LEGISLATIVE COUNCIL

ORAL HISTORY PROJECT

_____

At Sydney on Tuesday 5 July 2016

_____

The discussion commenced at 10:35 am

_____

PRESENT

Mr David Blunt
Dr David Clune
The Hon. Ron Dyer

Mr BLUNT: Mr Dyer, I formally welcome you back to the members' lounge for the second time as part of the Legislative Council Oral History Project. We are delighted to have you here again. We thank you for your assistance with the project. Before David asks the first question, can I also formally congratulate you on behalf of the Legislative Council and the department of the Legislative Council on your recent Medal of the Order of Australia for your contribution to political life in New South Wales.

Mr DYER: Thank you very much indeed, David. That is very kind of you. I suppose I could say that my notoriety precedes me. Thank you for your welcome. It is much appreciated.

Dr CLUNE: Ron, can you tell us how you became a member of the Legislative Council?

Mr DYER: In 1978 I was placed number 10 on the list of Australian Labor Party [ALP] candidates for that election. That was, of course, the first Wranslide election. As it happened, after all the votes had been counted nine of the candidates on the ALP list were elected, but I was not. I thought at that time perhaps that was somewhat of a misfortune. However, as events turned out it was not such a misfortune at all. The Hon. John Ducker created a casual vacancy in September 1979, the following year. The law then was that a casual vacancy would be filled by the next candidate on the list of candidates for that party at the preceding election. There was only one such person. No-one could stand in front of me, given that nine candidates had been elected, so I became the member filling Mr Ducker's vacancy. Now, why I say that was not really a disaster that I was not elected in 1978, the fact that I went into Mr Ducker's panel of members meant that at a subsequent election when I came up for re-election I was at a much higher place than number 10. My political position was in fact improved, although I did not know that in 1978 when I was not elected. I will make one other comment. It is an interesting fact that obviously my name is Dyer, starting with D, John Ducker's surname starts with D and his predecessor, as a member of the Legislative Council, was another D, the Hon. Reg Downing, who is, of course, a famed and illustrious member of the Chamber, serving for, I think, a record term in the British Commonwealth as Attorney-General and Minister for Justice.

Dr CLUNE: What were you expecting when you commenced your term in the Legislative Council and how did your early experience meet the reality?

Mr DYER: I do not wish to be too harsh about this. However, I can say that my expectations and the reality were rather closely aligned. When I arrived in the Legislative Council, I formed a view that at that stage—and I stress at that stage—as a parliamentary Chamber the Legislative Council was something of a backwater in political terms. It was not elected by the people. Question time, such as it was, did not extend beyond two or three questions each sitting day. The sitting itself often lasted only from 4.30 p.m. until about 6.30 p.m. The committee system was rudimentary, to say the least. I am not denying that there were some excellent members of the upper House. I merely wish to say that compared with other legislative Chambers in Australia, such as the Federal Senate, the New South Wales upper House was a very quiet place. That is the gentlest way I can put it.

Dr CLUNE: What are your thoughts on the 1978 reconstruction of the Legislative Council?

Mr DYER: I felt that my party's policy to reform the upper House was worthwhile. In former years the ALP policy, going back many decades, had been to abolish the upper House. I was never a personal supporter of that. I thought the upper House could be converted into a worthwhile working Chamber. As you know, the scheme that was worked out was to replace the election of a panel of 15 at each succeeding election for the upper House by an electoral college comprising all of the members of the upper House and the members of the Legislative Assembly voting together. To say the least, that was a very indirect form of democracy. I supported the policy of the Wran Government to reform the upper House and have it popularly elected, which obviously happened and is still the case today.

Dr CLUNE: When you came into the upper House in 1979, the process of transition was starting. How do you recall the changes? What were they like?

Mr DYER: My recollection is that the changes were smooth. Each panel came in as elections occurred. Eventually, of course, the House built up to a total number of 45 members, although, due to a need to have a reconstruction later on, that number was reduced to 42. That was equally divisible by two, with 21 members coming up for election at each election for the lower House. I think the transition occurred smoothly; however, there was a problem in my party in that there was resistance to members elected to the upper House immediately joining the parliamentary Labor Party's caucus. That was a keenly fought issue within the ALP, particularly at its annual conference. It was partly a factional issue between Right and Left; however, as you know, the difficulty was eventually resolved.

