my part, as a supporter of the development of parliamentary practice with as little assistance from the judges as possible, that that will lead to the continued practice that can still be observed of what might be called compromise and civilised restraint on both sides when controversies of this kind arise.

Could I then turn to the question of what future there may be with respect to change, development and adjustment for future circumstances in relation to the Cabinet secrecy rule? The rule pronounced in *Egan v Chadwick* would seem to say that as soon as something is put into that category, then members of Parliament may not avail of the Chamber's undoubted power to compel the production of State papers in order to contribute to their continuing holding of the Executive to account. To remind everyone of something so true and obvious that we tend to forget it: Cabinet does not get a mention in the Constitution Act; neither, for that matter, is there any provision of the Constitution Act that requires Ministers in the Cabinet or not to be members of Parliament.

It can be seen that the Constitution of New South Wales is as much unwritten as written in extremely important aspects of what we call responsible government. That is none the less real and none the less binding but, of course, it contains a magic native capacity to invent and reinvent. So long as it is done sufficiently slowly and by the appropriate organs in consensus, it means, surely, that there can be adaptation of Cabinet government according to different circumstances, and I propose one that I do not wish on anyone here present and will just look forward to a posterity when we are all pushing up daisies, that is, a time when coalitions are sufficiently fractious and internally clearly divided but also perennial that no government can obtain the confidence of the lower House, which is not composed of coalitions where the rough welds are very obvious. At that point, it seems to me, the weight on the fiction of Cabinet solidarity of the fact that there will be agreement that consensus is the outward appearance of every decision emanating from Cabinet is an affront to common sense and to the political good sense of the citizenry.

There will be—those observing Westminster would be entitled to see it happening there—policies of one part of a coalition, which will be traded for policies of another part of the coalition immediately after an election in which the parties respectively comprising those parts of the coalition have spoken to the electors opposing the other's policies. But to make government, and this is both civilised and proper, the agreement has been reached that not only will you have four Ministers and I will have five, not only will you have the Treasury and I will have Education, but you will let my schools bill through and I will let your tax through, notwithstanding I opposed your tax and you say my schools bill will be the ruination of our children. It is absurd that the Cabinet decisions that give effect to the legislation to carry through those parties' relative success—not complete—in persuading the electors to those policies that anyone would suggest that that Cabinet has solidarity on the point. Circumstances alter, in short, what is presently to be found in the cases about Cabinet secrecy, which are all in the context, bar *Egan v Chadwick*, of judicial proceedings, of the doctrine, as it were, as a timely, semi-religious tenet.

I would wish to propose that it is, above all else, a fiction—I do not mean a cynical fiction; it is an outright fiction. The notion that we have a Cabinet of capable men and women who never disagree among themselves when discussing to reach a decision is, of course, absurd—offensive. No-one proposes we would want such a Cabinet. Why then do we continue to insist on the carrying through of the fictitious monolithic

consensus of Cabinet into parliamentary accountability? I stress: It does not exist in a court. If revealing Cabinet minutes is necessary for the defence of a criminal accused, almost certainly they will be compelled to be produced, and in the absence of them not being produced, the prosecution will be stayed as an abuse of process.

That is what happened in *Sankey v Whitlam* as one of the main steps of the reasoning in Justice Stephen's, with great respect, brilliant disposition on these topics. He pointed out that were the English approach, intensely deferential to Cabinet secrecy, to be followed through and the Cabinet documents in that Loans Council scandal not produced, because the prosecution would thereby have to be stayed, the Ministers against whom the accusations were made would be immune from prosecution. Where is the public interest in that? But I say this: That is for the administration of justice by the courts. Where is the main difference, if any, to distinguish between the accountability of such Ministers to a House if it is, according to Justice Stephen, a self-evident wrong outcome for such Ministers to be immune from prosecution? If Cabinet documents could be withheld that ought to be produced to assist them in their defence, then how could it seriously be said that the rule of necessity, which, after all, triumphs over legal professional privilege, public interest immunity—why would the rule of necessity for the Legislative Council of New South Wales and one of its committees not permit Cabinet documents to be produced?

"Ah ha", some say. There are two reasons, traditionally, that the judges—and, I stress: Why would you leave this to the judges? But that is a comment—in England and here have historically offered as a reason why you would not permit it. The first has been denounced as the old fallacy—the old fallacy being that if members of Cabinet knew that their minutes might be produced, their candour, which I presume means their honesty and intellectual integrity, would be reduced, diminished or reversed from what it would otherwise be in those meetings. That is now treated by Australian judges as wrong. I would go so far as to say it is an obvious historical calumny on a political class in another country and we do not have to adopt it here. That is the old fallacy. What I will call the new or modern fallacy is to be found in what must be one of the most remarkable, and I have to say wrong-headed, passages in the judgements of one of the greatest common law judges ever, Lord Reid in *Conway v Rimmer*. Having moved on and said the detraction from candour justification will not do, he goes on—and he of course has ministerial or semi-ministerial experience—to state:

To my mind the most important reason—

That is, no disclosure of Cabinet material—

is that such disclosure would create or fan ill-informed or captious public or political criticism.

I do not know what parts of that that members past and present of the Legislative Council would volunteer to fit within! His Lordship went on:

The business of government is difficult enough as it is, and no government could contemplate with equanimity the inner workings of the government machine being exposed to the gaze of those ready to criticise—

And here comes the clincher—

without adequate knowledge of the background and perhaps with some axe to grind.

I do stress without any feigning that the man was a great judge. The breadth of humanity and decency comes out from his many, many judgements. It has to be said, however, that if that is a view of a constitutional representative democracy with responsible government that was appropriate in 1968 in the United Kingdom, it is one which we in this country at this time should set our faces resolutely against.

Access to Cabinet documents will increase knowledge. Access to Cabinet documents, including that which goes to Cabinet rather than record what goes on at Cabinet, will provide knowledge of background. Revelation of the fact that people disagree at Cabinet would be revelation of the bleeding obvious. In *Sankey v Whitlam*, you can read between the lines of the judges in the High Court a kind of incredulity that we were truly debating keeping secret documents, the nature and contents of which had been in the newspapers. There should be a similar realism, I suggest, in this area. But I trespass on your time. I will come to my last point, which is, I fear, slightly pessimistic.

Can this be done by the means that I have urged the Legislative Council, present and future, continue to follow; namely, shape yourself and your powers by your conduct, not by periodic visits across the road to the Supreme Court, let alone down the road to Lake Burley Griffin? Can you do that in relation to Cabinet documents? In theory, there is one way it could happen. In theory, there could be a sea change in the kind of

advice given over the generations to the Executive in this State, or even a sea change in the institutional view taken by the Ministers who comprise the Executive. They could say, maybe reflecting on their past days in opposition, maybe even reflecting on the possibility that they would at one time in the future again be in opposition, maybe taking a broad and historical view of the public interest, maybe, in theory, the Executive could decide, "We won't claim Cabinet secrecy. We wish there to be accountability in the name of the people through the people's representatives, and we are not afraid that the material we regarded as appropriate to ground our decisions in Cabinet will be made available to elected representatives."

That could be done, in theory, bearing in mind the practicality with which secret commercial-in-confidence and other sensitive documents, including those to do with pending litigation, have been produced time after time in the Legislative Council and its committees. Access is restricted, use is limited, secrecy is imposed—so far, always successfully. It is not to be supposed, surely, that members of the Council, acting as the President described today, would be so recreant to their oaths that they would rather, for short-term partisan benefit, spoil the public interest by, say, wrecking a market for the procuring of goods or services for the public by revealing that which is commercial-in-confidence. No-one has ever suggested that there is anybody likely to do so, let alone of course a majority of the committee or a majority of the Chamber.

These are fantastic possibilities and the courts tell us in judicial review cases that you do not judge the meaning and operation of the law by supposing an abuse of it. That is a basic approach to an understanding of administrative law. Neither should members of the Executive or members of the cadre of public servants who advise the Executive take that approach when considering handing over to members of Parliament, colleagues, for accountability functions that which has gone to them in Cabinet and that which records what they have done in Cabinet. That is in theory. I do not expect that that will ever happen. I have learned, I fear—not just in New South Wales but in other jurisdictions—that there is something in the species of an Executive that makes it quite unlikely that that would ever come about.

That, I fear, means that it might come down to the prospect of litigation. After all, the category of Cabinet document is sufficiently vague—remember the phrase "Cabinet paper or the like"—to lend itself to argument in particular cases about whether something is a Cabinet document or, in any event, whether a Cabinet document is a category which simply as such should be exempt from production. That would be possible, then, to produce litigation modelled like *Egan v Willis* and *Egan v Chadwick*. In such a case the state of the law is such that, in my opinion as an advocate, there could be a respectable argument put that *Egan v Chadwick* was wrong. You have to be prepared to go to Canberra to make that good, but that is done, as you know, from time to time. This is where we really need the declaratory theory of the common law and maybe it applies here: that is, the judges summoning up forensic botox to keep the straight face that is required to say, "We're not changing the law. We're telling you what it always was. Those who went before simply have not seen this point."

Not all judges will cleave to that. Sir Anthony Mason has famously described it as a fairy story. That then leads to the question: How does that match with what is at stake in this case? We are not just talking about some aspect or rule of the common law. We are talking about something which is absolutely fundamental constitutionally in this State. In particular we are talking about something that raises the question whether paragraph 7A (1) (a) of our Constitution Act is engaged: the double entrenchment calling for a referendum for the alteration of the powers of the Legislative Council.

Whether or not that is in terms applicable to the judges in Canberra deciding by majority that *Egan v Chadwick* was wrong is perhaps a nice point for legal scholars to debate. What really matters is that the intent of 7A is a very proper reason for the judges to be even more conservative than ordinarily in departing from previous decisions upon the basis of which there has been intervening practice. Of course, that is a very important reason why past precedents not be reopened by courts; left, as they say, for Parliament. And we come back to the problem with which we start.

We are not here talking about statutory powers. We are not talking about what happens when the two Houses are sufficiently politically in concord as to produce Acts regulating their own procedures in a fashion that conduces to the public interest. We are talking about what happens where there is that natural, according to the chances of ballots, lack of complete concord between the two Houses which gives, historically over the last quarter century, such striking and important occasions of accountability of the Executive in the legislative Chamber. If we are talking about that, then it seems to me at the moment, alas, the most obvious and glaring gap—the incapacity to compel the production of what are called Cabinet papers and the like—is unlikely to be remedied in court, unlikely to be remedied by legislation, and perhaps in theory remediable only by the unlikely event of the Executive giving up its secrecy.

Ladies and gentlemen, I repeat my appreciation and respect for what has been achieved in the last 25 years. I continue as a citizen to hope that the power to order the production of papers remains as useful as I think it has been. I respectfully question whether something bottomed on the rule of necessity does not therefore reveal that it has this inadequacy at its heart. Thank you.

**Mr BLUNT:** Thank you very much. Is it any surprise that the Legislative Council prevailed in the Egan case? We have some time for questions and comments from the floor. In accordance with the rules for question time in the Legislative Council, I ask you to keep your question or comment to one minute if possible.

**The Hon. MAX WILLIS:** Mr Walker, I was fascinated in your concept of what might happen in posterity. Is what you were postulating not similar to the situation that existed in the multiplicity of New South Wales Coalition governments prior to 1900—well, between 1856—when governments changed with great regularity, members switched sides with great regularity and Cabinets were constituted from all over the place in order to achieve Government? That is one thing. Is what you are postulating not similar to what in fact goes on in Capitol Hill in the Legislature of the United States of America: You support my bill which you do not like, and I will support your bill which I do not like?

**Mr WALKER:** The short answer is that the very persuasive exposition of this by Chief Justice Spigelman in *Egan v Chadwick*, to which I did not have time to turn this morning, makes both those points with real force. His Honour ultimately decided that, contrary to the American approach—the Americans not having responsible government of course, because the American approach was in a system which does not have responsible government, by which I mean the Executive at the behest of the vote in the popular House; the Executive is made by the quadrennial presidential elections, not by the biennial elections for the House of Representatives—such lessons as His Honour plainly thought were otherwise socially very impressive, that is, the accountability of the United States Executive to the American legislators, could not be used in our system. That is the first step.

The second step was to say, in a way that you will gather from my remarks I find ultimately unconvincing but they are very persuasive, as you would expect, that responsible government has as one of its facets the notion of Cabinet solidarity. In a nutshell, my criticism of that is that without us being cynics, indeed the reverse in fact, we all know as citizens, and those of you who are not legislators past or present know this, that of course Cabinet does not always agree on everything. I say as a citizen I would hate to hear that that were true. That is no doubt because I have been brought up in an adversarial culture, the humanities side of the scientific method, that is, there is a hypothesis and a contrary hypothesis and you test it and weigh up the evidence to see which one comes out better. I hope that happens with Cabinet. I certainly hope it happens in the working parties of public servants that produce Cabinet minutes. I happen to know from experience that it does not always but it would be nice if it did always.

For those reasons I have no citizen's respect for this notion of solidarity, that is consensus; it is totally fictitious. I think solidarity should exist on the basis that once it has been decided you have only two choices, support it or resign. That is solidarity, that is constitutional, that is politically sensible and that makes you a government rather than a rabble. That is real solidarity where you are bound by a decision that you contended against, and in truth I think that is how it is in practice. That is all you need. You do not need the fiction behind it that I now agree with something I have always publicly opposed. That is the first part of my answer to Jim Spigelman. The other is that although His Honour is careful not to have founded his conclusion on this, the oath of secrecy, the confidentiality that applies to Cabinet, is also called in aid. The short answer is that in courts of law there is no confidence, apart from those which Acts of Parliament put into a special category, that cannot be broken under force of law in answer to a subpoena or a question asked in a court.

The confidentiality between doctor and patient, banker and customer, Minister and Minister, to name just three, are daily revealed in court. Sometimes they are covered by confidentiality clauses, sometimes courts are closed—basically not, frankly. So if confidentiality is no obstacle to the administration of justice in the courts of law, why on earth should it be an obstacle in a place like this, where after all the disclosure is to people who have the public interest as representatives of the electors to the same degree as the members of the Executive? It is for those reasons that I strongly agree with Mr Willis that I think those two elements are of critical importance in weighing up the possibilities for, but certainly the merits of, pushing further than we have in relation to Cabinet secrecy.

**Mr ANDREW YOUNG:** My name is Andrew Young, from the Parliament of Victoria. I want to ask a question further to Mr Walker's point about what representative government and responsible government mean. Governments are meant to govern for the people and that relates to a matter that is particularly pertinent to committees and their powers over public servants and what I think is a growing proposition put forward by the Executive that public servants have no accountability directly to Parliament; they only have accountability to their Minister. We increasingly see committees unable to access public servants in certain circumstances and classic scenes of where a public servant may be called to a hearing and a Minister turns up instead. Could you comment on what the notion of representative and responsible government means for that relationship between a parliament and public servants?

**Mr WALKER:** I hope you all brought your sleeping bags. Seriously, I have had to think about this in a number of jurisdictions. Mercifully, I do not think anything has ever gone public. This is, in my view, the most challenging *Empire Strikes Back* aspect of this developing, evolving accountability relation between Executive and Houses of parliament. And when I say the *Empire Strikes Back*, I mean that the Executive has lost, in *Egan v. Willis* the capacity to say, "Clear off, none of your business, see you at the election"—they have lost that.

What they have taken up—and if I speak as if there were a conspiracy, it is because I think there is one—by way of an approach to this, is to build on old canons of courtesy by which, in particular, junior public servants were not put in horrible and invidious positions which they would understandably think would be career stunting, where they were invited, in effect, to say, "The Minister is a dill and would not know a good policy if it hit him in the face."

I have never seen anything in a modern committee that has ever come anywhere near presenting such an awful proposition. However, building on that spectre, they have developed this notion that public servants, in particular, cannot be asked anything about policy. It is a fantastic word, "policy". Does that mean you cannot ask about what it is like in practice? Because, if that is true, it means you cannot ask about the administration of the law. And I would have thought that one of the basic accountability functions is for a member of this Council to ask the public servant in charge of the rabbit kill how many rabbits were killed last year, if you were investigating the administration of the Bunny Elimination Act.

It seems to me that this is one of these deliberately unstable or intentionally unstable distinctions or categories—a bit like Cabinet papers or the like—where the penumbra effect is a chilling one: You cannot be sure what side of the line you are, so do not go anywhere near it. And policy has expanded now into practically anything by way of comment, that might be construed by a listener—either a committee member or a member of the public—as a criticism of what the Government has done or has not done.

Because that is so fundamentally at odds with the purpose of an accountability function, I think it is constitutionally wrong. That is, as a lawyer, I have a view that that is wrong in law and that, come the day, it will be described as a convention that may render members reticent to vote for the exercise of such power from time to time. However, if it came to a decision by judges, I think the judges would say: "Well, in this case that convention did not hold because there was a resolution that the majority of the House made, requiring an answer to that question" or, "They have had the subpoena issued for the parliamentary evidence to be given on this topic and we simply have to decide whether that is within power." In my view, if that ever happens—I rather hope it will not—I think that the Parliament will win and not the Executive.

So I wholeheartedly agree with your assessment of the flow of things. I notice because, as it were, these things cross my desk at not quite regular intervals. I have to say, it is getting a lot worse and I think that it is a retrograde step and those responsible for it should really seriously contemplate whether they are serving the public interest by either giving or accepting the advice in question. I do not think it reflects well on an ethos of the public interest and accountability in responsible government and representative democracy for information to be denied a parliamentary committee about what a public servant has or has not done, said or has not said.

All that being said, I repeat, in my view it would be scandalous, cruel and wrong to ask a public servant to make a comment at odds with what I am going to call a political program: "Should the GST be increased, Mr Secretary of the Treasury?" That is, in our system, not the United States. That, in my view, is a quite improper question and I imagine no chair would permit it to be put.

**Mr BLUNT:** Mr Foley? We will make this the final question for this segment.

**The Hon. LUKE FOLEY:** I am the current occupant of the office of Leader of the Opposition in the Legislative Council. Your presentation this morning is most timely. I can report that last night the Legislative Council received returned papers from the Executive Government that were subject to an order carried a couple of sitting weeks ago. I can report that there is an assertion there that Cabinet documents have not been provided. We cannot refer that to Sir Laurence Street as if it were a dispute about whether a particular document ought to be privileged or not privileged; it is simply an assertion. We do not know what the documents are that have not been provided. So, bearing in mind your injunction that we should attempt to resolve these disputes by way of compromise and I think you said, civilised restraint, my question is: What is to be done?

**Mr WALKER:** I was reminded by Mr Willis' remarks, in asking his question, that John Evans, his staff and I had what can only be described as a fascinating time researching *Egan v. Willis* and one of the fascinating eras was, of course, the few decades immediately following self-government—1855 through to about 1885. That was one of the golden ages, until now—until now—for orders for papers, during which there were, from time to time, some objections—Executive-minded objections—not put with the enthusiasm and confidence that they are put now, but still put. It was interesting to me with what care and I think prescience, there were comments—not by resolutions but mostly by comments by individual members in debates—in effect saying: "Maybe you will get away with it this time but I want to go on record as saying, in my view the power and function of this House, in the public interest, requires that you produce what we ask for or, in other words, shows that you are wrong. However, recognising realities, we cannot do anything further about it. Let us get on with something that can be usefully accomplished."

That may sound feeble advice but I mean it very seriously and I think it has developed a robustness, over time. Perhaps the only thing at the moment—but certainly the first thing to be done at the moment—is that the Council and thoughtful individual members of the Council, as well as the Council speaking collegiately, ought to say, "We note that the return is deficient in this fashion; we deplore the deficiency; we maintain that *Egan v. Chadwick* is wrong, and we move on." Fifty years from now, somebody occupying a temporary position, as I had when I was senior counsel for the President in *Egan v. Willis* and *Egan v. Chadwick*, will put together all of those statements, add what Chief Justice Gleeson said about the way in which one understands the extent of powers and, I hope, will then opine, in the circumstances that then obtain that: "It may have taken a long time, but the statement of position by the Legislative Council, long made, now ought to be recognised as the true state of affairs." And that is because the way in which the law is made in this area is not as it is for any other area with which I am familiar. So it is partly what you do but what you do also includes what you say.

And as I say, I was reminded of the statements made from time to time between about 1865 and 1875 to the effect of individual members deploring Executive recalcitrance to calls for production of papers. They were useful, I think. The fact that there was a contest between two Houses is in the nature of things. Judges like Murray Gleeson would never be put off that. They would say, "Well, this is the way these things evolve." So I am sorry, I think my best advice to you is to say what you think the position is. Because it is a House of Parliament, what is, shades imperceptibly into what should be. You have powers of creativity.

**Mr BLUNT:** Thank you very much, Bret Walker and thank you Mr President. We will need to wrap up this session. From here we will proceed up to the Fountain Court for morning tea. The next session was due to start at 11.15 a.m. but we will put that back to 11.20 a.m. We really cannot make it later than that because we do have a full schedule.

Bret, when you started to answer one question I think you said, "I hope audience members have a sleeping bag." As the father of a teenage daughter, I think I have the right terminology here: If you ever want to come over here for a sleep-over party, to discuss these matters at length, you would be very welcome.

As we wrap up this session, I would like to present you with this small token of our gratitude for your wonderful presentation today.

**(Short adjournment)**

## SESSION 1: HOLDING THE GOVERNMENT TO ACCOUNT

**Reverend the Hon. FRED NILE**, Session Chair, member of the Legislative Council.

**RODNEY SMITH**, Associate Professor, Department of Government and International Relations, University of Sydney.

**HELEN SHAM-HO**, OAM, former member General Purpose Standing Committee No. 3.

**The Hon. AMANDA FAZIO**, member of the Legislative Council.

**QUENTIN DEMPSTER**, Journalist, Presenter of *7.30 NSW*, ABC TV.

**Mr BLUNT:** Welcome everyone. It is my great pleasure to introduce the Chair of the first panel, Reverend the Hon. Fred Nile. I am sure Reverend Nile needs very little introduction and is known very well to all of you. Reverend Nile has been a member of the Legislative Council since 1981. Democratic reform of the Legislative Council came in the late 1970s. Reverend Nile was amongst the second tranche of democratically elected members of the Legislative Council. He has served in the Legislative Council since then, except for a couple of weeks in 2004. Reverend Nile has been a member or a chair of committees too numerous to mention: the list goes for two pages, so I will not take you through them all. Currently, he is the Chair of General Purpose Standing Committee No. 1. Reverend Nile, please introduce your panel members.

**Reverend the Hon. FRED NILE:** Thank you, and I give a big welcome to everyone and thank you for coming to share this very important day. This session that I am chairing focuses on the role of the upper House committees in scrutinising the Government. Our excellent, qualified panel is Associate Professor Rodney Smith, who teaches politics in the Department of Government and International Relations at the University of Sydney. His research interests include Australian political parties, parliaments and elections. Associate Professor Smith has written extensively on New South Wales politics and is co-editor with David Clune of the publication *From Carr to Keneally: Labor in office in NSW 1995-2011*. Also joining us on the panel is the Hon. Helen Sham-Ho, member of the Legislative Council from 1988 to 2003. As the former chair of General Purpose Standing Committee No. 3, Helen chaired many significant inquiries, most notably the 2001 inquiry into policing in Cabramatta, for which she received this plaque presented by the Cabramatta Business Association in recognition of her significant contribution to the future of Cabramatta.

Our next panel member is the Hon. Amanda Fazio. She has been a member of the Legislative Council since 2000 and as President from 2009 to 2011. Amanda presided over the House during the controversial General Purpose Standing Committee No. 1 inquiry into Gentrader Transactions, which I chaired. We look forward to hearing about the procedural and political challenges of this inquiry from the perspective of a presiding officer. Finally, I am very pleased to welcome Mr Quentin Dempster. I am sure everyone will know him well from the *7.30 Report*—a journalist and author with extensive experience in television and print media. Quentin is the current host of the New South Wales edition of the *7.30 Report* on Friday nights on the ABC, which all members of Parliament watch very closely. Given his on-air commitments in a few hours, we are especially grateful to Quentin for joining us today. We understand completely why he cannot remain for the rest of the seminar. We look forward to him saying some nice things about the Legislative Council and its committees in the evening and in the future.

I have some housekeeping notes to read. There are a large number of presenters over the course of the day, so to ensure each session runs to time I have been told to take a very firm approach for time keeping. The C25 staff will ring a bell when one minute remains for each presenter's contribution, that is, after nine minutes. After 10 minutes I will indicate that the speaker's time has expired. It would be appreciated if questions could be saved until all panel members have completed their presentations. We will then have a question time panel. I know it is a challenge to keep these presentations to 10 minutes, but that is the program designed for today. I would have given you all longer. I am pleased now to invite Associate Professor Smith to the lectern.

**Professor SMITH:** Thank you very much for the welcome. It is great to be here celebrating the 25 years of the committee system in the Legislative Council of New South Wales. It is not so good to give the follow-up speech after a senior Council; it is daunting but, hopefully, I will have something interesting to say. As I was reflecting on this day, I was thinking why 1988? In other words, why did what we recognise now as the committee system begin in 1988 and what explains its developments since 1988 into the kind of far more

elaborate system we have today? Why are we reflecting on this time? I guess we could have done this if we still just had two standing committees and the housekeeping committees, but we have far more. What explains the origins and development of the committee scrutiny of the Executive?

I think there are three significant factors and one critical factor. There are possibly four. I decided there might be four on my way from morning tea to here. So maybe there are four significant factors, and the additional one I think is particularly critical. To say in advance what I think that one is, and get the offence out of the way, I think it is the fact that the Executive since 1988 has never controlled the Legislative Council, nor has the Opposition had a majority in the upper House—the Legislative Council. To get to the punch line very early, I think it is the fact that the Legislative Council is always an unstable coalition of forces. On these occasions it is rude to talk the language of parties, but the language of parties is the language of politics. We like to think that we are all doing the same thing in the public interest and working towards consensus, but the reality—at least from this outsider's point of view—is that parties are part of the dynamic, if not the dynamic, of politics, including parliamentary politics.

It is the particular dynamic of the party or coalition that controls the Executive not controlling the Legislative Council that I think has been the mainstream of development of committee scrutiny in the Legislative Council. That is the punch line. Let me go to it. What are the three or four other factors? I think one factor we should not forget, and we talked about it already this morning, is that we have a constitutionally powerful second Chamber. So the potential for scrutiny and review is always there to be taken up. For that perhaps we can thank Jack Lang for failing in his attempts to abolish the Legislative Council between 1925 and 1930. Were we having this seminar in Queensland, where I grew up, we might be saying, as Queenslanders often do these days, "Wasn't it perhaps a mistake that between 1915 and 1922 Labor governments managed to eventually abolish the Legislative Council", despite that a referendum to support abolition failed during that period in 1917.

One key factor is the fact that we still have a Legislative Council to exercise committee scrutiny of the Executive. The second factor is the example of the developing Senate committee system from the 1970s. You will remember that I have just insulted the Labor members in the room so I will give them some praise now. You will remember Lionel Murphy's campaign in the 1960s to develop a committee system for the Senate and the response to that from the then Liberal and Country Party Government and the senators was to respond to that seriously; they did not brush it aside. They worked out what sort of committee system they were comfortable with and eventually we got a nice compromise. We got Murphy's standing committees on policy areas and we also got estimates committees, which were a kind of counterproposal from the Liberal and Country Party senators, supported by the Democratic Labour Party [DLP].

We have the example of the Senate and by 1988 we have the example of a Senate in which a minor party, the Australian Democrats, are holding the balance of power and making that committee scrutiny much more active, much more lively and much more interesting than it had been—and they had been doing that since the middle of 1981, so by the time we get to 1988 we have a good exemplar, if you like.

The third factor is the transformation of the self-identity of the Legislative Council from the 1970s and certainly the 1980s when it becomes a full-time council, with directly elected MLCs, and more and more frontbenchers coming from the Legislative Council. In 1976 the first Wran Ministry has one Minister from the Legislative Council but by the end of the Keneally Government in 2011 seven Ministers sit in the Legislative Council; in other words, the Chamber is becoming much more recognised as providing members of the Executive.

With the Opposition, the shadow Ministry again comes more and more from the Legislative Council. There were no Legislative Council members on the Opposition frontbench into the 1970s, or one at the most. By the period of the 2000s there is an average of four shadow Ministers, so the Legislative Council becomes a much more professional kind of Chamber, a much more active Chamber, a Chamber that is recognised as having a role to play in politics. The fourth factor that I was not going to mention but occurred to me is that also you have bored backbenchers; you have people in the Legislative Council either on the Opposition side who are not part of the Opposition frontbench or on the Government side who are not part of the Ministry. What are they going to do with their time? They are going to look after the people of New South Wales of course, and you have heard about that. They are going to think about the public interest but they want something more creative and interesting to do, so committees and committee scrutiny form part of that.

But the critical factor I think is loss of government control of the Legislative Council in 1988. Proportional representation was never meant to achieve this. Those of you with long memories will remember that when Neville Wran introduced the idea of a directly elected Legislative Council using proportional representation he said, "It is not going to produce government minorities in the Legislative Council." He was wrong and perhaps it is fortunate that he was wrong because one of the key things that have happened since 1988 is the development of a robust extensive committee system largely through the activities of crossbenchers, combined with whoever is in opposition at the time.

I will explain the kind of logic here. Governments have a very limited interest in scrutiny no matter their pronouncements while in opposition. For example, Nick Greiner was very keen on a committee system prior to 1988. A couple of years after 1988, he wished that the Legislative Council might be abolished. Labor's opposition to the self-referral powers of the general purpose standing committees in the late 1990s is another example of a party in opposition happy to scrutinise the government but when they are in government, suddenly scrutiny seems like a scary thing.

Opposition MLCs have an interest in scrutiny but this is limited by the fact that in the back of their minds they think, "One day I will become a Minister or I might be a Minister or I might be a member of a party that supports a Ministry", so there is a kind of self-limiting device there, if you like, that kind of reduces the interests of Opposition MLCs in scrutiny. The crossbenchers have no chance of gaining Executive power so they become the key players. Although some are more interested in scrutiny than others, most of them have at least some interest in scrutiny.

So we have had diverse non-government majorities in the Legislative Council over time that have meant more systematic and more experimental scrutiny as extensions to Legislative Council scrutiny as indicated through orders for Government papers that we heard about this morning in the 1999 to 2003 period in particular, but it is true throughout the period that we are looking at today. As David Clune and Gareth Griffith stated in their book entitled *Decision & Deliberation: The Parliament of New South Wales 1856-2003*:

... there is no substitute for committed doubters and dissenters, the "stirrers" who can be relied on to question the official version. Without them, procedural safeguards and processes tend to ossify and perish.

Although not all of the experimentation with different methods of scrutiny has worked equally well, the original estimates committees of the 1990s were often ineffective and probably a bit of a disaster but out of them came eventually, through compromise and development, the current system of general purpose standing committees. The lesson, though, overall since 1988 is that in the absence of a group of committed crossbench MLCs who can combine with the Opposition to form a majority in the Chamber and in committees themselves, scrutiny of the Executive is very much reduced. Thank you.

**Reverend the Hon. FRED NILE:** Thank you, Professor Smith. I would now like to welcome our next speaker, the Hon. Helen Sham-Ho. As she comes to the microphone, we will watch a brief, four-minute video related to her activity.

**(Video with host Ray Martin depicting organised crime and drugs in Cabramatta shown)**

**The Hon. HELEN SHAM-HO:** In 2000, I was the chair of General Purpose Standing Committee No.3 during its famous inquiry into policing of the drug trade in Cabramatta. Why was the inquiry important? It was important because it led to major changes in police management and the appointment of a new police Minister, a new police commissioner and a new local area commander and the establishment of a new police station in Cabramatta. It gained national media coverage for several months. However, its most important achievement was that it transformed one of the most important suburbs in Australia. When the inquiry started, drug dealers and drug users had taken over the public areas of Cabramatta, but by the time the inquiry finished they had been driven out. Now, 13 years later, they have still not returned.

Some delegates are from interstate. They might ask why Cabramatta is so important. It is important because it is the heart of multicultural Australia. In 2000, more than 75 per cent of the residents of Cabramatta were born overseas or had parents born overseas. It was where the Vietnamese refugees settled in the 1970s, and it had large Chinese, southern European and South American communities. It was a thriving area of shops, festivals and restaurants. However, in the years leading up to 2000 it was in crisis. It was known as the drug capital of Australia. In 1999-2000, 15 per cent of all drug overdoses in New South Wales occurred in this one suburb, and more than half of them happened in public areas. I have seen it. Children playing in playgrounds would find drug addicts passed out on the ground. People leaving the train station were constantly offered drugs,

and addicts were injecting in plain view in subways and shelters. More than half of all handgun shootings in 1999 in New South Wales happened in the Cabramatta/Fairfield area.

Despite this, as shown on the video, the Police Commissioner, Peter Ryan, kept saying that everything was okay. In February 2000, he stated

What we've done is such a success at Cabramatta that it's no longer regarded as dangerous or difficult a place as it used to be.

He downgraded the local area command as a result; in other words, he reduced police numbers. Those comments were made because the police at the time were using a performance measure called the "Crimes Index". Mr John Jobling would remember that. It measured the local command's success in reducing robberies and other minor crimes, but it excluded drug-related offences. As a result, many police officers in Cabramatta stopped policing drug crime because it did not improve their statistics. Roseville is a posh suburb on Sydney's North Shore and it had a higher Crime Index rating than Cabramatta.

Community leaders in Cabramatta lost trust in the police. They believed the suburb was being used as a dumping ground for the heroin problems in the rest of Sydney. Leaders like Ross Treyvaud of the Chamber of Commerce, Dr Thomas Diep of the Cabramatta Business Association—who presented me with a trophy—and local councillor Thang Ngo worked with brave and outspoken local police officers, including Detective Sergeant Tim Priest. They gave evidence to the committee about what had gone wrong and how police management were ignoring the open drug dealing, public drug use and gang-related gun violence.

The committee members included the Hon. Greg Pearce, the Hon. Rick Colless, Ms Lee Rhiannon, the Hon. Ron Dyer, the Hon. Ian West and the Hon. John Hatzistergos. We held many hearings at local venues in Cabramatta and heard from the community directly. We saw the problems with our own eyes. We held 10 hearings and two community forums and visited Cabramatta four times. One of the most important hearings was held in private at Cabramatta High School. We heard of schoolchildren who were too scared to leave their homes to come to school because drug users were shooting up in the stairwell of their apartment building. It was a very difficult inquiry for the committee and the police resisted many of its processes through their legal section. Government members were often placed in a difficult position and some people used the inquiry to attack each other. There were arguments between academics who supported harm minimisation and those who held different views. The media also reported on everything every day. Alan Jones spoke about the inquiry every morning on his program on 2GB.

The inquiry put a spotlight on the problem and gave the community a voice. The Government, led by Premier Bob Carr, responded and realised that it was being given poor advice by the police commissioner. The Premier appointed Assistant Commissioner Clive Small as regional commander and a new local area commander, and implemented a package of changes in March 2001. The changes included an increase in police numbers, new police powers to crack down on drug houses, new search powers and new move-on powers. A city watch program was established to try to link the community, local businesses, agencies and the police. Proactive policing of public drug use and drug dealing had an immediate impact. The Premier later made an admission. In July 2001, a quote in the *Daily Telegraph* stated:

I think in 1999 and 2000 the police got their eyes off the ball in dealing with these entrenched problems at Cabramatta. During 1999-2000, you didn't have the relentless focus on fixing up Cabramatta that I would want to see.

The report was released in July 2001 and gained massive publicity in the national media, such as the *60 Minutes* program and the *Bulletin* magazine. The committee had 25 recommendations. The committee concluded a second inquiry 12 months later to review progress by the Government on implementing the recommendations and found that 12 of the recommendations had been implemented and seven were being implemented. They were doing things the committee had not asked for, such as building a new police station at Cabramatta. In fact, shortly before the review inquiry began, the Premier tabled, in Parliament, an 85-page report titled "Cabramatta - A Report on Progress", and informed the House that a Cabinet subcommittee continued to oversee the issues raised by our committee.

More importantly, when we went back to the local community forum in Cabramatta, we could see, as the community told us, that things were much better. The square at Freedom Plaza in the middle of Cabramatta had been reclaimed by locals instead of being a drug market and there were some improvements in police and community relations, with much more work to be done. The committee found that other factors had led to improvements, such as the heroin drought, but it was the work of the committee in highlighting the problems to the Government and the way the leaders of the community used the democratic process given to it by the inquiry

to allow their voice to be heard. As it was stated in the first report of the committee, "... no-one is going to take the people of Cabramatta for granted again." Finally, the inquiry has resulted in a real and positive improvement to the way policing is conducted and ultimately to the quality of life for the people of Cabramatta.

**Reverend the Hon. FRED NILE:** Thank you, Helen, for a great job. I introduce our next speaker, the Hon. Amanda Fazio, a former president of the Legislative Council.

**The Hon. AMANDA FAZIO:** Today I will tell you a little bit about the Gentrader Transactions inquiry, which was held by General Purpose Standing Committee No. 1. On 23 December 2010, I arrived back in Sydney from a goodwill visit to Pakistan. I was aware that the Parliament had been prorogued the day before, but was unaware of the controversy surrounding this matter until journalists started knocking on my door at home. There were two questions regarding the Gentrader Transactions inquiry to which I was drawn: whether or not the Legislative Council committees could conduct business when Parliament was prorogued; and whether or not witnesses could or should be compelled to appear and give evidence.

There was conflicting advice in respect of whether Legislative Council committees could conduct business during prorogation, which can be summarised as follows. The Crown Solicitor provided advice in 1954 to the Legislative Assembly stating that committees of either House cannot transact business during prorogation unless authorised by legislation. It was this advice that the Government was relying upon when they stated they were of the view that the Gentrader Transactions inquiry could not proceed. Ms Lynn Lovelock, the Clerk of the Parliaments, was of the view that, "... if the committee wishes to meet it is able to do so despite prorogation, with the cautionary note that this view of its powers has yet to be tested before the courts." In view of this conflicting advice, the Department of Premier and Cabinet sought further advice from the Crown Solicitor, which was provided on 2 January 2011 and confirmed their earlier advice. On 7 January 2011, I wrote to the Crown Solicitor in the following terms:

There are two matters contained in your advice on which I would like to seek further advice as at this stage I am inclined to allow the Inquiry to proceed. These are as follows:

1. In view of your advice that parliamentary privilege would most likely not apply, if Committee members ask questions and witnesses appear voluntarily before the Inquiry and are sued for defamation and breach of confidence, what actions can the Legislative Council take to ensure that these Committee members and witnesses will have no claim on the Legislative Council.
2. In the absence of the ability to summons witnesses and administer the oath or affirmation, what action can be taken by the Committee Chair to ensure that witnesses are aware that they must tell the truth or is it possible for witnesses to voluntarily take an oath or affirmation?

I carefully considered the advice given by the Crown Solicitor on 2 January 2011 and supplementary advice received by me on 11 January 2011. The Clerk of the Parliaments also provided me with detailed advice on her opinion regarding the Gentrader Transactions inquiry. One of my primary concerns was that should the inquiry proceed, the Legislative Council may become legally liable for any torts by way of defamation or breach of confidence committed during the course of the inquiry. The Crown Solicitor advised that this would not be the case. Based on that advice, I was persuaded by the view of the clerk that the committee could hold the inquiry, even though Parliament had been prorogued. As a result, I was prepared to support the holding of the inquiry and, accordingly, I did not withhold any of the resources of the Legislative Council from the committee undertaking the inquiry.