Initially the suggestion was that as each tranche of MLCs was popularly elected they should enter the caucus; however, that is not what in fact happened. The deal or arrangement that was worked out was that when

each of the three panels of ALP members had been elected they would all enter caucus together as one body. At that stage within the ALP proportional representation had been brought in so the factional balance then between Right and Left was less unequal than it would otherwise have been.

Dr CLUNE: Did the type of member coming in change and did the proceedings in the House change?

Mr DYER: Certainly one could say that the type of member did change. I can remember the Legislative Council in its unreformed state had considerable representation of trade union officials. That was on the ALP side. On the other side the Liberal and Nationals members, or Country Party as it then was, tended to be representatives of employer associations or farmers' organisations and graziers and the like. There were some lawyers. Sir Hector Clayton was one example. He was a prominent lawyer. After the democratic reform of the upper House though, the membership became more varied and various occupations tended to come in.

For example, I was a solicitor prior to becoming a member, although for the immediate three years before becoming a member I was a member of the personal staff of the late Ron Mulock, who had a very lengthy and illustrious political career. At various times I filled different roles on his staff. I started out with the title Legal Research Officer and by the time he became Minister for Mineral Resources my title was Administrative Officer. I used to read all of Ron's departmental files and I would flag any significant issues for him and suggest that such and such a file needed particularly careful reading. Ron was an excellent boss to work for and it was very good experience for me. So I had been a solicitor, a political staffer and then I went into the upper House. Of course, there were other MLCs coming in who had varied occupational backgrounds. It was a more than positive development. The old House was from a bygone era, I suppose one would say.

Dr CLUNE: You described it as peaceful, I think. Did it become more partisan, more aggressive in its proceedings?

Mr DYER: The upper House did become somewhat more partisan as a result of the entry of democratically elected members. I think I would be entitled to say that it did not ever reach the heights—or depths, depending on one's point of view—of the Legislative Assembly, but certainly debate became more vigorous and possibly slightly less gentlemanly than it had been. In subsequent years, for example, there was a heated moment when Dr Brian Pezzutti, a Liberal member, had interjected while I was answering a question as a Minister. The question was a Dorothy Dixer from my own side and dealt with how people with disability could benefit from looking in a distortion mirror. Dr Pezzutti interjected and said, "Well, if you looked into a distortion mirror you would look slim." I was never aware that I was terribly overweight anyway. I retorted, "Well, if you looked into a distortion mirror your mouth would be closed." Dr Pezzutti was well known for interjecting vigorously. Anyway, the House, it is fair to say, did become more robust.

Dr CLUNE: You mentioned when we started that at the first election the ALP rather unexpectedly won nine out of 10 seats. That gave Labor a majority for the rest of its term, until 1988. Given that the Government controlled both Houses, how effective was the Council as a House of review?

Mr DYER: The only honest answer I can give is that during that period the ability of the House to act as a House of review was compromised to some extent as a result of the fact that the Wran Government had the numbers—to use political parlance—in both the upper House and lower House. It was perfectly possible and it sometimes happened that legislation, even contentious legislation, could pass through both Houses within two days or, in the case of perceived urgency, even one day. I have never regarded that as appropriate. I think the purpose of the upper House is to interpose some delay for the purpose of careful consideration of a measure and reflection on all of the merits of what that legislation is seeking to do. I was a supporter of the Wran Government, but looked at from the perspective of the upper House and its role it was less than ideal to have a majority in both Houses. It might be unexpected to hear me say that, but from that point of view, I think the House improved later on when the government of whatever colour had to consider other points of view and had to consider reports emanating from parliamentary committees.

Dr CLUNE: When you were a shadow Minister what was your approach to your role?

Mr DYER: Bob Carr, a former Premier, once said to me when I asked him how to best proceed with a particular issue, "Well, just do what you are famous for and consult." My approach to politics was always to be consultative, to ask interest groups what their view was. My door was almost always open for people to put their point of view to me. In opposition my approach to being a shadow Minister was to consult widely. During the opposition years I held three shadow portfolios; one was police, the second was housing, and the third was community and disability services. That included all sorts of things, including child protection and juvenile justice. When we came to office I held a grouping of social welfare type portfolios.

I believe that it helped me to consult widely because by doing that I was able to develop detailed policy documents for succeeding State elections—we were out for more than one term. At one stage I would be

consulting on police issues, later housing and later still the Department of Community Services [DoCS], and the other portfolios I mentioned. It was particularly important when it came to DoCS because the other side of politics had been in office at that stage for some considerable time and it was necessary to get ready. It could be that as the succeeding election approached we would come to office. Obviously, we needed to have well thought out policies available.

Dr CLUNE: You saw being a shadow Minister as a positive role as well as having the negative side of having to attack your opposite number in the House?

Mr DYER: Yes. That is right. But the latter is not necessarily negative, rather, put more precisely, it is speaking negatively.

Dr CLUNE: There is the old adage that the role of the Opposition is to oppose and that includes anything the Government puts up. Some subscribe to that, but obviously you did not.

Mr DYER: No, I have never subscribed to that view. If a measure is sound and represents the broad interests of the people I would be very much inclined to support it. It is only contentious issues that I would see it as necessary to oppose.

Dr CLUNE: Moving on to when you were in government, what was your approach to your role as Deputy Leader of the Government and a Minister in the upper House?

Mr DYER: My approach was to support the leader, Mike Egan. He, of course, was the Treasurer and Leader of the Government in the upper House. When the House met he would be moving all the formal motions and moving the House through the various stages until question time occurred. I would be sitting next to him and Jeff Shaw would be sitting next to me. My duty was clearly to support the leader and if circumstances should dictate, as on one famous occasion they did—we will come to that no doubt—I would step into the leader's shoes and run the House, or be in the role of Leader of the House until such time as the leader returned.

Dr CLUNE: If there were objections to legislation were you prepared to listen? Were you able to change things because you thought someone had a good case?

Mr DYER: Yes, I am always a listener. If someone put up a good case and moved a reasonable amendment to whatever bill was before the House I would be inclined, after having taken advice from whatever representative of the relevant department was present in the House, to accept. I have always been inclined to do that.

Dr CLUNE: What was your view of the rise to prominence of the crossbenches and how did you find them to work with?

Mr DYER: My view is that the increasing incidence of crossbench members in the upper House did lead to them making a significant contribution to the debates. I found them good to work with. The first crossbench member I encountered was, of course, Reverend the Hon. Fred Nile. He entered the House two years after me in 1981. I always had a good relationship with Mr Nile. He is still there, of course. When I retired I was the father of the House, or the longest-serving member, but Mr Nile has held that distinction for a long time now and one wonders whether that record will ever be broken. The crossbench members made a significant contribution. Later on Mr Nile was joined by members such as the Hon. Elisabeth Kirkby, Richard Jones and Peter Breen, Ian Cohen, and quite a number of Greens. I think it is true to say that those members have made a significant contribution. However, there is a limit to my tolerance. I am not saying that all members of the House should be on the crossbench. Anyway, I was more than happy to work with them and they made a solid contribution, both in the House and especially on parliamentary committees.

Dr CLUNE: Did you sometimes feel that the will of the Government was being unnecessarily frustrated by having to get the votes of the crossbench?

Mr DYER: No, I do not feel that that was the case. There were regular weekly meetings with the crossbench on the part of the Government, and no doubt the Opposition, to ascertain their view. As a bill came into the House we would consult more intensively, of course. The crossbench members might be expressing their concerns about various aspects of the particular legislation. We would approach the relevant department and, if necessary, Parliamentary Counsel, to see whether the concerns they were raising could be met. I think the system worked reasonably well.

Mr BLUNT: Do you think that those who were responsible for the democratic reform to the House in 1978 and also those who were responsible for the further changes in the early nineties going from 45 MLCs to 42 ever envisaged the impact that would have in respect of the growth of the crossbench?

Mr DYER: There was some concern on the part of the ALP at the time that a switch from a House of 60 and then 45 and then 42 was being suggested. The concern rested on the size of the quota. When the House was first formed, and popularly elected, the quota was 6.25 per cent. Later on the number drifted down to 15 and the quota drifted down about 2 per cent. That clearly meant that the threshold for a crossbench member to achieve election lessened and made it somewhat easier to become elected. There certainly were active concerns within the ALP about that.

Dr CLUNE: Ron, what do you believe were your main achievements in your career in the Legislative Council?