In regard to the matters of summoning witnesses, taking oaths or affirmations and parliamentary privilege, I took into account the following advice: that the Crown Solicitor remained of the view that the committee has no power to compel the attendance of witnesses or require such witnesses to answer questions; there is a risk that statements made in documents provided to that group of members would not be protected by parliamentary privilege and that witnesses could be exposed to claims for defamation and breaches of confidence. The Crown Solicitor also advised that the committee cannot administer an oath or affirmation under the Oaths Act 1900, but could request those choosing to give it information to confirm the truth of such by statutory declaration pursuant to section 21 of the Oaths Act. The Clerk of the Parliaments advised that in contrast to the views of the Crown Solicitor, the Parliamentary Evidence Act 1901 will apply. Further, the clerk advised that if the committee wishes to meet it is able to do so, despite prorogation, again with the cautionary note that this view of its powers is yet to be tested before the courts.

I was of the view that due to this conflicting advice, there could be no legal certainty regarding the powers of the committee. Therefore, I advised that the committee should proceed with caution, as there was no guarantee of legal protection, and I made a public statement to that effect on 12 January 2011. The committee

then obtained an opinion from Bret Walker, SC, from whom we heard earlier this morning, which supported their proposed course of action. In respect of witnesses being compelled to appear and give evidence, I was required to make a decision following the receipt on 27 January 2011 of a letter from the chair of General Purpose Standing Committee No. 1, advising me that the committee had met and considered whether, in their opinion, the witnesses had just cause or reasonable excuse to not attend the inquiry, and resolved that they did not; it had given their reasons due consideration, which was another requirement before they could seek to have summonses issued; and that under section 7 of the Parliamentary Evidence Act 1901 it is clear that this decision rests with the President; it had decided to request me to issue a certificate to a judge of the Supreme Court for the issue of a warrant for the apprehension of seven individuals under the process set out in sections 7-9 of the Parliamentary Evidence Act 1901.

Blake Dawson Waldron, Solicitors, wrote to me on behalf of some of the seven individuals and outlined their clients' concerns in respect of claims that they believed they may be liable for if they were to give evidence, including: breach of the relevant secrecy provisions in the Memorandum and Articles of Association of Delta Electricity or Eraring Energy; breach of confidence arising from covenants that the corporations have given to third parties to keep certain matters confidential; and defamation. Section 7 of the Parliamentary Evidence Act 1901 provides:

If any witness so summoned fails to attend and give evidence in obedience to such notice or order, the President or the Speaker, as the case may be, upon being satisfied of the failure of such witness so to attend and that the witness's non-attendance is without just cause or reasonable excuse, may certify such facts under the President's or the Speaker's hand and seal to a Judge of the Supreme Court, according to the form in Schedule 2, or to the like effect.

I was of the view that as there was no guarantee of legal protection for witnesses, the non-attendance of the witnesses was with just cause or reasonable excuse and, accordingly, I declined to ask the Supreme Court to issue warrants for the apprehension of the seven former directors. The reasons for my decision were advice from the Crown Solicitor:

There is a risk that statements made and documents provided to that group of members would not be protected by Parliamentary privilege and that witnesses could be exposed to claims for defamation and breaches of confidence.

and advice from the Clerk of the Parliaments:

If the Committee wishes to meet it is able to do so despite prorogation, [again] with the cautionary note that this view of its powers has yet to be tested before the courts

I do not wish to be rude but the opinion that the committee received from Mr Bret Walker, SC, on 21 January 2011 was just that—an opinion—and provided no legal guarantees for any witnesses. I stated this despite comments to the contrary given by witnesses at the hearing held by the Committee on Monday 24 January.

In the advice on the procedures after a witness fails to answer a summons prepared for the committee by the Clerk of the Parliaments on 24 January 2011 it was noted: "Since the advent of responsible government in 1856, no witness has been apprehended under a warrant of the Supreme Court and brought before a parliamentary committee in New South Wales". In view of the uncertainty surrounding the legal standing of the inquiry, I was reluctant to set a precedent that would involve the apprehension and detention of the former directors and a compulsion for them to appear when they had no guarantee of legal protection.

At all times during this episode, I was mindful of my responsibilities under section 22G of the Constitution Act 1902, which provides:

There shall be a President of the Legislative Council, who is the Presiding Officer of the Legislative Council and is recognised as its independent and impartial representative.

The well-accepted role of the Legislative Council as a House of review I believed should not be, in effect, gagged by prorogation by any government of the day. The potential for tension between executive government and Parliament will always exist, but even more so when the Government does not have a majority in the Legislative Council. As the President I saw my role as defending the rights of the Legislative Council, especially from interference by executive government. I would also like to acknowledge the strong position taken by the then Clerk of the Parliaments, Lynn Lovelock, who mounted a well-reasoned case in defence of the role of the Legislative Council as a House of review. Thank you.

**Reverend the Hon. FRED NILE:** We can see that was a very interesting inquiry. I now welcome Mr Quentin Dempster from ABC Television to the lectern.

**Mr DEMPSTER:** Mr President, former Presidents, honourable members, ladies and gentlemen, this seminar marks 25 years of the modern committee system in the Legislative Council. Broadly speaking the Westminster parliamentary system has many flaws but as a journalist who has been covering its proceedings in the New South Wales jurisdiction for the past 23 years, and in Queensland for 17 years before that, I want to acknowledge its strengths. I have a pertinent point to make, and Professor Smith alluded to it earlier. Queensland has a unicameral—one-house—Parliament. In the early part of last century there was what was called a suicide squad of Labor Party upper House members who voted to abolish the Queensland Legislative Council and it duly ceased to exist. The complaint was—I think Professor Smith has probably read all the motivations and justifications for it—that the upper House was a squattocracy: a colonial derivative of the House of Lords in merry England.

There may have been some substance to that complaint at the time but there was a downside, particularly as a concerned Queensland Clerk of the Parliaments observed that the resultant one House legislature had turned itself into a sausage machine: bills were put in one end, a handle was turned and without further debate legislature was exuded from the other end. Queensland's famous "malamander"—the four zonal gerrymander, as it was called—was a direct result of unicameralism. It was the political manipulation of the electoral boundaries to favour first a Labor government and then a Country Party government and it entrenched them in power for decades. That is the primary example of what became institutionalised corruption in Queensland, where the electoral system was perverted.

Unicameralism was eventually discredited in Queensland in the 1980s through the Fitzgerald inquiry into police and political corruption. In technical terms, Queensland had become a police state. The electoral boundaries were manipulated to entrench the ruling and corrupt Bjelkest regime, the judiciary was subject to political interference, the police force became an arm of the ruling Bjelkests, and police batons were used to literally crack the heads of political dissenters. Through strident attacks on dissenters the press became a lenient critic until, through some courageous journalist, it eventually found a backbone. Unfortunately, in my opinion, Tony Fitzgerald, QC, did not recommend that the Queensland Upper House be restored as a check and balance on executive government in that State. Instead, he proposed, and the Government then implemented, two standing external oversight bodies on governance: the Criminal Justice Commission and Electoral and Administrative Review Commission. The zonal boundary system was changed as a result of that. The people of Queensland can now more easily change government because they have fairer boundaries.

These two external oversight bodies were alright up to a point, but they did not have the flexibility and responsiveness of an upper House with powers to bring executive government to account on decisions and issues which, while contentious, may not necessarily fall into the corrupt conduct category. Since I have been in New South Wales I have observed, and sometimes covered, public inquiries of Legislative Council General Purpose Standing and Select committees, as well as budget estimates hearings. At the outset let me thank the Legislative Council for allowing television cameras to record those proceedings. With internet streaming—which has been started in some committee hearings—this can build the relevance and effectiveness of these kinds of public inquiry. The public can observe members and witnesses grappling with the issues to be investigated. It brings an intellectual honesty to the proceedings because observers can say, "That does not sound right to me" or "That does not sound plausible" or "Why don't you ask that question?" With the public watching, it adds a different, spontaneous dynamic and people have to take these committee hearings seriously.

The committee system has its deficiencies, but after 25 years of operation I think the concluded consensus must be that it has made a significant contribution to the good governance and accountability of New South Wales through a readiness to respond to public distress or concern about any issue—from a contentious planning decision such as in the Cross City and Lane Cove tunnels fiasco, the apparent high cost of rail infrastructure in comparison to other jurisdictions, Treasury gentrader strategy, or Cabramatta policing which, as Helen has pointed out, was a triumph of exposure against bureaucratic inertia and political spin at the time. This has consolidated the credibility and integrity of the upper House committee system. It has enhanced the public understanding and the public record it creates is enduring.

We are now living in what is called the digital revolution, which is transforming not only the media but the Parliaments as well. Submissions however lengthy can be posted online in the unlimited capacity of cyberspace and constituents can feel included and listened to in this process. Academic and journalist research is not persecuted by the 24-hour news cycle they can see at their desktops. All the material the committee sees,

including the transcripts of the questioning of the witnesses, is not only available here but to any inquirer accessing the Parliament's website from anywhere in the world. Information and analysis relevant to the terms of reference can be accessed from any sources domestically and internationally.

The power of the Legislative Council to call for papers, which has now been confirmed by the High Court of Australia, gives this House of review some real clout in the accountability objective. We have seen that sensitive, technical information usually tagged as commercial-in-confidence can be tabled for members' eyes only but transparency to the representatives of the public is the point.

So it is the ascendancy of the Parliament over the Executive which has to be reinforced and its role as part of a robust democracy. There is also the other great lever or weapon in accountability, if properly applied, of the Westminster system—that is, parliamentary privilege. As a journalist observing this system, please allow me to make one request based on constructive criticism—would honourable members please restrain themselves from turning committee hearings into party political adversarial games? Dissenting reports along party lines are a giveaway. Where you get bipartisan support for the findings in a committee report or bring yourselves to a consensus across party lines that really builds the credibility of the findings.

I know that sometimes things get pretty hot politically. But if honourable members can withstand that sort of heat and say, "No, I am concentrating on this element of the terms of reference and I am going to bring myself to bear on it and express it accordingly; I know these are negotiated in the committee phase," then that is an important aspect of establishing the credibility of committee findings. As Professor Smith said, executive government has a tendency towards secrecy. There can be corruption, incompetence, negligence, error, or ministerial or political interference to be concealed. The Government Information (Public Access) Act and freedom of information are helping to change the culture about public access to information, but the upper House committee system can discredit itself if members use it to grandstand or self-aggrandise to get on the six o'clock television news. It would be more desirable to get on the six o'clock television news through asking a killer question, a question which extracts revelatory information or a question which exposes that which has been hidden.

I know that everybody in this room knows that media is deeply superficial, and I hereby confess to this on behalf of the media; but in a robust democracy like ours—particularly given what we have been through in New South Wales with the exposure of corruption, malpractice, neglect and incompetence—it is absolutely vital that people of good will keep working together. So if you find a journalist who is obviously ignorant about the functions of the Parliament then it would be good to pull them aside and say, "Listen, I want to help you understand what is going on here." If you do that then you will help to build this great partnership between journalists and the Parliament.

**Reverend the Hon. FRED NILE:** Thank you. We are now going to move to questions. If you wish to ask a question then raise your hand and a microphone will be brought to you.

**The Hon. RON DYER:** I think my question is most properly addressed to Professor Smith. You would be aware that in his keynote address this morning Bret Walker referred to inquiry powers in an era of Executive dominance. Assuming the implication is correct that we live in an era of Executive dominance, to what extent, if at all, do you feel that a degree of equilibrium has been restored between the legislature and the Executive as a result of the last 25 years of the upper House committee system?

**Professor SMITH:** Thank you for the question. I think it has been restored to some degree—there is always a contest. I think it would be a mistake to see the period that we are in as one of extraordinary Executive dominance. In fact I would argue, probably, that there is less Executive dominance now than there was 25 or 30 years ago vis a vis Parliament. If you go back and read all the dusty old textbooks in political science about Australian politics, you will see that they say very little about parliament that is complimentary—they talk in a language of sausage machines, rubber stamps and so on. You cannot use that language today. For all the advantages that Executives give themselves, there has definitely been a counterbalancing by the growth of committees scrutiny and other mechanisms, particularly by this Legislative Council and other upper Houses throughout Australia and particularly where the governing party or coalition is not in the majority.

**The Hon. BRIAN PEZZUTTI:** There is a theme today about a "them and us" arrangement where the Legislative Council seems to be holding itself as accountable against government. But there are a whole lot of things that the Legislative Council committee system does. It allows the Parliament to reach out to the community, not just the upper House committees but also the lower House committees, to seek their views—

and not necessarily on an issue which is contentious. I think of the inquiry into adoption, the inquiry into coastal planning and the inquiry into mental health that my committee did. We really were, as a Government or as a Parliament, seeking advice on how best to proceed—so it is a power of positivity rather than just being a brake or a check.

**Professor SMITH:** I agree with that as well. I think there are issues which governments, for whatever reason, are too busy to pursue or that are taken up by the community and need the sort of reflection that committee inquiries like the ones that you have mentioned are able to give to those matters. So, no, I do not see it entirely as an adversarial relationship; I think committees can do much more than that. Committees again perform a function which majority government tends not to—that is, to open up the processes of government to the community. So the fact that committees like yours are able to call for submissions and travel around visiting communities and getting input I think is a terrific contribution, and one that should not be underplayed in today's proceedings.

**The Hon. MARIE FICARRA:** My question is a contrast between the media, represented by Quentin, and the academic side of things, represented by Professor Smith. What do you think the public perception is of the Legislative Council? I know our colleagues in the Legislative Assembly always make jokes about the Legislative Council when in the party room. Given that, as Mr Dempster said, the media is superficial, what do you think the general public thinks about the upper House? If we had to have a referendum, would we go down the track of Queensland? People say there are many colourful identities in the upper House, as there were elected recently to the Senate. They see them in our upper House. I say this with all due respect to the members of the Shooters and Fishers Party and the Christian Democratic Party here today. The upper House does have many colourful but relevant members and parties.

**Mr DEMPSTER:** You would have to work like buggery to establish your reason for being if there were any move to abolish the upper House, because people just perceive the institution as the Parliament. You all know that—they just think it is the Parliament; they do not know the separate parts. We always say, "This is a member of the Legislative Council," when we are reporting but it just washes over everybody. So the branding, if you like, of upper House committees is an interesting area. There has been some talk about calling yourself a Senate. I do not know about that. I have not thought about whether that is a good idea to help you rebrand yourself as a State Senate—it would be worthwhile thinking about. But at the moment you are not discerned as a separate entity within this "bloody place at Macquarie Street".

**Reverend the Hon. FRED NILE:** I hope my Senate bill will get passed one day.

**The Hon. AMANDA FAZIO:** My quick comment on that question from Hon. Marie Ficara is that I think as long as we have that adversarial role between the two Houses, the Legislative Council will always come off second best. As long as we have a Premier who is publically disdainful of the Legislative Council, we are always going to have to stand up for our rights and stand up for the representation of small parties.

**The Hon. LUKE FOLEY:** Can I respectfully challenge Quentin's assertion that our committees should be bipartisan. I think the three standing committees initially established should strive to be bipartisan where possible. I think that when it comes to the scrutiny function of the estimates committees and select committees established to probe certain government actions, it is entirely appropriate for members of those inquiries to be inquisitorial towards public servants and adversarial towards ministers. Was Senator Faulkner not right to be inquisitorial and adversarial during the "kids overboard" inquiry?

**Mr DEMPSTER:** Get the Government members in estimates to do the same sort of adversarial questioning.

**The Hon. LUKE FOLEY:** Were the non-Government members of the gentrader inquiry—the Coalition, Greens and Christian Democratic Party members—not right to be adversarial towards the leaders of that Government who made such a hopeless decision?

**Mr DEMPSTER:** My point is that if you want to establish the credibility of it, whether you are Government or non-Government, you should apply yourself to the questions at hand and be clearly seen to be—and be thinking about—establishing the proof of the matter in the facts that you are trying to get on the public record. That is the point I am making. When you see minority reports that just go on party lines you see that they just follow the same sort of spin. Anybody reading that would think, "That is of no value to me. It is just adversarial games."

**Reverend the Hon. FRED NILE:** Unfortunately, we will have to wrap up question time. I would love it to go on for another hour or so, but we have a full program of activities today. To conclude our session I would like to thank our presenters. It has been a very fascinating discussion—especially that last comment from Luke Foley, a Labor Opposition leader commenting on the previous Labor Government. I would like each of our guest presenters to accept a token of the Council's appreciation for sharing your knowledge and experience today.

**Mr BLUNT:** Thank you very much, Reverend the Hon. Fred Nile and your panel. It is now time for a change-over of panels. While that is happening I will just mention a couple of things. The Hon. Amanda Fazio referred to the advice provided by my immediate predecessor during the gentrader inquiry. Unfortunately, Lynn Lovelock was not able to join us today. She is 10,000 miles away on the other side of the world, continuing to enjoy her retirement. However, she sent this very brief message:

... however, I wish you all the best with the day. Naturally, it will go splendidly. How could it not, with the wonderful committee staff the LC has?

That is a good segue into a word of thanks. I think it is appropriate now, while everybody is gathered here, and we have had such a fascinating first session, to acknowledge and name those who have been responsible for the set up today—the organisation of it and the planning. Firstly, I acknowledge Rachel Callinan for her initial work on planning and preparation 12 months ago, when planning began; Emma Rogerson, for producing the oral history PowerPoint presentation, which is being displayed in the Parkes room today, and the attention grabbers; Sam Griffith, for sound and audio editing, music advice and photography; Anna Perkins for letterhead and program design, coordination of displays, and overall administrative coordination of C25; and Christine Nguyen for high-level technical support, bookmark design and DJ assistant—I think we will learn more about that later!

I acknowledge Alex Stedman, researching and interview coordination for the oral history project; Angeline Chung for design of the C25 banner and other administrative assistance; Rhia Victoriano, speech-writing and research; the chamber and support team for making the Macquarie room look so good—I think everyone would agree that they have done that—and Mark Muntz for his inspiration and lending his voice to the oral history PowerPoint. I thank other members of the committee office for focusing on our core business of providing support with respect to complex inquiries, with their usual professionalism and commitment; Rebecca Main, joint C25 coordinator—she was the brains behind the C25 logo; a gifted organiser who thinks of everything—Beverly Duffy, joint C25 coordinator; David Clune for his work on the wonderful monograph that was launched yesterday; Chris Bourke, the voice of the oral history project; and Hansard. Listed as the bottom dot point here is my dog, because it seemed as if at the end of every weekend I would come in and talk to Beverly and Rebecca and say, "I was just walking the dog on the weekend and I had another idea for C25."

**(Power Point presentation shown)**

## SESSION 2: DEVELOPING POLICY FOR NSW CITIZENS

**Mr BLUNT:** Not everything involves adversarial conduct. There is another aspect to committee work. To chair this session on the policy contribution of the Legislative Council committees I would like to introduce the Hon. Niall Blair, who is chairing the session. Niall was elected to the Legislative Council in March 2011. He has been the Chair of the Standing Committee on Social Issues since that time. Mr President has already drawn our attention to some of Niall's very insightful comments made in the debate in the Chamber yesterday. In addition to his committee responsibilities, Niall has another string to his bow, that probably takes a little bit of his time: State chairman of the National Party.

**The Hon. NIALL BLAIR:** Thank you David. Welcome, everyone. I take it that the sound track that we just heard, *When love comes to town*, may be a bit of a reference to the Social Issues Committee's last report which had a section dedicated to love. I think that was a first here for a Legislative Council committee. The session that we are going to look at now focuses on the contribution of upper House committees to policy development in New South Wales. I would like to introduce our panel. As David alluded to, as the current Chair of the Standing Committee on Social Issues, I am especially honoured to welcome two former chairs of that committee to our panel this morning: the Hon. Max Willis was a member of the Legislative Council from 1970 to 1999, and its President from 1991 to 1998. Mr Willis was the inaugural chair of the Social Issues Committee. He describes the committee's first inquiry in 1989 into adoption information as the most significant milestone of his 28-year membership of the House. That is something that I have been reflecting upon—I referred to that yesterday in the debate—when making my contribution to that committee.