Mr DYER: So far as being an MLC is concerned, I would consider my role in achieving a committee system in the upper House was clearly an achievement. I am not saying that I was the only one involved in that. There were others on both sides of the House who were as keen to see a committee system as I was, at least as keen.

Dr CLUNE: You did chair the committee on committees.

Mr DYER: Yes, properly called, of course, the Select Committee on Standing Committees, which jocularly became known as the committee on committees, as you say. I was pleased to be appointed as chair of that committee. Its report in due course led to what exists today. I am not seen as a passionate person, I suppose, but I saw a committee system in the upper House as being central to its role—absolutely central—because we did not have parliamentary electorates, other than the whole State, and the committee system, in my view, would enhance the role of the upper House and enhance the governance of the State as well. The Senate has that highly successful committee system. Not only the Senate: looking south to Victoria, the Victorian Legislative Council had and still has an effective committee system. I really see that as an achievement, in company with others.

As chair of the Standing Committee on Law and Justice, which I chaired in my last four years in the upper House, between 1999 and 2003, I was very active. I cannot mention everything but there were some very useful reports that we issued during that time. One was an inquiry into what we called crime prevention through social support. We issued two big volumes about preventing crime, particularly by young people. That report really did not receive the attention it deserved in subsequent years. However, it is there as a model to build a structure that would lead to diversion of young people particularly from following a criminal path if they are given appropriate support. The difficulty there is that central agencies of government, particularly Treasury, do not really see the value in putting in dollars at the front end like that when they do not see the outcome for years to come. That is the unfortunate reality. Another significant report that we did was the bill of rights inquiry. I have dealt with that in detail in my previous interview. I well remember the horror of then Premier Bob Carr when our report surfaced publicly. However, I was determined to get something out of that exercise and we did. We had a fallback position of having a committee to scrutinise bills, based largely on the Senate model. Such a committee does exist now, as a joint committee administered by the Legislative Assembly. I think the work that it has done via its bills digests is good. In a submission I have made to another inquiry going on here I suggested that could be improved upon. My own view is that a scrutiny of bills committee is best located in the upper House because the Assembly is dominated by the executive arm of government. That is one argument, but there are others. For example, the Legislative Assembly members do not necessarily have the time to devote to a task like that. I would be happier if it were located in the upper House, as it is in the Australian Senate, for example.

So far as being a Minister is concerned, when I had the grouping of social welfare portfolios led by Community Services we set up joint investigation teams for child abuse representing the police and the Department of Community Services. That is a tragic area but mechanisms have to be developed to deal with it. I thought having the police and the Department of Community Services working together where the abuse was particularly serious was the way to go. Peter Ryan was the police commissioner at that time and he attended with me the launch of that initiative. I think that was a worthwhile thing to do. In the child protection area generally, there were all sorts of things that were done. One I would single out, without wishing to be too contentious, is that I restored the specialist child protection officers that had been removed under the previous Government. I felt it was important to do that because this problem is a scourge on society and there have to be resources to deal with it.

So far as Juvenile Justice is concerned, I did a lot of things there. One was that I set up juvenile detention centres at Dubbo and Grafton. You might say, "Does that really fit with your reformist agenda?" The first thing I would say is that they were quite small detention centres. The reason I set them up in those locations, and closed such facilities elsewhere, is that what tended to be happening was that young Aboriginal offenders were being incarcerated far, far from home. They might come from the Western Division of the State and they were in a juvenile detention centre in the Illawarra on the coast. Or they might have been from the North Coast and they were down here somewhere in metropolitan Sydney. I wanted those young people to

spend their time in juvenile detention closer to home where they could be visited by their friends and family and better supported than would otherwise be the case.

As to disability services, the initiative of which I would be most proud—and this was one of the first decisions the Government took at its first Cabinet meeting in Newcastle after the election—was to allocate a large sum of money, more than $40 million, to create 300 or more places for people with disabilities in a residential community-based environment. These were, in effect, Richmond scheme support funds that had not been spent by the previous Government. The problem was that there were too many people with disabilities—and I visited them—in large residential institutions who were virtually left there to rot. In many cases they did not have day time activities of any great use. My policy was to get as many as possible out into group homes. There is one such group home diagonally opposite where I live at Wahroonga. The people there function at a higher level than they would if they were in a large residential institution. They not only have day activities; it is better than that. They go out to work and it gives them a role and something to live for. I am very happy indeed that so many of these people are living in a community setting and functioning much better than they did.

As Minister for Public Works and Services, the achievement of which I am most proud is the construction of the new Conservatorium of Music on its existing site adjacent to the Botanical Gardens. This was a sensitive project, given the need to avoid damage to the Gardens and to achieve vibration insulation from the underground railway between St James and Circular Quay stations

Dr CLUNE: Who were the MLCs that impressed you most during your career and why did they impress you?

Mr DYER: On my own side of politics Michael Egan certainly impressed me. Mr Egan is a larger than life, volatile character. It is better not to encounter him too early in the day. He is like a bull with a sore head until he has at least had an infusion of coffee—he is not a morning person. Mike Egan clearly has loads of ability. I knew Mike a very long time ago when he was in what was then known as the New South Wales Council of ALP Youth, now known as the Young Labor Council. In those days I was on the Right of my party and Mike Egan, funnily enough, was on the Left. Later on, of course, he adjusted his position in the internal ALP spectrum. Mike Egan is a volatile and perhaps even at times tumultuous character. He is also an amusing sort of person. When I had the Public Works portfolio, my ministerial office here in Parliament was on the eighth level on the main side of the building halfway between the Premier at the northern end and Treasurer Egan at the southern end. Mike burst into my office one day to consult me about something or other and he said to me, "This is a disgustingly tidy office." I did not say, "Well yours is disgustingly untidy," although I might have been tempted.

Jeff Shaw was an excellent performer as Attorney-General. I am sorry about his early passing. He was an effective Minister and he had a substantial workload. Any Attorney-General in any government has a big workload.

Dr CLUNE: He had industrial relations [IR] at one stage as well.

Mr DYER: That is true. The Attorney-General, almost as a matter of definition, constantly has a substantial number of bills going through Cabinet and Parliament. It is the nature of the job. He is also first law officer of the Crown and has to have regard to the appointment of judges and magistrates at all levels. It is an important responsibility. The Attorney no longer has the role he once had of having the power to no bill an offender that is vested in the Director of Public Prosecutions. That change occurred when Terry Sheahan was Attorney-General. He also impressed me.

Someone I greatly admired was Reg Downing, but he was not here when I was a member. He was an illustrious member of the House without a doubt. Paul Landa was a very volatile Minister, one could say. He had a lot of ability. He was an excellent debater. The best speech I ever heard him make, I think, was supporting Aboriginal land rights at State level. He made a very vigorous and persuasive speech on that occasion.

I cannot name everyone, but from the other side of politics, when I first became a member, I was impressed by Sir Adrian Solomons, who was a Country Party MLC. He was a solicitor by background, the same as I was, and he was a very decent man and a very sound contributor to debate on legal bills—as I hope I was. I spoke on legal bills particularly in opposition. It was no longer so appropriate when I went into government. Sir Adrian was a very sound contributor in that sense. We also went to meetings of the Australian Constitutional Convention, representing our respective parties, in Brisbane, Melbourne and Adelaide. People have forgotten about the Australian Constitutional Convention. Certain reforms did come out of that. Perhaps it is only of major interest to lawyers but in commercial cases the cross-vesting of jurisdiction between the Federal Court and State Supreme Courts occurred as a result of the Australian constitutional convention. Sir Adrian and I were colleagues at those meetings.

Richard Bull, another National Party member, was someone who impressed me. As I said in my valedictory speech, he had the misfortune to be here when his own party was in opposition and did not have the opportunity to be a Minister. Had he had that opportunity he would have performed well. I did serve with him on a select committee on police promotions, which travelled very quickly around the world to San Francisco, Chicago, Toronto, Amsterdam and London, investigating their police promotion systems and I enjoyed that exercise with him. From the point of view of the development of the committee system, I thought the late Lloyd Lange and Max Willis made sound contributions. From the crossbench, I think of members such as Elisabeth Kirkby, Richard Jones and Peter Breen.

Mr BLUNT: Moving on to the so-called Egan cases, at the outset, did you ever think that the Government's resistance to the Legislative Council's assertion of its power to call for State papers would end up before the High Court?