I also introduce the Hon. Ann Symonds, member of the Legislative Council from 1982 to 1998, and chair of the Social Issues Committee during the mid-1990s. During this time the committee conducted numerous high-profile inquiries into complex social issues, including sexual violence, children's advocacy, disability services, past adoption practices and prison reform.

Our third panel member is the Hon. John Hatzistergos, who was a member of the Legislative Council from 1999 to 2011. Mr Hatzistergos became a member of the Law and Justice Committee in the late 1990s before serving as Attorney General from 2007 until 2011. As Attorney General, Mr Hatzistergos referred six inquiries to the Law and Justice Committee on some controversial legal issues including altruistic surrogacy, the use of victims' DNA and spent convictions for juvenile offenders.

We are also pleased to be hearing from Ms Alison Peters, the Chief Executive Officer of the Council of Social Services of New South Wales [NCOSS]. That organisation provides independent policy development and advice, playing a key coordination and leadership role for the non-government community services sector in the State. The focus of NCOSS is on addressing the causes and consequences of poverty and reducing disadvantage. It has also made a significant contribution to the committee system over the years through submissions and providing witnesses for many inquiries. Ms Peters has been Chief Executive Officer of NCOSS since October 2007. I welcome the first speaker, the Hon. Max Willis.

**The Hon. MAX WILLIS:** I suppose I could introduce myself as one of the living dinosaurs of the modern committee system. I am pleased to participate in this seminar. I acknowledge President Harwin, the Clerk and the staff of the Legislative Council for the effort they have put into the conception and implementation of events to mark 25 years of modern committees. I must confess that until yesterday I was a little puzzled as to why there was so much navel-gazing over 25 years of committees. As I listened to yesterday's debate in the Council Chamber, the answer emerged. Here again was another fine example of the nature of the Westminster parliamentary system, a demonstration of how dynamic it is and how it changes and evolves constantly to meet the changing demands made of the institution of Parliament.

In this process of realisation I contemplated the vast changes that had occurred to committees in the Legislative Council since I joined the ranks and made them unrecognisable in the short time of 43 years—a twinkling of the eye in the big picture of dynamic evolution. Up to 1977 in my experience all committees served the purposes of the Executive Government. In 1978, however, the Legislative Council, where the Coalition Opposition had a majority of members, did something dramatic in establishing a select committee to inquire into corruption. We had in our sights Chief Magistrate Farquhar and Minister Rex Jackson. This move so offended or terrified—I do not know which or both—the Government of Neville Wran that it withdrew all resources from the committee. We had no Hansard, no typists, no resources. A young John Evans, who was our committee secretary, will remember this well.

In those days, I might remind you, the Parliament had no budget of its own. It relied entirely for its resources on the Premier's department. Consequently, faced with this, our committee used our own tape recorders, we typed our own transcripts, we issued our own summonses—you name it. The rest is history. Parliament was prorogued by the Government to stop us and an early election followed. But in due course both Farquhar and Jackson were convicted of corruption and went to jail. How different today.

I will give a little more history if you will indulge me. After the popularisation of the Legislative Council following the referendum reforms of the first Wran Government, it became obvious to me and many others that the role and modus operandi of the Council had to change in line with those reforms if the Council was to remain relevant and effective. I and others in the Liberal Party saw that the obvious evolution was down the committee path. I had been impressed by the committee system developed in the Australian Senate and I was also impressed by what I saw in committees in legislatures around the world when I undertook a CPA tour in 1985. Then there was the valuable consolidation work done by the committee on the committees, chaired by the Hon. Ron Dyer, of which I was a member. The Liberal Party went to its successful election in 1988 with a definitive policy for standing committees in the Legislative Council. It came to pass, and I was honoured to be appointed chair of the Social Issues Committee. What a wonderful experience that was.

I am often asked what the highlight was of my 28 years in the Parliament. Considering that I am such an ardent constitutional monarchist, most would expect me to answer that it was receiving the Queen to open the Parliament in 1992. Not so. The highlight of my parliamentary years was as chairman of social issues in setting up the committee, influencing who would be its members, choosing staff, and, above all, chairing the adoption information inquiry—the biggest, to that time, committee inquiry ever conducted in the Legislative Council. We made a difference. I empathise with the current chairman's comments yesterday in the House.

My experience of the Social Issues Committee was short. Barely two years after being appointed chair I moved on to be President, in 1991. I saw through from beginning to end only two inquiries; namely, the adoption information inquiry and the youth drug abuse inquiry. I like to think that the adoption inquiry was the benchmark of the use of parliamentary standing committees for the development of policy for implementation by government. Social engineering is a very dangerous process because it is mostly driven by dedicated, often obsessed, sometimes fanatical, determined, narrowly based interest groups who often command a disproportionate influence on government. President Fazio adverted to this yesterday during her comments in the House. Consequently, governments historically have more often than not got social engineering wrong and caused far worse problems than the engineering was meant to solve. Classic examples of this are prohibition in the United States and the current so-called war on drugs, both of which were and are abysmal failures.

The secrecy amendments to the New South Wales Adoption Act in 1965, preceded by similar legislation in the United Kingdom and New Zealand, are another classic example of social engineering gone wrong by legislation. These secrecy provisions arose out of the theories and so-called research done in the United Kingdom by a Professor Bowlby in the area of child bonding and parental disengagement. This so-called expert and his narrow-base support cult pushed the idea to a legislation level that the interests of natural parents, child and adoptive parents was best served by covering adoption in the dark cloak of secrecy. It was not until well over a decade later that another expert in the United Kingdom, a Professor Triseliotis, found that Bowlby's research was flawed seriously—so flawed that it might have even been false—and that its legislative fulfilment had led to much worse and more serious problems of genealogical bewilderment for adopted children and psychological trauma for birth parents. Then it took another 20 years for this flawed social engineering to be undone. In the meantime, incalculable damage, ranging from bewilderment to stress, psychological trauma, broken and damaged relationships to the extreme of a suicide, was done.

The miracle of the Social Issues Committee was that it produced a unanimous report. This made it a benchmark. When the committee was appointed I looked at it and thought to myself, "My God, how am I going to herd this group of cats?" But there, of course, I was wrong, and I realised it was not my job to herd a group of cats; it was my job as chairman to provide to that disparate group of members of the Parliament the means by which they could reach a conclusion, and they did that.

The mechanics of all this was the composition of the committee members reflected the composition of the House, which, in turn, reflected the community at large. They reflected a spectrum from the far right to the far left, both politically and social; they represented city and country; they represented a male and female balance. The terms of reference were broad and permitted the inquiry to range free with its evidence. The committee support staff was of the highest quality. I refer in particular to our gem director Tony Pooley. The

evidence taken, both written and oral, was exhaustive and very extensive. The intellectual integrity of the committee members, without exception, was beyond reproach.

My thesis then is this: Social change by social engineering by government is a very dangerous process. The best social engineer is the community itself by a process of evolution relying on the community's innate sense of right and wrong. Parliament as a whole, dominated by party discipline and Executive Government, is not a suitable alternative instrument in a true democracy. The standing committees that we have developed in this place over the last 25 years have proven to be a successful and effective mechanism for policy development, especially in areas of social change. This should be jealously guarded and encouraged to evolve to the benefit of society, maintaining the criteria for success that I have outlined above.

Finally, yesterday in debate, the Hon. Amanda Fazio expressed concern that the moves in the other place to emulate or replicate the modern committee system in the Legislative Council might be a danger to the Legislative Council system. I would say to you: Fear not. The bear pit is neither temperamentally nor constitutionally up to such things. Finally, for those who bear the mantle this day I say: Be fearless in your pursuit of truth, accountability and transparency and you will be successful. Thank you.

**The Hon. NIALL BLAIR:** Thank you, Mr Willis. I would now like to welcome the Hon. Ann Symonds to the microphone.

**The Hon. ANN SYMONDS:** Thank you very much, Mr President, and former members—I suppose there are some current members here. I am looking around at wonderful people who contribute to the operation of the Legislative Council in their spectacular roles of support staff. I have to mention Dr Jennifer Knight, Julie Langsworth and Beverly Duffy. You will never be forgotten for the contribution that you have made to public policy in this place. As a contrast to the learned, scholarly and prepared statements of former contributors today, I am offering a personal perspective, starting with a little reference to the fact that transforming the upper House is something that I experienced personally.

I came into the upper House on a vacancy caused by Peter Baldwin in 1982. At that time there were very few women in the House. In fact, I distinguished myself, as maybe Max will remember: nobody told me what the conventions were for your first speech, so I gave my political statement about why I thought I was there, which caused John Holt to rise up and run out of the Chamber in disgust after saying a few choice words. I did not start very well in the upper House but I enjoyed it tremendously. Over time the House was transformed first of all by what Neville Wran did and then by replicating, or attempts at replicating, the committee system that Lionel Murphy had instituted in the Senate. I would also like to now publicly recognise the fact that the first person who introduced the idea of committee systems was the Hon. Lloyd Lange, who is with us today. I hope he is satisfied with the 25 years of the committee system.

The whole upper House, of course, is vastly different from the one that I first came into where you had Greg Kelly and Noel running everything, and now you have got staff of hundreds—not hundreds but a great number of staff, sorry David. Let me get to my experience of the committee system. The membership of the committee was diverse, as the Hon. Max Willis has said, and I have to echo what he said about the adoption inquiry. He said it provided a benchmark. I think it provided a model of the way in which public policy can be provided. The way in which it provided a model was not only the way we conducted ourselves—and we all started from different perspectives at that inquiry—but we all took evidence very seriously, and that led us to a conclusion of the need for change.

There had been a campaign for change going on since the International Year of the Child, where birth mothers had been trying to get some access to information. It did not happen until this committee met and considered the evidence and produced its unanimous recommendations. What was so valuable about it—and this is why I think it provided the model—was that it produced legislative reform and it produced a budget to implement the bureaucratic changes that were put in place to allow people to access—

**The Hon. BRIAN PEZZUTTI:** Both done by government.

**The Hon. ANN SYMONDS:** Yes. What did you think I said?

**The Hon. BRIAN PEZZUTTI:** You said that the committee did it.

**The Hon. ANN SYMONDS:** The committees' work produced that result. I am sorry if I am being a little lax here. You will probably have to correct me even further, Brian, as we go through. But I think the outstanding thing that we also did was—because there was quite a lot of opposition to us doing this—what we did individually was he went to his party room and explained it all and answered questions and I went into our party room and explained what the intent was, and that is where we got support as well for it to go through.

I just want to offer some other personal reflections on my association with the Hon. Max Willis, because he did begin the drug abuse amongst youth inquiry, which led us to a wonderful study tour and which meant that the butcher's daughter from Murwillumbah actually had tea in the House of Lords with an hereditary lord who spoke about the fact that his father was legless every morning because of his whisky consumption, but he had difficulties with the fact that he could not go around the corner and get some heroin. We had different perspectives on the way that drug use should be acted upon. Unfortunately, the Hon. Max Willis left us for a higher seating but during that inquiry he had left me with a dedication to be involved in drug law reform, which I am still sort of involved in. But it is a long and hard process to get people to understand that, as you said, the war on drugs is wrong and how we actually reform that. That is coming, I believe.

The number of inquiries in which I have been involved produced a variety of results and I just have to mention a few. For example, we did not ever get to have the births, deaths and marriages open register because one of the committee members did not want anyone to know how old she was, so that lapsed. We had a very difficult inquiry, which was most unpleasant and distressing, which was called the medically acquired HIV inquiry. It was very, very distressing. Some people had proposed that there be financial compensation to those who had acquired their HIV status through a medical need to have blood transfusions, but at that time there was a great misunderstanding of the way in which that whole disease needed to be acted upon by government. Fortunately there is a lot of very good public policy in that area now.

You mentioned sexual violence. I remember Reverend the Hon. Fred Nile was taken by the then chair, Dr Marlene Goldsmith, on a tour along with Helen Sham-Ho, and I was left behind as the deputy. But I paid for myself to go and hear the evidence because I could not believe that this group in the United Kingdom had decided that Australia was the most sexually violent country on earth. What I found out was they had conducted some type of poll on telephones, which would have left quite a number of countries and individuals suffering sexual violence out of it.

My most rewarding time on the committee was as chair when we did issues of children's policy, which were most important to me. The children's advocacy report produced a unanimous proposition that we should have a status of children office within the Premier's Department. It did not work, unfortunately. The most important committee of which I am proud of being involved, and which had a unanimous set of recommendations, was the children of imprisoned parents. The question that arises both from that report and the last committee I chaired, which was a select committee on the trial or establishment of a safe injecting room, is really important for us to consider. Evidence-based policy is often spoken about, but sometimes it does not eventuate. I still believe that we provided the best evidence for a safe injecting room at that committee hearing. And I am not looking at any members here who were present at the time. That was not agreed. Very fortunately, the representatives at the Drug Summit voted for a trial, so the wisdom of the populace won through on that occasion, even though the committee did not.

The biggest challenge to government and to the committees is: How do we affect the responses that we want, even if we produce unanimous reports? I think of the best speech in the upper House in support of the tabling of the children of prisoners report, which was from The Nationals man, the late Hon. Doug Moppett. He made the best speech. I will not quote from it now because I do not have time. The question is: When you have such understanding, such commitment and such passion for change in such an area, how is it that government does not get around to implementing the change? Public policy needs to be affected by committee decisions, but how does the committee get to the stage of inducing implementation by the government? What sort of processes should we have as committees to further the recommendations that we have made and the outcomes that we have presented to the Government? I think that is a major consideration.

I cannot resist saying that I will report the Hon. Max Willis to people for misrepresenting Bowlby. I will, and I will tell him about Mr Bowlby in a minute when I sit down. Thank you very much.

**The Hon. NIALL BLAIR:** It is good to see there is still live debate occurring, even at the head table. Thank you, Ms Symonds. I would now like to introduce the Hon. John Hatzistergos.

**The Hon. JOHN HATZISTERGOS:** In his introduction the Chairman indicated that I was on the Standing Committee on Law and Justice for four years. That of course is true but I was also a member of a large number of other committees of the Parliament, both joint committees and select committees, and I had the opportunity during that period to be able to compare the cultural differences between the different committees. When the Hon. Luke Foley was here at the end of the last session he referred to some of those. So it was the case that by sitting on those committees for the four years I came to appreciate what the standing committees in particular had to provide, and that will be the focus of what I want to talk about today.

For many people the committee system has provided tangible improvements in their lives and of course in terms of policy development there have been some outstanding outcomes. However, when the committees were established and indeed until the present time, the standing committees had been Government-dominated. At least as far as I can determine the chairmanship was determined by the Premier of the day and the non-government parties were represented by the crossbench and the Opposition having one member each. The references largely came from the Government. This influence has to be seen as a characteristic that determines in many respects the role that it plays in policy development. The outcomes are a reflection of that characteristic. To put it simply, the Government majority and indeed the chairmanship enable those committees to have a genuine policy role which extends beyond simply an academic exercise but actually into tangible action. They are not adversarial and their majority composition provides some comfort to the government of the day that they will not be turned into political talkfests.

But it does not mean that the government treats those committees—or at least in my experience—as subservient. I will go into a couple of examples of instances that demonstrate this. Some of you will recall that the previous Attorney General, the late Geoff Shaw, made a reference to the Standing Committee on Law and Justice to examine whether New South Wales should have a bill of rights. That reference was the subject of vigorous debate among the committee members, the community and to some extent nationally as there has also been a debate in more recent times. At the time that that reference was given, the Premier was somewhat horrified. He of course made a submission to the committee that indicated strong and strident opposition to the concept.

All of the committee members, including me, vigorously subjected the various submissions to scrutiny. In the end, the recommendation that was agreed to by the committee was that we should have a legislative review committee that would examine pieces of legislation when they came forward, and in particular that a digest would be produced that the committee would sign off on. Transgressions or issues relating to rights that were raised by the legislation would be discussed in that digest, with the committee's response. That recommendation was unanimous. It did not find favour with the government of the day. I should add that Peter Breen, who was a member of the committee and a strong supporter of it, put up a private member's bill to establish the legislative digest and scrutiny of bills committee. Ultimately, the Government agreed to support that proposal.

To this day the digest which you all receive when you are debating legislation is a product of that committee response. As I said, with a government majority it nevertheless agreed to it, even though it did not find initial favour with the then Premier. I should also point out that it changed the way governments decided things. Ministers, as they put legislation towards the Parliament, were required to anticipate the response which the committee might give in relation to potential transgressions of human rights; and if the committee challenged any legislation it was required to respond to those challenges and the debate issues were reproduced in the digest.

Another example of a reference to the committee, which came from an ordinary member, was the case of Peter Breen, who proposed that we should have legislation to recognise the State coat of arms. That was something which an ordinary member of the community had come to him about. If I remember correctly, it was Richard d'Apice from d'Apice and d'Apice, Solicitors. He was anxious to ensure that New South Wales arms and symbols were protected by domestic legislation. Ultimately a reference was given to the committee by Attorney General Debus. A unanimous report was produced by the committee supporting it, realising that many of our symbols were, up until that point, not protected by legislation.

The Legislative Council debated a private member's bill which initially came from the Independent member, Peter Breen, and ultimately the Government agreed to adopt that particular legislation. I might add that the Opposition at the time opposed it, mainly because some members did not like the idea of the Coat of Arms in the New South Wales Legislative Assembly and the New South Wales Legislative Council being removed.

However, I did not think it was a vigorous opposition, bearing in mind that the Opposition members of the Law and Justice Committee had supported the proposals in the first place.

So my experience in referring matters to the committee as a Minister was largely formed on the basis of my experience of the committee process and, moreover, my experience on other committees working out the contrast and the strengths that these committees had to provide in terms of policy development. If I can summarise what I thought were the most important aspects of particularly the Law and Justice Committee, they were that they enabled a public exposition of the issues and the framing of the parameters of a debate. They gave the public an opportunity to contribute directly to policy formation. You can see with the State arms legislation how that occurred. They gave the committee members an opportunity to be informed by the submission process and to consider the issues. And they gave members an opportunity to debate the committee report in a take-note debate, which did not involve a vote but did involve an airing of their positions not dictated by party allegiances.

They subjected matters which involved complex arguments to the benefit of a scrutiny which would not otherwise occur inside a department. In many instances a political consensus developed which ultimately enabled the legislative process to go forward. When I became Attorney General I recognised those strengths. When you have a number of choices in terms of how you can go about inquiries—send it off to a judge, send it off to a departmental review, send it off to some expert in a university—you recognise the strengths of the committee system as I have outlined them. So what I chose to do was give the committee things on which I thought it could achieve a policy outcome that would be beneficial in any of those respects that I have outlined.

Let me go through some of the particular proposals. Many of you will recall that there was a strident debate particularly a couple of elections ago about naming children who were involved in serious criminal conduct. If they were convicted of serious crimes they should have their names exposed and not protected. The matter was advanced, I think, by the Opposition three elections ago and had some currency and support among victims groups and, indeed, the media. I decided when I became Attorney General to refer that issue to the Law and Justice Committee. The Law and Justice Committee unanimously recommended against the proposal and detailed the reasons why.

The surrogacy report was probably one of the most interesting reports. At that time I had to consider whether to refer it to the Law and Justice Committee, knowing that all members of that committee had divergent views about how we should deal with it. I chose to send it to that committee because I thought it was important that those views should be documented, that we should have on the table the competing views, knowing that there is no right or wrong; there are complex issues surrounding it, particularly things like commercial surrogacy, altruistic surrogacy and so on.

Other controversial issues involve things such as spent convictions. People may not have been aware but there were issues of people who may have been involved in underage sex, having convictions for it, being placed on sex offender registers for the rest of their lives—whether that was an appropriate policy outcome. It was possible to straight out legislate to stop that but it was important to take the public through that process to expose the kinds of things that were happening and build momentum in the case for change. That is what that report was able to do. Again, the issue of judge-alone trials was another case. The Chief Judge had been badgering me because he said, "In South Australia 30 per cent of the trials are done without juries. Why can't we have that in New South Wales?"

I was not necessarily a supporter of that because I thought it was always important to have community contributions to the justice system. It makes the outcomes much more acceptable. But in deference to him I agreed to send that off to a parliamentary committee. The parliamentary committee came back with a unanimous report advocating for some change but certainly not as far as the Chief Judge would have liked. That led to legislative action that enabled judge-alone trials in those sorts of cases that were particularly complex, where they would be burdensome and where the interests of justice are required on analogous grounds to what they do in a couple of the other States.

I hope those examples demonstrate the kinds of things that I believe these committees can achieve but moreover the value that these committees can provide to policy development. A lot of the credit for that must go to the members of those committees who have presided over those inquiries and the intelligent and thoughtful way in which they have conducted themselves to achieve those outcomes.

**The Hon. NIALL BLAIR:** Thank you, Mr Hatzistergos. I now welcome our final speaker for this session, Ms Alison Peters.

**Ms PETERS:** I begin by acknowledging the traditional owners, the Gadigal people of the Eora nation, and pay my respect to elders past and present. I also acknowledge the many people here today who have contributed to the committee process over the years, whether they be members, staff or contributors to the process. In particular, I acknowledge my fellow panel members. As a frequent flyer in the committee process I do not think I had the opportunity to appear before any of you, but I acknowledge your contribution to the system. For those of you who do not know much about NCOSS, NCOSS is the social justice advocacy organisation and the peak body for the community sector in New South Wales. Our aim is for a fair and just society and our focus is firmly on improving lives for people on low income, those who are disadvantaged and those who are vulnerable.

In researching NCOSS' engagement with the committee system, I discovered that the first select committees held inquiries into public sector tendering, which was State Development in 1989, and accessing adoption information, which was the Social Issues Committee also in 1989. I could not quite find the NCOSS submissions to these because our archives are not quite at the same standard of the Parliament, but there is reference to both of our submissions in our annual reports and newsletters of the time. I was also a little unnerved to hear this morning that there were some 300 inquiries and that my invitation to speak on this panel may have been because NCOSS has been involved in more of them than any other contributor. That is something we might have to investigate later. The committee has some very important implications for the Council of Social Service of New South Wales [NCOSS] and the people we seek to speak on behalf of.

Scrutiny is certainly one of them and it is often what grabs the public attention but we put in a little bit of a plug for the importance of policy—the decisions and actions made by government and by parliaments that have a particular effect on people. The policy process, in theory, is a nice, neat, somewhat linear or often circular process where a problem is identified; you do some research; you do some consultation; you develop a solution; you articulate what that solution might be; you then implement the solution; you evaluate it; and then you start all over again. In fairness, it is also a lot messier than that nice, neat linear process would suggest. It is also an inherently political process.

For NCOSS—which seeks to influence policy outcomes—the process is certainly not straightforward. As one of my colleagues describes it, it is about having as many fingers and toes in as many pies as you can, so that when the planets align, you are ready. There are multiple competing priorities and agendas, difficult time frames and, with respect to recent committees, sometimes too short a timeframe and sometimes equally, too long a timeframe because issues are not only important, they are also urgent. There are also the practical limitations of time, money, capacity and political will.

For NCOSS we spend a lot of time talking about wicked problems and we also consider the limitations of parliamentary debate in addressing such matters. Wicked problems quite often mean there is no consensus or we actually do not have a clue about what we need to do and that is where we spend a lot of our time. We have a great respect for parliamentarians and their staff, as well as the staff of the Parliament. What they do is not an easy job and people willingly give their time and skills to the service of society, to make it better. Having said that, occasionally our parliamentary democracy does not live up to our ideals and high expectations and I think, as has already been alluded to, sometimes the public perception of what happens in this place is not necessarily a great one.

For the people we care about, life is not always straightforward; it is incredibly complex. For too many people, life is difficult and there are way too many barriers for them to lead ordinary lives, where you feel you can meet your needs for shelter, food, clothing, health and education, as well as being engaged with family, friends and community.

We expect our governments and other institutions to address these barriers and issues and we know that that is easier said than done. While much is done at Executive Government level, we would say Parliament also has a role. When decisions are made by government, these are often made by just enacting legislation and that is fine, if there is a consensus. But in many cases, it is a contest of ideas and, as the earlier session suggested, too often it is a contest of numbers. A black and white approach for the issues we care about is not always the best way to thoughtfully consider what needs to be done to address what are not easy or simple questions. A more nuanced consideration is required and this is when NCOSS would argue the Legislative Council committee process comes into its own. The capacity of the committee process allows for in-depth consideration of issues. It

usually gives far more time than the parliamentary debate process would allow. It allows consideration of a range of views and perspectives and it gives voice to the needs and concerns of those who usually are not heard in this place.

We have talked a little about experts today and, certainly, the committee process can and does call on expert opinion and I would say NCOSS falls into that category. However, at NCOSS everyone is actually an expert in their own lives and they are entitled to have that expertise considered by parliamentarians in their deliberations. What we also acknowledge about the committee process is that, for some of the trickiest and most difficult of issues, it has often led to a consensus view about the way forward and we see that as a great strength. There is no doubt that the committee process has an influencing role. The process has a capacity to not only influence decision-makers and government—and certainly many committee reports have led to governments changing their position on critical matters—but the committee process also has the capacity to influence the views of other stakeholders.

That is so whether they be the committee members themselves or even organisations such as NCOSS, by requiring us to consider views that we had not perhaps thought about on previous occasions. That is another important role of the committee. There is also an educative role. The committee process summarises issues as well as options for future action and makes recommendations, as we have heard. For NCOSS, these reports quite often become useful resources. NCOSS, for example, still holds up and refers to the 2006 inquiry by the Social Issues Committee into Dental Services in New South Wales. Our advocacy has not quite got there yet on what we want but we continue to use that report as a touchstone to inform advocacy.

There is also an important democratic role for the committee process in that it does involve more people in the decision-making process than normal public debate or, indeed, other policy processes. Taken together, these features are critical for developing sound policy for the people of New South Wales. There are, of course, limitations to the process. They are overtly political. The issues considered can sometimes be quite narrow and they are not always the ones that NCOSS, for example, would have prioritised. Participation can still be limited to the usual suspects because we have the time, the energy and the inclination to participate but I would also like to acknowledge the parliamentary staff's contribution to trying to engage with broader audiences.

In my final remarks I would like to acknowledge in particular the work of the Legislative Council staff in partnering with NCOSS to hold parliamentary inquiry workshops which we have been doing now since 2009 which is a proactive approach to engagement with the community sector but also, more broadly, the community. On Wednesday this week I travelled with a number of the staff to Wollongong where we held the nineteenth such workshop. The aim of the workshops was to inform and build the capacity of the community sector to participate in committee processes, which increases our understanding of the process and builds our confidence to be able to contribute. We think it improves the effectiveness of contributions and we would also argue that it expands the range of people and organisations whose views are now put before committees and we think that is a further strength of the committee process.

The committee process is only one mechanism to develop policy but the structure and processes of the Legislative Council committees are extremely useful and have been an influential contributor to making a difference for people on low incomes who are disadvantaged or vulnerable. The Council of Social Service of NSW looks forward to many more years of participating in this process. Thank you.

**The Hon. NIALL BLAIR:** Thank you, Ms Peters. We are going to have time for a few questions but before we do that I am going to seek some indulgence and quickly give a recent example of the way in which an inquiry was able to then influence policy. With the Social Issues Committee inquiry into domestic violence, once the committee got an idea of where we thought we were going with the recommendations, we wanted to ensure that we had the feedback on some of those proposed recommendations. We called all the stakeholders back and held an in camera session here as a roundtable discussion. That included the non-government sector, the police and a whole range of other government departments. There was risk involved in that because these were only proposed recommendations but it was important for all the committee members to make sure that we did not just put out a report that gathered dust, but that there was actually a good chance of it turning into policy.

From that stakeholder roundtable we were able to refine our recommendations and put them forward as part of our final report. To date, we have had four pieces of legislation go through the Parliament as a direct result of that report. I think that shows that when committee members all are working towards the same outcome and we engage those stakeholders, such as NCOSS, and listen to how they may receive such recommendations,

we have a stronger chance of turning that into policy. That is a good example to wrap up all of the contributions from the panel, including the NGO sector. We will now take questions from the floor.

**The Hon. RON DYER:** I think I should address my question to Alison Peters. One of the important rationales behind the recommendation of the committee on committees, to give it that informal title, was to give residents of New South Wales input into the policy formulation process. It clearly emerged from your remarks that NCOSS has availed itself of that opportunity. Could you give us an idea of the extent less generalist bodies, smaller bodies, avail themselves of that opportunity? Do you think that in practice over the years since the modern committee system was established 25 years ago that it has been a success and people are given fairly ready access to the policy formulation process?

**Ms PETERS:** I would have to say yes. Certainly, not as many organisations from our sector participate as we would like, because we think that is an important thing for them to do as well. But I am aware, certainly since I have been at NCOSS, that the breadth of submissions made by the sector has been quite good, and increasingly—I note as well the comments of this session's chair—committees have taken steps to include not just those organisations but also the clients and users of the services we provide. I think that gives a very rich and deep perspective of what we are doing. It is not perfect and occasionally other things are going on in our world and we do not get round to writing the submission we might like, and so on. But I think that the process has done the very best it can to extend the breadth of voices that are heard around that table. It is still the case, I would hazard to suggest, that the usual suspects are always in there, but I think there is a wider group of people contributing to the process than you might perceive from other forms of policy development.

**The Hon. NIALL BLAIR:** I also think as a committee chair you can identify the organisations that have been to the workshops, particularly those on how to give evidence and how the committees actually work. I reiterate the importance of those workshops, particularly to get the most out of those witnesses when they turn up on the day.

**The Hon. BRIAN PEZZUTTI:** I can answer Ann Symonds' question, which was: How do you get implementation? The mental health committee I did was the brainchild of Arthur Chesterfield-Evans. He raised the select committee, the House voted on it and I got to be chair because Arthur wanted me to chair it. The important thing about that committee was that it went everywhere, did everything, spoke to everybody, got lots of submissions and wrote a unanimous report with fantastic support from our Clerk, who did most of the writing and organisation. Then I was fortunate enough to have Johnno Johnson speak to Helena Carr. Next thing, I had a phone call from the Premier about six months after I retired from this Parliament, asking me if I would please chair an implementation committee, which I thought was pretty extraordinary, given I was a Liberal.

**The Hon. ANN SYMONDS:** Was a Liberal?

**The Hon. BRIAN PEZZUTTI:** Ann! The important thing about that was that he disagreed with only one recommendation of the 119; all of the others were supported by government. Then we got very fortunate enough to have a Minister, Morris Iemma, who, when he became Premier, made mental health and homelessness his two big targets. He had all the resources we needed to make sure not just the Department of Health but all of the human services departments reported to the Parliament on their implementation of the recommendations of that committee. So we closed that circle in 2012 by having carers included in the Mental Health Act. You have to take time, but you have to have government that is willing to listen to a reasoned report, which is fully supported by the community voice and represents the community voice. If you get that and you get some champions—you have the Premier and the Minister for Health as your champions—then you get everything you ask for.

**The Hon. ANN SYMONDS:** I have to respond. I have to say, lucky you, because I produced unanimous reports from diverse members of the upper House. Perhaps I should have spoken to Helena Carr because I really would have liked the implementation of the children's advocacy report and then the children of prisoners report. They were both very important unanimous reports, as far as I am concerned. The fact is that the children of prisoners report still stands to be implemented somewhere along the line. I hope it will be.

**The Hon. JOHN HATZISTERGOS:** Some aspects were when I was Minister.

**The Hon. ANN SYMONDS:** Some aspects of it. I know that. But I have to say that of 97 recommendations the most critical one is that the sentence of imprisonment of a primary carer of children

should only be imposed when all possible alternatives have been exhausted. That is the one that is not being addressed by the judiciary or by the Parliament.

**The Hon. BRIAN PEZZUTTI:** Get back to the Premier.

**The Hon. ANN SYMONDS:** I will go and see Mr O'Farrell. Thank you.

**The Hon. NIALL BLAIR:** We have run out of time for questions. Dr Phelps is happy to ask his question perhaps during the break. I thank all of our panel members. We have for you a small token of our appreciation.

**Mr BLUNT:** Thank you, Niall, and your panel members for yet another excellent and informative session. Thank you all for your frankness.

**(Luncheon adjournment)**

### SESSION 3: TAKING PARLIAMENT TO THE PEOPLE

**The Hon. JENNIFER GARDINER:** Session Chair, member of the Legislative Council.

**Mr PETER TOPURA,** Director, Procedure, Bougainville House of Representatives.

**Mr SIMON JOHNSTON,** Twinning Project Coordinator, NSW Parliament.

**Mr STEVEN REYNOLDS,** Deputy Clerk, Legislative Council, NSW Parliament.

**Mr BLUNT:** I trust that video clip has grabbed everybody's attention for Session 3, which deals with consultation and community participation in the work of committees. While the last few people are coming into the room, before I introduce the Chair of this session I have two messages from former Clerks-Assistant—Committees to read out this afternoon. I will read one out now and one before we start the final session. It is from Mike Wilkinson, the inaugural Clerk Assistant-Committees, who stated:

I understand that this week the LC will be celebrating the Committees' 25th Anniversary. Firstly, I would like to thank you for your invitation to attend the celebrations; however, as you know, this is not possible as I am currently in the south of France—

Good luck to him—

Nevertheless, I would be grateful if you could extend my congratulations to all Committee staff, both past and present, and any Members attending the celebration. When I was appointed to the newly-established position of Clerk-Assistant Committees in 1991, only Social Issues and State Development, together with the Privileges Committee, existed. Not long after I, along with Ronda Miller, Mark Swinson and John Evans, worked on creating the Joint Estimates Committees which later became the General Purpose Standing Committees of the Legislative Council. I was followed by Giselle Dawson and [subsequently] Warren Cahill as Clerk-Assistant Committees. During their time Committee responsibilities were greatly increased leading to the structure you have today.

It was always my personal opinion that the work of the Committees contributed more to the good reputation of the LC than any other Parliamentary department. The Committee reports and their recommendations played, I believe, a very important role in influencing government departments and, in some instances, government policy.

I found all the Committee staff with whom I came in contact over my 14 years in the Legislative Council highly professional and very hard working. So, again, I congratulate all the Committee staff, and now I am going to settle back in chair in the Café de Grammont, sip my café au lait, enjoy the Mediterranean sun, while looking out over the harbour in St. Tropez.

He rubs it in, doesn't he? Without any further ado, I will introduce the Chair of this session, the Hon. Jennifer Gardiner. Jenny has been a member of the Legislative Council since 1991. She has been Deputy-President of the House since May 2007. Like Reverend Nile her service on committees runs well into two pages, including service as Chair of General Purpose Standing Committee No. 4 between 2003 and 2007.

**The Hon. JENNIFER GARDINER:** Thank you, David. As was mentioned, this session will be about focusing on community engagement in the committee process, or power to the people, as John Lennon would say. Firstly, we are going to briefly leave New South Wales, so to speak, at the beginning of this session by viewing a video presentation from the United Kingdom Parliament on community engagement—House of Commons style. After that, we are going to come back to the Pacific and we are going to hear from Peter Topura and Simon Johnston about taking Parliament to the people in the autonomous region of Bougainville. Peter Topura joined the autonomous region of Bougainville House of Representatives in 2010 and is currently the Director of Procedure. Peter has worked on a number of committees and their inquiries in Bougainville, including the Torokina oil palm inquiry, which involved travelling up crocodile-infested rivers to remote communities; he obviously survived. Peter, it is great to have you here today to share your experiences.

Simon Johnston is the Twinning Project Coordinator in the New South Wales Parliament. He started work with the Legislative Council in 2005 as part of the committee office. Since 2010 Simon has been the New South Wales Parliament's Twinning Project Coordinator, developing the relationship between our twinned Parliaments in Bougainville and the Solomon Islands. After Simon and Peter's presentations we will come back here to New South Wales where the Deputy Clerk of the Legislative Council, Steven Reynolds, will talk about approaches to community engagement in the Legislative Council. Steven joined the Legislative Council committee office in 1999 where he managed numerous inquiries for the Standing Committee on Law and Justice as well as the general purpose standing committees. Steven became the Clerk Assistant in 2006 and the Deputy Clerk in 2011. Welcome to the panel. As I said, we will start off with a short video from the House of Commons on community engagement in the United Kingdom Parliament.

**(Video from the House of Commons on Community Engagement in the United Kingdom Parliament shown)**

**The Hon. JENNIFER GARDINER:** That was interesting. The United Kingdom Parliament probably pioneered the use of Twitter. However, the New South Wales Legislative Council not only has avid Twitter users among its membership—myself included—it also has a Twitter handle, which we love using.

**The Hon. ROBERT BROWN:** They are called upper House twits.

**The Hon. JENNIFER GARDINER:** I will take no notice of the gallery today. I welcome Peter Topura and Simon Johnston. We look forward to hearing your presentations.

**Mr JOHNSTON:** I will speak extremely briefly because the most important person to hear from is Peter Topura. I will introduce him and the Twinning Project. The New South Wales Parliament is twinned with the national Parliament of the Solomon Islands and the Autonomous Region of Bougainville's House of Representatives. As delegates would be aware, the Autonomous Region of Bougainville is a former province of Papua New Guinea that has special autonomous status, and it is moving towards a referendum on that status between 2015 and 2020. The New South Wales Parliament is twinned under the auspices of the Commonwealth Parliamentary Association, but we sought and received funding from AusAID to support capacity building and institution strengthening in the two parliaments. That pattern has now been rolled out by other Australian parliaments that are twinned with Pacific parliaments.

New South Wales parliamentary staff, and in particular the Legislative Council's Rachel Callinan and Beverly Duffy, have had a great deal of involvement with Bougainville's Public Accounts Committee and the committee staff generally—although specifically the Public Accounts Committee. They have both spent a month there working with the committee on delivering inquiry reports. Peter Topura is the Director of Procedure in the Bougainville House of Representatives. In that role he has done some excellent work with the Standing Orders Committee reviewing and revising the standing orders so that they reflect the practices that members want. Because the Parliament has a small staff, he must undertake a range of duties, one of which is assisting with running an inquiry into the Torokina palm oil project and that is why he is here today.

**Mr TOPURA:** I will provide some information about our committee work in the Bougainville House of Representatives and bringing the committee's work to the community. The committees are established as required by the Bougainville Constitution and the standing orders. We have 11 committees that were formally established by a motion moved by a member of the Executive Council. The committees have five members and a quorum is formed by three members. Committees have the power to request information and to invite witnesses to appear. They can also demand information, summons witnesses and undertake visits to inquire into issues. The committees then prepare reports containing recommendations to which the Government responds.

One challenge for the committees is lack of funding. Staffing and office space are also challenging. Some areas have no reliable communications network, so it is difficult to provide information to the community. Access to the inquiry site is also an issue. Committees have tabled reports, but we have received no responses from the Government.

Case study on the Torokina Palm Oil Project. Bougainville Island is divided into three regions: north, central and south. The committee held a public inquiry at a site that was at the southern tip of Bougainville Island. The only way to get there was by road and then by dinghy. This place is only accessible by sea, so that is why we had to return to Boku by dinghy. One of the challenges that we had as a committee was that we did not expect that the road would be in a bad condition, and we thought we would be okay, until we arrived at the location. Night came and darkness fell. This is a picture of one of the places that we had to get in a dinghy to move to the location at which the public hearing was held. When we arrived, the public were waiting for the committee, even though it was dark. They had been advised that the committee would conduct the public hearing at night, because in the morning of the second day we needed to get to the next location. You could not get to that location in the evening because the stream would dry up and you could not get through. Upon advice by the local member, the chairman said, "Let us do this at night." This is a picture of the next morning when we were travelling upstream.