Mr DYER: The answer I would give to that is: Clearly not initially. Can I say this regarding that question: At the outset, no litigant, whether they are the initiating party in litigation or the responding party, really has any idea where it is going to end. Whether it is a commercial dispute or a criminal trial or an action for damages arising out of a motor vehicle accident or industrial accident, no-one knows where it is going to end, so the only answer I can really give is that, no, I did not know that the proceedings would end up in the High Court. But I suppose it is not a bad thing that they did because that is, after all, the apex of the judicial system in Australia. The decisions of the High Court clearly have to be respected, as do the decisions of the Court of Appeal in New South Wales, of course.

Mr BLUNT: During Mr Egan's suspension from the House, you briefly served as Leader of the Government in the Legislative Council. I assume that period was not without its challenges?

Mr DYER: You would be correct in that assumption. Regarding Mr Egan's suspension from the House, on that day I did not have any idea that could be about to happen. I had no idea at all. Well, as you know, he declined to produce the papers in question and he was held, as I recall, to be in contempt of the House and he was suspended from the service of the House, I think for three days, and he ended up out on the footpath. Warren Cahill was the Usher of the Black Rod at that stage and, in subsequent litigation, Mike Egan, using a fair amount of hyperbole, referred to this burly parliamentary officer putting him out on the footpath in Macquarie Street. My recollection is that Warren Cahill was not burly. I do not think he was any bigger than I am. He was not an aggressive person at all. Mike Egan was suspended from the service of the House. The thought that was going through my mind at that stage was, "Thanks, mate, for the heads up." I did not know what was going to happen. I stepped into his role and to the best of my knowledge I handled everything appropriately during Mike's absence and nothing untoward occurred, but when he came back he did not say, "Thanks, mate", or anything of that sort. He just got on with business. I do not bear any grievance over that but that is how things happened.

Mr BLUNT: What was your response to the judgements of both the High Court and the Court of Appeal? Do you believe they were a positive development in identifying the powers of the Council?

Mr DYER: Yes, I do believe that they were positive. Both of those cases assisted the upper House to determine what its powers were in regard to seeking the production of government papers. Before then the upper House would have been in a state of doubt, I imagine, as to whether or not documents were susceptible to compulsory production. For example, with documents that attracted a claim on the part of government of legal professional privilege or public interest immunity or Cabinet documents, there was no clarity at that stage as to what the rights of the upper House were other than on the basis of cases decided in the past.

Mr BLUNT: Do you think that the power that is now recognised by the courts and regulated by Standing Order 52 has been used effectively by the House?

Mr DYER: I must say that I had little direct contact with the order for papers procedure; however, it is my impression that the procedure afforded by Standing Order 52 over a period of many years now has been used effectively by the House. There have been all sorts of issues that have been raised where members have thought it appropriate or necessary to move a motion to call for papers. I am sure that in various cases that has shone some light on the matters in issue in regard to whatever that particular policy or administrative matter might have been. Whether the procedure can be improved is really not for me to say because I have not been here looking at what has been happening on a continuing basis. However, yes, I think the power must have been useful and in many cases has been constructive and has advanced a consideration of various issues.

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

Mr DYER: My response to that would be that I have no objection to such claims being made as they no doubt are made perhaps quite commonly from time to time. I am fortified by the fact that an arbitration process has been set up to determine the merits of such claims. As I understand it, either a retired judge, I presume, or a Queen's Counsel or Senior Counsel can be appointed to fulfil that arbitration process. As I understand it, a person so appointed is called a legal arbiter. I think that is an appropriate way to proceed and the right thing has been done to endeavour to resolve disputes of that character.

Mr BLUNT: Are you able to comment on the process by which the arbitration procedure was originally decided upon?

Mr DYER: No, I am not because I was not involved. However, I am more than satisfied that an appropriate arbitration process has been developed. I think on one particular matter I can remember Sir Laurence Street, the former chief justice was appointed to arbitrate. A person of that eminence and ability at that stage was very suitable. There are many such judicial officers or former judicial officers and members of the senior bar who are more than appropriate to carry out that function.

Mr BLUNT: I should let you know the eminent person who has most recently been appointed to perform that role is the Hon. Keith Mason, AC, QC, former President of the Court of Appeal. Once again an eminently suitable person.

Mr DYER: I know Keith Mason. He is a typical example of a suitable person to fulfil this role, as was Sir Laurence Street, AC, KCMG, QC.