Finally, the committee members realised that the people had different expectations of the government. During the inquiry, they were not focused on the questions that the committee members were asking. The people

in the communities do not understand committee work. They were all thinking we were the government. They were accusing the members of not delivering. So the committee members had to listen to what they were saying and try to get what they needed to write its report. The other thing is that the local people do not know what the distinction is between the Executive Government and the Parliament. They were telling the members, "You are the members. We voted for you and you did not deliver. Today you have come to find something and are expecting us to tell you something." All in all, they were happy that at least they had seen the members, that they had had personal contact with them, and that the members had visited their communities. That is the end. I will leave you with some short footage from that inquiry.

**(Film shown of committee members travelling by dinghy)**

**The Hon. JENNIFER GARDINER:** Thank you very much, Peter and Simon. I think there was a Standing Committee on State Development inquiry into fisheries years ago. I do not know if Brian was there that day, but we were in a dinghy on a waterway that had been affected by acid sulfate soil. But it was daytime, there were no logs and no crocodiles. Thank you for that presentation. Now we move to Steven Reynolds, who will talk to us about community engagement with New South Wales upper House committees.

**Mr REYNOLDS:** I have been given the job of summarising 25 years of community consultation by the Legislative Council committees in 10 minutes, so I will give it a go. It is an impossible task. I will start off with a pessimistic view. This was a quote made about 10 years ago by a former clerk of the Canadian House of Commons. Essentially what he is saying is the old model of a parliamentary committee with a chair and members sitting around a table asking a witness questions is outmoded and that it may not survive the next 25 years.

Around about that time, Legislative Council committees were receiving approximately 1,000 submissions a year, holding about 100 hearings, and receiving evidence from 600 witnesses. Going forward, in 2012, the Legislative Council committees received 2,500 submissions and heard from 850 witnesses. This year they received 8,500 submissions, which is the highest number in the history of Legislative Council committees. So the public of New South Wales still believe this is a viable model, but the former Canadian House of Commons clerk had a point. If this is the extent of the engagement with the public, then the model really is not bringing Parliament to the people.

I will give some examples of the way in which past and current Legislative Council committees are using other processes to bring the work that it does and the evidence it hears to the people and how committees are hearing from New South Wales citizens. The most important way that committees engage with the public is still through the media. As long as I have worked here, committee chairs, members and staff have always embraced the media. They have always seen the media as an essential tool of committee work and not something of which to be afraid. I will play a film clip about the Gentrader Transactions inquiry, not because of the political significance of the inquiry but because it gives a good example of a news story that is summarising the evidence that a parliamentary committee has brought to light. It delivers a clear summary to millions of viewers of that television news program what the committee had found.

**(Channel Seven news story played about Gentrader Transactions inquiry)**

**Mr REYNOLDS:** This is another example of the way that committees engage with the media: an item on a committee report on school bullying. It mentioned cyberbullying. The chair of that committee managed to get that onto the front page of the *Daily Telegraph*, the biggest selling newspaper in New South Wales. Again, the recommendations of the committee are reaching 300,000 or 400,000 people. Another way in which communities engage with the citizens of New South Wales is by site visits. The next example shows a committee very carefully inspecting a muddy pool of water somewhere in New South Wales. Our committees have always travelled through New South Wales and when a committee does that it really is bringing Parliament to the people. It is acting as a mini Parliament. The people in that region and that town get to see the work of upper House members in a way that they otherwise wouldn't. It also gives members of the committee and staff a chance to wear hard hats and fluoro jackets. If you are a former member of the New South Wales Parliament I am sure we have a photograph of you somewhere wearing a hard hat and a fluoro jacket.

I should say that sometimes site visits have unexpected benefits for the places that the committees visit, as you will see from this film clip from the Royal North Shore Hospital inquiry chaired by Reverend the Hon. Fred Nile. After that we received requests from hospitals all around New South Wales for an inquiry into their hospitals so they would be cleaned. Another important role of our committees is to hold public forums and

hearings in regional areas. At these public forums citizens get up to five minutes to express their views on the issue being inquired into and a transcript is taken by Hansard. This is the coal seam gas inquiry, chaired by the Hon. Robert Brown. At that inquiry public forums or hearings had 200 or 300 people. We could not fit everybody in the rooms for some of these events. In fact, we were not sure whether the people shown here were protesting about coal seam gas or protesting because they could not get a seat inside at the hearing.

When we do these regional tours and site visits at times we also take along other staff to deliver programs to school groups to inform them about the role of parliamentary committees, using that particular inquiry as the basis. As Alison Peters has already said, we work with NCOSS in delivering training to community groups across New South Wales in different regions, assisting them to engage with the inquiry process—how to make a submission, how to be a witness to an inquiry. We also struggle with the challenges of engaging with New South Wales Aboriginal communities, and quite often fail to do so effectively. At the very least where the inquiry is relevant we try to make contact with the local elders or the local land council in the area we are visiting.

Finally, I want to talk about social media. We have really lagged a little bit behind our members like Jenny Gardiner who have been quite active in this area. We first started with an inquiry into school bullying three or four years ago where we were getting no responses from young people on an issue that was really about them. So we engaged with a consultant who set up a survey on a Facebook site. Through that means we got about 300 responses from young people on issues of bullying, which we would not have got through the formal committee process. A different approach is currently underway with the Yaralla Estate inquiry into horse agistment. The opponents of the recent Government decision have their own Facebook site but they are using that to put on lots of information about the committee hearings, transcripts, submissions and so on. We have cooperated with them to the extent of making sure that they are provided with accurate information on the committee's activities.

Finally, as Jenny alluded to, about two months ago we set up an upper House Twitter account and we are finding this a very time-effective way of communicating information about the activities of our committees. It is far more useful in some ways than spending time preparing a press release and boxing it downstairs. An example of that is the recent social issues inquiry into same-sex marriage. We put out a tweet with a photograph of the findings of the committee's report. That was extensively re-tweeted by other sites with a lot more followers than we have. In the end it also received extensive coverage in the mainstream media. In conclusion, I would say that the model the Legislative Council committees are using is a very old one—the basic model has not changed very much in 25 years—but the way in which those committees have engaged with the public of New South Wales continues to evolve and change. I am sure over the next 25 years it will go in all sorts of different directions that we have not anticipated. Thank you.

**The Hon. JENNIFER GARDINER:** It was beautiful to see that clip from the Royal North Shore inquiry. Whatever cleaning industry the government of the day then employed came unstuck when the then Minister for Health came before the first public hearing. Buried in the submissions was a submission from a surgeon at the hospital who complained about cockroaches on the theatre operating table, and that was the lead story notwithstanding the fact that the Federal budget had been brought down the same day. We now have time for questions from the audience in relation to this session on community engagement. Have we got any questions?

**The Hon. MAX WILLIS:** My question is addressed to Mr Peter Topura. I understood from what you said that the committee up the creek had great difficulty because people in the community that you were seeking information from assumed the committee was the government. They knew no difference between the committee and the Parliament or the Parliament and the Executive Government. Did I understand you correctly?

**Mr TOPURA:** Yes.

**The Hon. MAX WILLIS:** How did you solicit from those members of the community that your committee was talking to in the middle of the night the kind of information that your committee sought if the people you were engaging with had no idea who you were or what you were on about other than you were "from the government"? It seemed to me a herculean task.

**Mr TOPURA:** On the first night that was the first place we went. So what the committee did was—from the first experience they were trying to express to us how to get that information. So they were trying to explain what they were there for.

**The Hon. MAX WILLIS:** But having explained what they were there for, what kind of response were they getting back from the community?

**Mr TOPURA:** From the first location they weren't able to get information from the people.

**The Hon. JENNIFER GARDINER:** Are there any further questions?

**The Hon. ELISABETH KIRKBY:** My question is to Mr Steven Reynolds and it is about Twitter. I do not use Facebook and I do not use Twitter, but as soon as I switch my computer on I get everybody's information and updates—a lot of it is either sarcastic or ill-informed and not of any real value. Does that happen when you get submissions to committees? Is the information coming through sensible or is it something that is being terribly clever or very sarcastic or that kind of thing?

**Mr REYNOLDS:** What you are alluding to is a very real problem, and we certainly faced that with our Facebook survey on school bullying, which was why we chose to do it as a survey rather than just inviting comment. We are not receiving submissions through Twitter and we are deliberately structuring our use so that it is a one-way exercise; we are putting out information but we are not looking to engage in conversation with people because of that kind of risk that you start to get sarcastic comments or comments that could lead to the sort of interaction that you are not really about promoting. So it can be a real problem. It is really early days. I have only been doing this for two months so we have not yet encountered a lot of the difficulties with this medium; but some of the members here have been on Twitter for three or four years so they might be better able to answer that question.

**The Hon. JENNIFER GARDINER:** I think the key is to factor in that when you are dealing with the "Twittersphere" there is a lot of material out there that is extraneous, abusive or whatever. The way I use Twitter is to simply concentrate on things that I want to learn from what is happening around the world. But you are right: there is a lot of extraneous material. I just filter it out, and I think my colleagues would do the same. By the same token, it is a fantastic medium for very fast and often extremely entertaining communication about the workings of the Parliament. Dr Phelps, Government Whip in the Legislative Council, is a famous tweeter.

**The Hon. Dr PETER PHELPS:** In relation to taking committees to the people, one of things I have noticed—and I do not know if my experience is different from that of others—is that, in some sense, there is an appreciative fatalism about the people who appear before committees. They do not actually expect that they are going to get what they want, but, at the same time, there is a sense of gratitude, and we find this especially when going around rural and regional New South Wales, that you have actually turned up to listen to them. In many ways, the contributions received are almost incidental to the fact that the witnesses appearing feel a sense of relief. They think, "You have actually come out here and you want to talk to us," rather than expecting a defined outcome from the committee process. I do not know if other people feel that way but that is certainly the impression I get from being a member of the Standing Committee on State Development and General Purpose Standing Committee No. 5.

**The Hon. JENNIFER GARDINER:** I would certainly agree with that. Having sat on a lot of rural and regional public hearings, some with literally hundreds of people in the room, there is a genuine appreciation that parliamentarians have taken the opportunity—as we saw in the video clip from the United Kingdom—to go and interface with constituents. They really enjoy the process. The audience enjoys seeing the parliamentary committee interact with its witnesses and listening to the debate, and they appreciate the fact that the committee has made the effort. They might have low expectations sometimes of the outcome but of course, as we have seen today, some of the outcomes of those inquiries have been momentous.

**The Hon. RON DYER:** I would like to ask Steven Reynolds a question. During your presentation I understood you to be saying that the current committee system follows a traditional model, which clearly is substantially true. You were suggesting, if I understood you correctly, that, in the future, consideration ought to be given to alternative models and other means of engaging with the community. Could you tell us very briefly what you might have in mind in that regard?

**Mr REYNOLDS:** In a sense I was saying that the model that we use is still a very viable one; and probably it is more the connection between that model and the community which will continue to change rather than necessarily the model, which the Clerk of the House of Commons was criticising. I do think it is still a valid way to get information from people. We have modified it slightly with things like public forums and so on. Another point is the way things are progressing on social media, but that is a quite difficult area for a committee

to engage with. The model itself is quite robust. I think it is more the way we connect that model and the information it gathers with the community that will continue to change. I do not have a crystal ball. Things change so quickly—for example, three years ago we were not talking about Twitter and Facebook seemed a relatively new thing. So it is very hard to predict the way things will go.

**The Hon. Dr PETER PHELPS:** We did something interesting with the Standing Committee on State Development. You do not have to have the sort of board or inquisitorial model where committee members all sit at a table at the front of the room and throw questions at one or two individuals sitting before us at a table as witnesses. Committees do have public forums—which are like an open mike night. We held one of those forums during the inquiry into Yaralla Estate. When the Standing Committee on State Development held an inquiry in Western New South Wales, the committee split up into small groups and conducted small roundtables. Committee members divided up into three smaller groups and essentially had a room of small roundtables where we could find things out at a smaller level. Witnesses would talk to us, we would inquire further and then we consolidated what we learned into a final report on the day's activities. So you do not have to completely dispense with the system, but there are certainly ways of relating to people which do not require the old

**The Hon. ROBERT BROWN:** On the point that has been raised about methods of engaging with the community, Peter's little video was quite informative. Some of the inquiries I have been on looked a bit like that. On two inquiries that I chaired the same thing happened: we needed to have some consultation with a local Indigenous group. It became quite obvious that the Indigenous people were not comfortable with the top-table-style inquisitorial method of getting information. So the committee went to the Indigenous community. But when the committee went to the Indigenous community—you have probably seen it on television a number of times when Federal Government inquiries visit land councils in the Northern Territory—we conducted the inquiry in a way that the constituents were comfortable with. All that meant was that there was an acceptance by the members of the committee that rigidity—whilst it is good in the parliamentary sense; you need to maintain protocol and procedure—probably does not work in a lot of circumstances.

Steven has alluded to the changing methodology of communications to and from the committee with regard to social media. One thought I had sitting here listening to this was that, subject to the ever-tightening budgets of the Legislative Council and its committees, the making of a film, movie or presentation of a committee hearing while it is in progress, then having that uploaded onto Facebook, is an almost instantaneous way of allowing communities at the time of, around the time of, or after the event—even many months after the event—to see what transpires in a committee meeting.

Some of the comments made to me by witnesses coming to committees, particularly in rural New South Wales were (1) they did not know what to expect; (2) there was an expectation that it was not really going to matter anyway; and (3) they were coming there to have a go at the Government—in other words there was a problem with the participants not really understanding why the committee was there. But during the course of an inquiry, and certainly after the inquiry, the attitude completely changes: those constituents who have been involved in the inquiry are happy with the process. But when you go to a different location you start the whole process over again. There has to be a way that would perhaps better publish, publicise or broadcast the way that committees are run, and show the ways the formal process can be varied.

**The Hon. JENNIFER GARDINER:** That is an interesting thought. One of the beauties of the public forums—as well as having formal hearings with expert witnesses—is that you can perhaps restrict contributors to two-, three-, four- or five-minute speeches. That spreads the load around the community. Afterwards you have so much terrific feedback about people having a say. They have a chance to get off their chests whatever it was. If you combined that with social media now it would amplify that sense of participation even more than, say, five years ago.

I would like to thank Peter, Simon and Steven for their presentations this afternoon. Thank you very much. We have some presentations to make to them in appreciation.

**Mr JOHNSTON:** Before we move on, Peter has a small presentation which he would like to make.

**Mr TOPURA:** I would like to present this to you. As we are part of this celebration we will benefit from the knowledge that it has given us. It says that it is a gift to the New South Wales Legislative Council, 20 September 2013.

**The Hon. JENNIFER GARDINER:** We really do appreciate the twinning arrangement. It is fantastic you could be here. Thank you very much. This will go in a very special place in the President's collection or the Clerk's collection.

**Mr BLUNT:** Thank you very much, Jenny and panel, for another fabulous session, and for the contributions from the floor. We will now have a break for afternoon tea. Given that we have just enjoyed a session on community participation this will not be just afternoon tea; this will lead to an enhanced opportunity for participation from all of you. The final session, which starts in half an hour, is in two parts. The second half is entitled "wish list". It requires each of the panel members to nominate one initiative or reform to ensure that Legislative Council committees are effective beyond 2013. Whilst I am sure that each of those panel members will make very good suggestions, given we have a roomful of people with such a strong interest and such expertise in relation to matters connected with committees, we would love to hear all of your views on this question and record those views for future consideration.

The proposal is therefore that you take a five- to 10-minute break for afternoon tea then go back to your table or perhaps combine with some other tables so that those of you who are particularly keen to contribute in this discussion can have a discussion with your colleagues and nominate a representative. You will be asked by Mr Foley during the last session to report back on the single idea that your table has come up with. If your group is struggling with the concept of bipartisanship and unanimity and cannot reach consensus on the most important initiative, bad luck!—we will not allow for dissenting views. You have to come up with one idea from each table.

**(Short adjournment)**

## SESSION 4: BEYOND 2013

**The Hon. LUKE FOLEY**, Session Chair, Member of the Legislative Council.

**The Hon RON DYER**, Former Chair, Law and Justice Committee.

**The Hon. JOHN HANNAFORD**, Former Minister and former Chair, State Development Committee.

**Associate Professor RODNEY SMITH**, Department of Government and International Relations, the University of Sydney.

**The Hon. ROBERT BROWN**, Member of the Legislative Council; Chair, General Purpose Standing Committee No. 5.

**Dr JOHN KAYE**, Member of the Legislative Council; Former Chair, Select Committee on Election Funding.

**Mr BLUNT:** Before I introduce the Hon. Luke Foley as chair of the final session for today, I mentioned earlier that I had a further message from a former Clerk Assistant to read out. If you thought that Mike Wilkinson was in an exotic location when he was writing from St Tropez, listen to this. Warren Cahill, former Clerk Assistant-Committees and former Usher of the Black Rod, writes:

Mr President, members past and present and my dear colleagues and distinguished guests,

My heartfelt greetings from Mogadishu!

I am sure that you have had the opportunity to reflect on many of the important—sometimes great—achievements of the committees of the Legislative Council over the last 25 years. During the cut and thrust of politics it is easy enough to dismiss their importance in increasing government probity and effectiveness, improving public policy and lawmaking and most importantly making a positive difference to the wellbeing of many of the people of the State. However when you see the difference that the work of similar committees has made or is beginning to make in places such as the Solomon Islands and here in Somalia, a very different perspective and assessment of their value is evident and acknowledged.

As Clerk Assistant Committees I had the privilege of leading a small (but growing) team of extremely bright and dedicated young professionals during a period of major procedural and administrative change to the way that committees of the Parliament operated.

I will abridge the message slightly but I promise I will read it in full to committee staff next week.

It was also a time when we met the challenge of more and busier committees by introducing a more flexible and efficient system of committee administration that has been admired and copied both in Australia and overseas. Throughout that period I was mentored and had great support from Presidents, Clerks, chairs and members. However reflecting back over the period what I remember most is the talent, humour, dedication, teamwork, strength of character, camaraderie—did I mention humour of the directors and staff that I worked with through the many challenging committee inquiries. They inspired me and made me proud of the work we were doing—even at times when things were tough...

Enjoy the celebrations and the reflections.

The message concludes with Warren offering his congratulations to everyone involved with recognising the significance of this event. He extends his heartfelt best wishes and to all the members who have contributed to the rich history and legacy of the committees of the Legislative Council over the last 25 years. The structure of the committee Secretariat is very much the legacy of Warren Cahill.

Luke Foley was elected to fill a casual vacancy in the Legislative Council in June 2010. A year later, in June 2011, he was elected as Leader of the Opposition in the Legislative Council. In his short time in the Parliament, Luke has been an active member on a range of committees—at least one of which I am sure you are all aware of at the moment. Without further ado, I will hand over to Luke Foley.

**The Hon. LUKE FOLEY:** Thank you, David. It just goes to show that there is one silver lining on the dark cloud of electoral annihilation—the few who remain get promoted very quickly. We are deep into Friday afternoon. In an hour and a quarter you can all have a drink and, even better, it is David's shout. We will hear from five speakers before we seek your ideas about how we can do things better in the future. We have two of the founding fathers of the modern committee system of the Legislative Council firstly to speak about whether their vision has been fulfilled and then we will move to our other panellists to start a discussion about a wish list for the future. Ron Dyer and John Hannaford can both take much credit for the establishment of the modern

committee system in 1988. My friend Ron Dyer was the chair of the Select Committee into Standing Committees of the Legislative Council. I read the report this week and it has stood the test of time. Ron, of course, went on to become a Minister in the Carr Labor Government.

John Hannaford, as I said yesterday, was one of the leaders of the Liberal Party in the Legislative Council who maintained their commitment to the establishment of a modern committee system. When the Coalition parties entered government after the 1988 election it would have been easy for people like John Hannaford and Ted Pickering and Max Willis following their party's election to government to perhaps shelve the policy or defer it for further consideration or investigation. To their great credit they proceeded to implement what they had talked about at length in opposition and, despite some sceptics in the ranks of Executive Government, they implemented two standing committees.

Both of our guests are very welcome 25 years after they did so much to give us this committee system. Both of them are going to attempt to grapple with the question of whether their vision of the 1980s has been fulfilled. I call first on the Hon. Ron Dyer.

**The Hon. RON DYER:** Thank you, Mr Chairman. I am delighted to be here and to have this opportunity to engage on this appraisal of whether the vision has been fulfilled. Could I first of all congratulate David Blunt and Steven Reynolds and everyone else involved in organising this seminar. It seems to me that it has been very well organised indeed. After 25 years it is appropriate to engage in an appraisal of the system that was established 25 years ago. It is a substantial period of time. To use another way of approaching it, it is a quarter of a century—that makes it sound longer still. But it seems to me that what you are doing is justified and appropriate.

To set the scene could I say that I became an MLC here in Macquarie Street in 1979, which seems rather a long time ago. I remained in the House for 23½ years and retired from Macquarie Street in 2003. In assessing the Legislative Council when I first joined it I am a little conflicted in that I was very much aware when I became a member that the Legislative Council is the oldest parliamentary institution bar none in Australia or New Zealand. It has a long history and I felt very proud and honoured at the time to become a member of it. On the other hand though, after I had been a member for some little while, I did form the view, without trying to be too unkind, that it was something of a sleepy hollow at the time. It really needed to update and modernise.

When I first came here there was virtually no question time. The House tended to sit at 4.30 in the afternoon and it could well have adjourned by 6.30. The committee system was rudimentary and it would be exaggerating to call it a committee system. I am not trying to condemn the House; I am just saying that it really was a product of its time. There was, however, a committee on subordinate legislation, chaired by the late Sir Adrian Solomons, when I first became a member and I succeeded him as chair of that committee from 1980 to 1987. It became apparent to me that the committee needed resources because we were not really doing our job properly unless all regulations appearing in the *Government Gazette* had, indeed, been properly scrutinised and examined against the criteria which the committee was supposed to be considering.

I lobbied the then Premier, the Hon. Neville Wran, for funding to get some staff assistance for the committee—in fact, I made quite a nuisance of myself, I think—and eventually that assistance was provided by some funding being made available, and a legal academic at Macquarie University was engaged to undertake that task. Then in February 1985 the Hon. Barrie Unsworth, who at that stage was Leader of the Government in the Legislative Council—later Premier, of course—moved for the appointment of the Select Committee on Standing Committees and I became its chairman. Many of you probably know—certainly those who were members at that time or a short time later—that it became commonly and jocularly known as the committee on committees.

We feel that we devoted ourselves to the task very conscientiously. We visited other Australian jurisdictions, such as South Australia, Tasmania, Queensland, Victoria and of course the Senate and the House of Representatives in Canberra. Most of the conclusions we drew as to what would form the nucleus of a committee system here in New South Wales were drawn from the Senate system of committees and the system in the Parliament of Victoria as well. We had some very eminent witnesses, such as Mr Jim Odgers, who is a famed Clerk of the Senate. David Blunt would be familiar with *Odgers' Australian Senate Practice*, no doubt.

The composition and functioning of the upper House was evolving. The merits of having a viable committee system were well and truly apparent. One of the merits was to support the review function of the

Legislative Council. After all, its primary function is to review legislation coming from the lower House. Another merit supporting our review was to find a means to enable interest groups and citizens generally to express their views regarding pending legislation. After all, we live in a democracy and it is important that citizens and residents of the State should be able to express their view on legislation before it is enacted. Regrettably, sometimes bills go through the House—particularly the lower House, if I dare say it—with some rapidity. I do not necessarily see that as healthy. In any event it is the duty of an upper House in my view to slow things down and have a proper inquiry before legislation is enacted that might have the effect of affecting people adversely.

In any event the committee on committees reported in favour of a number of committees: the Standing Committee on Subordinate Legislation and Deregulation, another one on State progress, the Standing Committee on Social Issues, the Standing Committee on Country Affairs, and a Standing Committee on the Scrutiny of Bills. The last mentioned was intended to be considered at a later stage. When the Greiner Government came to office in 1988 it established the Standing Committee on State Development and the Standing Committee on Social Issues. Somewhat later when the Carr Government came to office, in which I was a Minister, the Standing Committee on Law and Justice was set up. I will briefly refer to the New South Wales bill of rights inquiry. I do not want to go into the detail. For various political reasons we did not report in favour of a bill of rights but we did recommend a scrutiny of bills committee. I was determined that arising out of that exercise we would get some positive outcome. We recommended a scrutiny of bills committee and I am happy to say that such a committee operates in this Parliament and continues to this day.

Despite what the Chairman said this morning, I have some reservations about general purpose standing committees. Although I was surprised to hear him say it—being a journalist—Quentin Dempster expressed the view that it is desirable for committees to achieve and develop consensus across party lines. That coincides very much with my own view: perhaps that suits my style. However, government should be, and I include all interests in the Parliament in saying this, trying to govern in the interests of the State. If consensus can be developed, that is a very positive outcome. Has our vision been fulfilled? In my view, the answer is yes. I do not say that the model that was developed or which exists right now is necessarily perfect. However, the Social Issues Committee, the Law and Justice Committee and the State Development Committee without doubt have all made major contributions to the functioning of the Legislative Council and to the governance of New South Wales.

Any governmental structure that is set up is capable of improvement: I do not pretend otherwise. But I think that we really made good recommendations. The decisions made by the Greiner Government and later the Carr Government have resulted in a sound committee system that has served the people of New South Wales well. In conclusion, I would like to say that there is a need to achieve a balance between the Government's right to legislate and the right of the upper House to review legislation. That is not necessarily an easy balance to strike. However, through the committee system, if it acts responsibly, the balance can be struck. Generally speaking, the committee system that operates in this Parliament and particularly in the Legislative Council probably has achieved that balance for the benefit of the people of New South Wales.

**The Hon. LUKE FOLEY:** Thanks very much, Ron. I will now call on the Hon. John Hannaford.

**The Hon. JOHN HANNAFORD:** Has the vision been achieved? In one sense, I believe it has. In another sense, I have to say that the jury is still well and truly out. But before I make any comments, there are two people who I must mention and say thank you to and without whom we would not have had a parliamentary committee system in this Parliament, if it had not been for their activities and their guidance. Those two people are Les Jeckeln, as Clerk of the Parliament, and John Evans, as Clerk of the Parliaments. Mr President and ladies and gentlemen, it is to them that I say we owe a significant debt of gratitude. I take credit always when I get the opportunity for drafting the rules for the first standing committees. That is not true. Les Jeckeln drafted the letter to Gerry Gleeson, asking for the Premier's support for the committees. We received a reply and then we settled down and began to negotiate. But it was Les Jeckeln who formulated the framework. It was Les Jeckeln who drafted the rules upon which we worked and those rules very much still stand.

We now come to John Evans. There has been much talk today about the leadership that was taken by this Parliament in securing the production of documents and the accountability of the Executive to the Parliament. Those rules were drafted by John Evans. Again, I claim some responsibility for it, but the truth is that it was John Evans who drove that particular program. We worked very hard on trying to make it work. When it came to the general purpose standing committees, again it was John Evans who was responsible for formulating that framework. In the environment of a seminar on the twenty-fifth anniversary of the Legislative

Council committee system, we should recognise that they were ones who, behind the scenes, made all of this happen.

In that context I want to take a strong difference of opinion to that shown by our keynote speaker this morning on the issue of the confidentiality of Cabinet documents. We had some discussion about that at the time of the drafting of the rules. I had a view then, and I maintain the view today, that that confidentiality must be maintained. As a Minister in many portfolios and for nearly a decade of experience at a Federal administrative level, I can say with confidence that it is my view that the bureaucrats draft their Cabinet minutes and they draft their submissions and they participate within the framework of government very openly and transparently in their advice to Ministers because they can feel confident that what they say in those documents will not be released. So there is no diplomacy necessarily in what they write; they say it as they see it.

In some Cabinets a full record is kept of the discussions within the Cabinet. In other jurisdictions only the minutes are kept. I have no doubt that the minutes are only kept in certain jurisdictions because they fear that at some stage the records will be released. In New South Wales I know that Premier Greiner often used to claim that many votes were 19-1; he had the one. The rest of the Cabinet were against him and his proposal was implemented. I will not say it was always successfully implemented but it won the day. But I can say that, as Bret said, once the decision is made then that is the Cabinet decision. We all know that Cabinet decisions come about from very deliberative discussions. Some of them go for hours. I can remember Cabinet discussions where people were basically standing up screaming at each other, but then a decision is reached. That sort of combative, cooperative decision-making would not be achieved if those records were released. So I take a very different view from that of our guest speaker this morning on the issue of Cabinet confidentiality.

I raise the issue that Luke Foley mentioned about whether there should be some access. Ministers and the Government take advice from their bureaucrats. Do I have any doubt that on some occasions some bureaucrats would seek to keep certain documents confidential by claiming that they are Cabinet-in-confidence documents? I have no doubt that that sometimes occurs. In answer to the issue raised by Luke Foley as to whether there should be a mechanism for independent examination of some of those claims to see whether or not they properly should be made, yes I think there should, because again it will keep the administration, more than the Executive, honest and accountable, and the systems will not get abused.

Another thing we put into the rules for the operation of the committees was the protection of commercial-in-confidence documents. Why was that there? Because at that time this was an issue for debate within the Parliament. I think it is fair to say that we believed we would not get the rules through the Parliament if we did not put in place that protection. I would have to say that I do not believe that a lot of claims for commercial-in-confidence documents are in fact properly made. In fact, I do not believe that in terms of the system of government that that sort of claim is necessarily justified. The people who put together their bids on major projects know that there is a good chance that they will be released.

In this particular document I regret that one thing we did not achieve was an effective public works committee. If we did have a properly functioning public works committee—and I do not believe we have ever had one in this country that has worked—then a lot of the major projects that cause controversy, if properly examined, would not end up being as controversial and there certainly would not be any need for this concept of commercial-in-confidence protection of documents. So my first comment was to say thank you to Les Jeckeln and John Evans, and to explain to some extent the background of some of the rules that we work under.

There are four matters I want to advert to. First, what was the vision? When the policy committees were established, they were established without there being any speech from the Leader of the Government as to why the Government was establishing the committees. Do we know what the Government's vision was in relation to that? No, we do not. But when I spoke on 7 May 1997, moving for the establishment of the general purpose standing committees—my comments are repeated at page 49 of this document—I explained my vision of it. I said:

The Standing Committee on State Development, the Standing Committee on Social Issues and the Standing Committee on Law and Justice are policy committees—they look at what is necessary to advance the body politic of New South Wales. The general purpose standing committees will be oversight committees—they will oversight the management, structure and business of government; they will not address issues of policy or hear evidence from the vast majority of the community on policy changes. It is not the role of these committees to use their power to investigate the policy of government; they will investigate the expenditure undertaken by government and they will scrutinise and evaluate the performance of government. However, as a result of their scrutinising and evaluating the performance of government, matters of policy may be brought into question.

I do not believe we have been successful in relation to that. In relation to policy, we have been successful. I will make a couple of comments about the question of the operation of the general purpose standing committees. I draw on my experience in the last decade as an inquisitor, an examiner or an interrogator in one of Australia's most secret organisations. You get more from people by being civil to them than you do by being confrontational to them. As I keep on saying to those people who work with me, you catch more ants with honey than you do with lard. I am concerned about the issue of civility in proceedings in which we are asking people for information about what is going on. If there is a lack of civility, you will get what you deliver. The more you antagonise people who come before you, then the message will go out that there is no purpose in cooperating or volunteering to be there because you are not respected.

There is a need to enhance the capability of the staff of our committees. At the time that I set up some of these committees I had discussions about having in place the concept of what are called special counsel, similar to what they have in the United States Congress. I was told that you should learn to crawl before you walk or run. Gathering information from people is an art and it is an art that has to be learned. Every politician thinks that he has the art; a lot of barristers and lawyers think they do too, but they do not. Some of these hearings can become very confrontational. Putting in place a program of special counsel to assist in the development of studies by general purpose standing committees is something that I would advocate for the future.

The final thing I want to leave you with is this: If these general purpose standing committees do in fact become effective committees, then you will need to look at the question of protection of witnesses. Amanda Fazio made some comment about that this morning. I have said that it is about understanding the performance of government. Most of our committees, when they started, brought in the Ministers to be questioned. When one politician asks another politician a question, you are lucky if you get a straight answer. I always intended that the general purpose standing committees should be about asking public servants about what is going on. It is the Minister who is accountable to the Parliament but the bureaucracy is responsible to the Parliament. The Parliament will not get misled by members of the public service, but it will be told what is frankly going on.

At the time we drafted all this John Jobling said to me, "John, this will come back to bite you but at least you'll know which public servants are dumping on you when they start honestly answering the questions." My view of it? The general purpose standing committees—to some extent, we have failed because we try to use them as an adversarial tool, politician against politician, and it does not work. When I see it sometimes on television, I cringe because I think that sort of adversarial gamesmanship damages the image, and eventually the reputation, of the Parliament and does not encourage members of the public to want to cooperate. I leave that with you.

As I said in relation to the protection of witnesses, when you are starting to bring public servants in, you will need to have a very clear framework about how they are going to be protected. You will need a well-articulated framework and one that has, in fact, been tested. And when you bring in people from outside industry—as you had in the gentrader inquiry—and you want them to disclose what has, in fact, gone on, then what is the framework you are going to have in order to protect those witnesses? Because that is part of what will enhance your reputation, that not only will you get truthful guidance and assistance, you will get it because these people have confidence in you as an institution. We have such protections for some of our royal commissions. The parliamentary committee is, in fact, the most powerful of royal commissions. Look carefully at how you look after those who you want to be looking after you, by providing you with information as you move forward.

**The Hon. LUKE FOLEY:** Thank you very much to John Hannaford and Ron Dyer. We have 40 minutes left. I will make a unilateral decision that we will spend 20 minutes hearing from our three remaining panellists. That will leave us 20 minutes to hear your views about how our committee system can thrive into the future. I know what Rodney Smith was doing 25 years ago; he was lecturing me at the University of New South Wales. The Hon. Robert Brown and Dr John Kaye are, of course, crossbench members of the Legislative Council. Crossbenchers almost always have a heavy committee workload. Both Robert and John acquit themselves very well at a great many select committees and general purpose standing committees, so we will hear from them on their wish list. First, please welcome back—by popular demand after his performance this morning—Associate Professor Rodney Smith.

**Professor SMITH:** Thanks for that introduction, Luke. Twenty-five years ago this would have been a much easier gig for me because it was common for political scientists to bemoan the state of Australian parliaments, including the Parliament of New South Wales and, in many cases, with good reason. If you want to

look later on for a text in this vein, you could do no better than to look at Dean Jaensch's *Getting Our Houses in Order: Australia's Parliament, how it works and the need for reform*, 1986. Lectures on Parliament—apart from mine, I guess—were desultory affairs full of sausage machine and rubber stamp metaphors and complaints about gags, guillotines and lack of scrutiny of the Executive. Upper Houses were viewed either as weak or, in the case of the Senate, particularly by—again, I will exclude myself from this—lecturers who remembered 1975 with great emotion, as obstructionist.

If we think about the New South Wales Parliament, my colleague for a number of years at the University of New South Wales, Elaine Thompson, wrote an account of the New South Wales Parliament between 1978 and 1981 in a collection of essays released in 1986. The collection, called the *Wran Model*, put together by Ernie Chaples, Ken Turner and Helen Nelson, focuses on the story of Neville Wran's and the Labor Party's dominance over the Opposition in the Legislative Assembly. In an essay, this is what she has to say about the Legislative Council—and there is no need for sleeping bags, because it is a very short paragraph:

The Government continued the practice of denying to the Legislative Council any important role in legislating or in the oversight of the bureaucracy. It refused Council requests to look into the possibility of establishing a thoroughgoing standing committee system; moreover Council members had frequently to wait three or four months for detailed answers to questions on notice.

That is it. That is the paragraph that deals with the Legislative Council in that period, written by Elaine Thompson, political scientist. It would be impossible to write such a chapter or indeed such a paragraph now. And so, in a sense, it is hard to come up with a sufficiently big idea that you will say: Well, that is just typical of the ivory tower thinking that goes on in universities; that is completely unrealistic. So, I have thought hard and I think I have come up with one.

My idea is to expand the number of Legislative councillors from its current number of 42. It seems to me that one of the things that we have heard today is what good work the Legislative Council committees do and I am sure we can think of many topics they do not currently look at that are worthy of their scrutiny. At the same time, as we have just heard, Legislative Councillors are limited in their time, energy and resources. And so, an obvious answer to this is to provide for more of them.

In 1988, when the committee system was first established, there were 3.3 million voters in New South Wales. Currently, there are 4.6 million voters in New South Wales, an increase of 39 per cent. So the Government is getting an efficiency dividend out of Legislative Councillors at the moment and quite a considerable one. It might be a good thing but maybe not.

If we increase the number of Legislative Councillors by the increase in the population since 1988, we could add another 16 members of the Legislative Council to the ranks of the 42 we now have. That would be another eight elected at each election. It would lower the quota to 3.333 recurring per cent, but with the clever way that the Legislative Council ballot paper and ballot rules have been reformed in recent years, that would not let in the micro parties; it would keep them out. We could reintroduce regions—now we are thinking. It would still let the Shooters and Fishers in and so on and we would have more Legislative Councillors to do the important committee work that is, as yet, left undone. I am sure that there are many other ways we can think of to improve the work of the committees. It is already very good work.

The final thing I would say about my proposal is that, as I said this morning, it would ensure one of the most important features of the Legislative Council's committee work and one of the most important protections of the continued good work of those committees and that is that it would almost certainly go further to prevent the government of the day from ever gaining a majority in the Legislative Council and on those committees.

**The Hon. LUKE FOLEY:** The President of the Legislative Council would like nothing more than to work on drafting a set of boundaries for election of the members of the Legislative Council by region. I call on the Hon. Robert Brown.

**The Hon. ROBERT BROWN:** Thank you, Chair. I assure you that I will not eat into anybody else's allocation of time because I will be swift. There are a lot of my honoured colleagues here, with a lot of history and a lot of capability in putting into this vexed question of: Where to from here? Rodney was not game to say that, but I egged him on.

My brilliant idea for where we go from here is aimed at solving one of our immediate problems. Rodney alluded to one of the problems which, of course, is just the physical capability of the numbers of members in the upper House who actually prosecute these inquiries and general committee work. The other

alternative—and I am looking at you, Mr Treasurer, up there in the camera—is to increase the budget allocation for the Legislative Council for committee work. At the same time, that does not solve the problem of only having a certain number of upper House committee members to actually do the work.

But if that increased funding were to provide extra resources to the secretariat—one idea was put forward, I think by John Hannaford—thought should be given to bringing in specialist advice permanently, or perhaps on a case-by-case basis like a special counsel. I have had inquiries where we have had to spend the money—in some cases we did not have to spend any money because we got advice gratis—to bring in people to explain to the committee issues about which not many of them, if any, had any technical knowledge. Drilling a hole in the ground to get coal seam gas and having to go through things called aquitards and aquifers and all other sorts of things, it does not matter what witnesses you bring in from outside to give you their opinion—drilling company witnesses et cetera—unless the committee or the secretariat has some sort of resource available to check the veracity of statements, you are wasting your time and the reports you produce for the Government really are not worth the paper they are written on.

I think that is a brilliant idea, sir, but the alternative because the President has come up with a very rapid counterproposition, which did not sound too good at all, is simply that. Now that we have a window of opportunity—I mean collectively "we" in the Legislative Council; Reverend the Hon. Fred Nile and his party, myself and my colleague, The Greens, the Opposition and the Government—let us put some pressure to think seriously about having a crack at trying to at least improve the work we do, even if we take on no new work, and really stick it to the Executive Government of the day. At least then we can do the work better and more efficiently. That takes resources. That is my great idea. Thank you.

**The Hon. LUKE FOLEY:** Thanks, Robert. Our final speaker before we go to questions is that relentless terrier of upper House committees, Dr John Kaye.

**Dr JOHN KAYE:** Thank you very much. I am the last speaker. There is something significant about me being the last speaker, I guess. In some sense I get to close this off. Unfortunately, I am going to do it with a slightly dark satanic view of the future, for which I apologise. But I will try to end on a positive note. When I was asked to think about one big idea, the place I began was the one big challenge for the upper House in general and its committee system: that is, the likelihood that after March 2015 the upper House will have a Government majority for the first time in a very long time without the leavening of the crossbench. I make it absolutely clear that this is not meant to be a partisan comment. Everything I say about governments would be equally true of a Labor Government, a Coalition Government or even a Greens Government—there is a dark satanic thought for Dr Phelps to have a bad weekend over.

The reality is that any government with control of both Houses of Parliament is tempted by the idea that it can avoid some of the hardest edges of scrutiny. Scrutiny is hard. It is much easier to avoid the partisan conflict that arises. I take on board the remarks of the Hon. John Hannaford, but partisan conflict—that sometimes seemingly rude behaviour in which we engage—creates a degree of accountability and scrutiny of government that I think produces great outcomes. People refer quite often to the Gentrader Transactions inquiry. It was an essential rite of passage for New South Wales to go through that gentrader inquiry. It was not a pleasant inquiry on which to sit, but it was an important exposure that has changed the face of politics in New South Wales and Australia forever. I do not think a government will ever again try on that particular stunt.

It is difficult for governments to respond to challenges on policy. It is much easier for it just to be able to implement its program without being challenged along the way and without taking the risk associated with comprehensive examination. It is tempting also for governments to use the committee system as diversion therapy for backbenchers who would otherwise be less occupied and might get up to mischief. But we need more than that out of our system. The reality of the history of governments controlling upper Houses is not good, with respect to committee systems. Again, I refer to the Howard Government, but I am sure if Labor or The Greens had had control of the Senate at any stage, the same would have happened. Between 1 July 2005 and 30 June 2008 the Howard Government had complete control of the Senate by one vote. I understand the Fraser and Menzies governments also had control at various stages, but they had less discipline over their senators, whereas the Howard Government was able to exercise discipline.

The effects were dramatic. Between 16 November 2004 and 30 June 2005, before the new Senate, only 13 per cent of motions to refer matters to inquiries were defeated. Between 1 July 2005 and 11 September 2007 after the new Coalition-dominated Senate, a massive 54 per cent of motions for referral of matters to committees were defeated. The second aspect came about in June 2006 when Senators Minchin and Coonan changed the

committee system. In their media release they said, "The membership and chairmanship of the committees will reflect the composition of the Senate." Indeed, all changed. The committees did reflect the composition of the Senate: that is to say, the Government had a functional majority on all committees, the number of committees was reduced, the number of days of budget estimates hearings was reduced, and the chairs of all of the committees, rather than just half of them, came from the Government. The Clerk of the Senate made this point: the outcome of those committees was less stringent, the accountability was less intense and the degree of information that came out of those committees was less than it had been in the earlier period when the Government did not have control.

In confronting the likelihood of this after the next election, the reality is that those of us in the upper House who care about these things need to work out ways to persuade the Government that accountability is not just about good governance; it is also about good governments. A government subject to stringent accountability measures, such as independent committees, is much more likely to avoid the sorts of disasters that the gentrader inquiry exposed. Those sorts of inquiries create an environment in which good governments, re-electable governments, are more likely to prosper than the alternative. The next thing we need to convince them of is that non-government committees—committees not dominated by the Government—will also not just find out when things are going wrong but will be there with, I think, a degree of honesty to be able to say when things are going right and when they do say things are going right, they have credibility.

I say also that those sorts of upper House committees not dominated by the Government do give the Government the capacity to say to voters, "Look, we allowed independent committees to assess what we have done. They didn't find anything significant. We're clean." We have to convince the Government that giving up on that sense of assessment is a bad idea. My big idea is that we do not have committees the composition and chairmanship of which reflects the composition of the Parliament but, rather, reflects the diversity of the Parliament and the urgent and important need for the Parliament to have genuine accountability and mechanisms for investigation. I imagine a degree of cynicism amongst some people present about whether we will be able to achieve this. But I end on a note of optimism. Yesterday, a motion of The Nationals leader, moved by the Hon. Jennifer Gardiner, and agreed to unanimously by the House, concluded:

That this House notes that the work of the committees has continued, and will continue, to enable the Legislative Council to effectively:

- (a) hold the Government to account;
- (b) allow for the community engagement in the parliamentary process; and
- (c) develop sound policy for New South Wales' citizens.

To which I say, hear, hear! Thank you.

**The Hon. LUKE FOLEY:** Thank you, John, and thank you to all our panellists. We will now go to the adjournment date, and you do not get five minutes; you get two minutes. We want to hear from as many of you as possible about your ideas on how our House can build an even more effective, modern committee system into the future. Sam will carry around a microphone. We will start at this end of the room and gradually move across, but please raise your hand if you want to make a contribution.

**Ms CALLINAN:** I am Rachel Callinan from the upper House here in New South Wales. I have a small suggestion. I think there is some merit in committees having a process where they would look into the government response to their recommendations after they have been received; some kind of process where a month after it is received the committee could get together and have a discussion amongst themselves to talk about the recommendations and if there was potentially a need to re-examine a small or larger aspect of the government response, they could do something to that effect.

**The Hon. LUKE FOLEY:** Rachel is modest. She is the Usher of the Black Rod and cannot wait to put somebody out onto the footpath. Who else? Suggestions please or I will give you mine.

**Reverend the Hon. FRED NILE:** Many of the committees conduct very important inquiries on important subjects but I sometimes wonder whether we should have a system in the upper House where the House does it itself. We should ascertain the priorities and issues affecting the people of New South Wales, select those issues and then have inquiries into those. We have some committee inquiries that to me are close to nonsense for some reason. We have an inquiry now into some horses on a paddock up near Parramatta River.

**The Hon. LUKE FOLEY:** Who set that one up?

**Reverend the Hon. FRED NILE:** You may have, I think. There are greater priorities and we should get the priorities right so that we are working to bring about benefits for the State.

**Ms McMICHAEL:** I am Teresa, one of the committee directors in the upper House. Rachel, you stole our idea about government responses. I have always thought it to be a real shame, with the amount of work committees, particularly secretariat staff, put into inquiries and reports, they are then tabled and more often than not unfortunately nothing comes of them. Obviously we get a government response within six months but nothing happens. Our idea is that once the government response is received, there should be some debate in the House. We suggest that it might be more useful to have the debate once the government response is received rather than when the report is first debated.

**The Hon. LUKE FOLEY:** Teresa, you were in charge of the gentrader inquiry. Thank you for that suggestion; it is a good one.

**The Hon. BRIAN PEZZUTTI:** The only idea I have is the implementation issue, which was raised by Ann Symonds today. Once a committee has reported and the government response has been tabled, there should be a way of checking up on whether the Government has implemented its own responses to the report and if there are recommendations that the Government has not implemented, perhaps the committee should have another look to see if the committee thinks those recommendations are serious enough to shove back up to government. The only other comment I would like to make is that I have worked with many Clerks and assistants in the committees. I have to say that the ones who came with an open mind and were organisationally proficient were the most useful because at the end of the day the people who draft the reports are the clerks. If they are open minded and proficient in doing that, it saves a lot of time and trouble as members of the committee argue about the outcomes.

**The Hon. LUKE FOLEY:** Thank you, Brian. Max Willis.

**The Hon. MAX WILLIS:** Mr Chairman, I would like to take up the comment of my former colleague and friend John Hannaford on the question of the public works committee. As he well knows, his views on that matter are ones that I have always strongly supported. My question to you, John is: You were at the heart of government for many years. Can you tell us if we wanted to have such committee, why governments of the past, including the ones you served in, would not have a bar of it and what do we have to do in the future, even if it takes 10, 15 or 20 years, to have such a committee—and I share with you the view that it would be an enormous benefit to the good government of this State?

**The Hon. JOHN HANNAFORD:** The answer is very simple. Governments do not like their decisions to be second guessed and their decisions might, in fact, as a result of a clear analysis of the program, be found to be in error or partially in error. When you are coming to large expenditures, then governments want to have control of those agendas. They wish to be seen to be delivering the big projects in a timely fashion but sometimes they can be beneficial, and I will use one example because I was the recipient of it—Port Macquarie Hospital. I took the view that the role of government was to ensure that health services were available for people as and when they needed them, that governments did not have to own the hospitals and so we moved towards Port Macquarie as the first example of that and the Public Accounts Committee was established with a special reference to examine it and as a result of that examination, some parts of that contract were varied.

What happened was that at the end of the day, yes it was delayed, but we got a decision. What happened afterwards is a matter of politics and I will not go into it but it would mean that in respect of some big projects they may be delayed for six, nine or 12 months but you factor that into your decision-making in the pursuit of major projects and if you have good public inquiries in respect of those matters, it is my view that you would in fact get better outcomes in respect of—and I will use a number of them them—the toll roads. I think that if we had had public inquiries in relation to a number of those toll roads, we would have got better contracts in relation to those toll roads and in fact some of the figures upon which some of the assumptions were made would have been shown to be unsustainable. We know that now but it would have been better for the whole of the community to have known that up-front. It was tried for a while in Canberra and it was abandoned in Canberra because governments did not want it but in my view the body politic would be well served by a revisiting of such an approach when dealing with major infrastructure projects.

**The Hon. LUKE FOLEY:** Thank you John and Max. Ann Symonds.

**The Hon. ANN SYMONDS:** I hope for some wisdom from Brian, John or Ron in response to a question I have about the fact that I found it very disappointing that the unanimous recommendation of the children of prisoners report found little response from government. The major agreement was that in fact no custodial sentence should be applied to an offender, particularly a woman non-violent offender who has the sole care of an infant. The Government did not respond in any way. Is it a case that that sort of recommendation should have been examined, or could have been examined, with some profitable examples for implementation by a judicial officer or, as you suggested, a special counsel, or referral to an external body to examine the possibility of providing a new system of paying attention to the needs of the child and a more appropriate response to the offending behaviour of the mother? It would have cost less money to incarcerate people in alternative ways. I do not know how you resolve the fact that that has never been properly addressed.

**The Hon JOHN HANNAFORD:** It was one of the things we considered with John Evans when we were drafting the rules for the general purpose standing committees, but it has never been exercised. The Government initiates policy requirements for general purpose standing committees that are looking at administration, performance and accountability. How can you deal with the fact that the Government at an administrative level is ignoring the implementation of some of your policy recommendations? The general purpose standing committee is there for you to ask the administration what steps it is taking, and if it is not taking any, why, in relation to those recommendations. No-one initiated that sort of questioning in the general purpose standing committees. While there was a committee, the rules say that any member of the Legislative Council is able to attend and participate in those inquiries and to ask questions, but not to vote. Again, the specific of purpose of that was to accommodate members like you. You had a very great interest in prisons; I suspect you had more knowledge about them than almost any other member of Parliament. You would have been able to turn up and pester the life out of—

**The Hon. ANN SYMONDS:** Do mean that I should not have resigned in 1988?

**The Hon. JOHN HANNAFORD:** We all think you should never have resigned. The framework is there, but it has never been exercised to sustain pressure on the administration to find out what is going on in relation to the Government's response or lack of response to policy initiatives. I referred to part of the reason for that. When we set up the general purpose standing committees they came after the estimate committees. They were adversarial. Ministers wanted to turn up because they wanted to be seen to be dumping everything they could on the shadow Ministers questioning them, and the shadow Ministers wanted to pretend that they were able to out gun the Ministers. It was a confrontation period and it has continued. In my view, general purpose standing committees never really performed in the way that was intended because they wanted it to be a shadow Minister and Minister theatre. The best thing that could happen would be to kick the Ministers out and let us find out what in fact is going on.

**The Hon. RON DYER:** I will make a brief supplementary comment, but it is not on the precise issue that Ann raised. Arising out of my experience as chair of the Law and Justice Committee other four years, we did an inquiry into crime prevention through social support. We produced two volumes, travelled around the State and we made in my view, and in the view of many people, many useful suggestions as to how crime might be prevented by providing more social support, particularly for young people and children. The reality is that it is very difficult to persuade the central agencies of government that it is worthwhile putting in the funding at the front end. They can respond with police and custodial officers and things of that kind, but persuading the Treasury or the Department of Premier and Cabinet, those central agencies, that putting in the money at the front end will result in a better outcome 15 or whatever years later, or less perhaps, is difficult. I am not sure that there is anything that can be done about that by institutional change within Parliament and by procedures. I think we need to change the culture within those central agencies of government and somehow, some time persuade them that it is really worthwhile to spend money to prevent much more money being spent to little purpose sending kids to juvenile detention centres.

**Ms SIMPSON:** I am a former officer of the Legislative Council and I am now with the Legislative Assembly. My big idea to increase the effectiveness of parliamentary committees is to build in wherever we can the process that the Social Issues Committee adopted in its domestic violence inquiry of testing recommendations before reporting to the Government. As the chair said, those recommendations demonstrated that if they are tested and refined and are accepted by the stakeholders they have a much greater chance of being implemented by Government.

**Mr DUNCAN:** I am the Clerk of the Australian Capital Territory Legislative Assembly. My big idea relates to the chairs of committees. Not much has been said today about the crucial role of the chair. You can have the best resources, secretaries and submissions, but if the chair of the committee is not particularly interested or motivated to pursue the inquiry, the recommendations or the objectives of the inquiry, the committee suffers. I have worked in three Parliaments, including this Parliament, and I have seen the difference between a good chair who can drive an inquiry and a chair who is not quite as interested. When I went to the Westminster seminar last year I found out that the United Kingdom House of Commons changed its system of selecting committee chairs. The choice is not made by the whip; the House of Commons elects each chair of each committee. My big vision for the New South Wales Legislative Council is to get it to choose the chairs of committees.

**Mr FRAPPELL:** I am the Clerk Assistant - Procedure in the Legislative Council. I want to pick up on something the Hon. Ron Dyer said. I may be trespassing on the Hon. Dr Peter Phelps' territory with regard to the Legislation Review Committee of the Parliament. At the moment it is a joint committee of both Houses, but the majority of members are from the lower House. It also performs bills and regulations and ordinance functions. I started my parliamentary career in the Senate and I am very conscious of the fine work of the Senate Standing Committee on Regulations and Ordinances and the later Selection of Bills Committee. In the context of today's discussion, it has always struck me that the appropriate House to host those committees is the House of Review—that is, upper House.

**The Hon. LUKE FOLEY:** Good idea, Stephen.

**Ms WEEKS:** Maureen Weeks from the Department of the Senate. As someone from the upper House and the Federal Parliament, and as Stephen rightly points out, it has the role—in fact, now there are three scrutiny committees in the Federal Parliament: one that looks at regs and ordinances; one that looks at the scrutiny of bills; and a third joint committee that looks at human rights. My comment was going to be about keeping it simple. When you are thinking about the future of a committee or the committee processes, the Scrutiny of Bills Committee in the Senate has recently done a review of its own activities, and it has made a number of recommendations in the report that it hopes will be considered by the Senate Procedure Committee. One of those recommendations, I think, is particularly useful, and it goes to the timeliness of the reports that they provide to the Senate for the consideration of legislation.

The history of the committee is such that it reports directly to the Senate, whereas other committees have the right to report when the Senate is not sitting. This causes a disjoint between the work of the committees that review the legislation in the Senate and the ability to pick up on the information that the Scrutiny of Bills Committee highlights in their regular report. It is very useful every now and then for you to examine your own procedures and proceedings and see where they might lie. It does not have to be a grand idea. One little idea can achieve quite a lot.

**The Hon. LUKE FOLEY:** Thank you, Maureen. Jenny and Elizabeth, then we will wrap it up.

**The Hon. JENNIFER GARDINER:** There is a bit of a theme developing, but to revive a campaign that our late colleague Doug Moppett used to wage with the Public Accounts Committee, which of course resides in the Legislative Assembly, but he said if it could not be transferred to the Legislative Council it should at least be a joint committee.

**The Hon. LUKE FOLEY:** Thank you.

**The Hon. BRIAN PEZZUTTI:** Only one good report came out of that, which was Tinks' report on school buses. It was the only decent report they ever did, and they are very expensive as well.

**The Hon. ELISABETH KIRKBY:** I will follow up very quickly on what was said by my colleague over there on the Regulation Review Committee. We know perfectly well it does not matter what is in the legislation, how the Houses have either amended it or agreed to it, the devil lies in the regulations. So unless the regulations are being fully policed, you will never know whether that legislation is going to work. If it is necessary to strengthen the Regulation Review Committee, perhaps that is something that should be done. I say this now because I am a member of the International Commission of Jurists. We look at the regulations from time to time and we also look at legislation that has been before the New South Wales Parliament and past New South Wales Parliaments. The problem is it is very difficult to get information and also to know exactly what the regulations are. That is my contribution. Thank you.

**The Hon. LUKE FOLEY:** Thank you, Elisabeth. Thanks, everyone. There were some terrific ideas. Harry Evans, the former Clerk of the Senate, used to speak of the Senate's culture of independence. I think all of the ideas in the last half hour could be grouped under the theme of a culture of independence, that an upper House of the bicameral legislature is independent of Executive Government.

**The Hon. ROBERT BROWN:** Solidarity.

**The Hon. LUKE FOLEY:** It always has a meaningful role in the area of scrutiny and review. I heard Rosemary Laing make a speech in which she said, "All of us in the Department of the Senate were reared to be Senate chauvinists." I will hand back to that Legislative Council chauvinist, David Blunt, to wrap up.

**Mr BLUNT:** I am not sure whether I should come to the microphone. Thank you very much, Luke. Once again, it was another fabulous session. That nearly brings our proceedings to a close. During the course of that session I was handed an advertisement, so I will pass that on to everybody. This is from Dr Colin Huntly, Clerk Assistant, Committees, in the Western Australian Legislative Council, who reminds me that the Biannual Australia-New Zealand Scrutiny of Legislation Conference is being held from 11 to 14 February 2014, in Perth. Details will be available shortly. This opportunity for reflection happens from time to time. In October next year, the New South Wales Parliament will be hosting the National Conference of the Australasian Study of Parliament Group. I will not say anything more about that because I do not want to steal anyone's thunder concerning the conference topic or the precise dates. Lastly, I reiterate saying thank you to the staff who have put everything together today: Rebecca, Beverly and your team, you have done wonders. It has been fabulous. I ask everybody to join me in thanking them.

*[Applause.]*

I also repeat the acknowledgments of the former clerks who are here: Les Jeckeln, John Evans—it has been an honour to have you with us for the day—and the former members who have been with us all day as well: the Hon. Elisabeth Kirkby, the Hon. Dr Brian Pezzutti, the Hon. Max Willis, the Hon. Ann Symonds, the Hon. John Hannaford and the Hon. Ron Dyer. Thank you very much for your presence and for your contributions throughout the day.

That closes the proceedings. Refreshments are being served in the Fountain Court. I am informed that if you proceed out into the Fountain Court you will be waited upon and orders will be taken. Please join me for refreshments. Thank you.

**(The seminar concluded at 5.06 p.m.)**

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