Mr BLUNT: On the issue of Cabinet confidentiality, what do you make of instances where governments claim Cabinet confidentiality as a means to exempt certain documents from the power of the House to order papers? And should the ability of governments to claim Cabinet confidentiality be tested at some point?

Mr DYER: It is at this point that a massive fissure may open up between you and me regarding Cabinet confidentiality. I have served as a Minister and I know how the Cabinet process works. I have fairly strong views regarding that matter. First of all, it is my view that the cases of *Willis v. Egan* and *Willis v. Chadwick* have been properly decided in that respect. I am not dealing now with a claim of privilege or public interest immunity; I am just dealing with the production of Cabinet documents. The Court of Appeal panel that decided *Egan v. Chadwick* was particularly strong. On the bench were Chief Justice Spigelman, Justice Meagher and Justice Priestley. That is a formidably constituted court. I realise that Justice Priestley dissented.

As a lawyer, I agree with Spigelman CJ and Meagher JA, and the reasoning they adopted. Justice Meagher went further in his decision than Spigelman CJ did. The latter said, in effect, to allow a call for Cabinet documents would interfere with a key element in our system of responsible government, the doctrine of collective ministerial responsibility. The way Cabinet works, all Ministers go in there and when they make a decision they are bound by that decision. That is what collective ministerial responsibility is. Justice Meagher took a broader view by saying that the immunity of Cabinet documents was complete.

There is some distinction to be made. Cabinet documents can variously be minutes, correspondence from central agencies of government, such as the Premier's Department or the Treasury, or line departments to the Department of Premier and Cabinet. They can comprise the minutes of Cabinet itself. However, my view is close to Justice Meagher's. The traditional doctrine has been that Cabinet meets confidentially and it is not open to anyone to prise that open. That secrecy does not have any sinister motive. It is a matter of all sorts of things being able to be said openly within that forum, sometimes in the course of robust debate, and all of those people coming out and hopefully adhering to that collective decision. Unless there is a leak from Cabinet—which is an absolute disgrace if it happens—that is what happens.

All this might be surprising you. You might say, "I didn't realise Ron Dyer was such a traditionalist." If I could draw a parallel with freedom of information [FOI], which is a wider area. Gerry Gleeson, who was the secretary of the Premier's Department during the Wran Government was critical and hostile to the very existence of FOI. I do not go that far with regard to FOI, as distinct from Cabinet documents. Gerry Gleeson's view was the duty of a public servant is to serve the Government of the day, no matter what that public servant's own political view may be, to give them frank and fearless advice and to outline options. Mr Gleeson's view was that, to the extent that officials reduce those matters to options, if they are susceptible to being revealed in response to an FOI application, that compromises the way the system works and the way it traditionally did work. His view was that public servants had to adjust to FOI and, in appropriate cases, give oral advice to Ministers and not produce policy options or administrative options in writing. I have had many experiences in the past, during my period as a Minister, of options being identified—quite commonly three—and the duty of the Minister was to carefully consider those options. I am not saying that the Minister cannot form a view on the basis of a written

document; I am not saying that at all. What I am saying is that the willingness of the public servants to be as open in writing as they were in the past is compromised. I think Gleeson is right about that.

In sum, I stand with Spigelman CJ, Meagher JA, and the High Court. There is a long line of cases going back through British common law holding that Cabinet papers, properly so-called, are in a very special category. There are good reasons why that has been so.

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

Mr DYER: The election of the Legislative Council by the people at a general election I would see as the preeminent development in recent decades. The development of a modern and fairly comprehensive committee system is also something that is a major achievement that has contributed to the standing and the functioning of the upper House. Of barely lesser importance would be the onset of full-time members of the Legislative Council. I always treated it as full time from the day I came in here, and I do not regret that—I learned the ropes quickly. Also the development of a full question time in the upper House. I think I said earlier that when I first sat on the benches question time lasted barely longer than two or three questions. That was hardly a sustained probing of the Government of the day. I would say that arising out of all those things the Legislative Council in this State now plays an important role as a House of review, which was not always the case. It was a House of review but it had a much more limited function, or it was much less effective than it now is.

Mr BLUNT: Is there anything else you would like to say about the role of the Legislative Council today? In fact, is there anything else you would like to share with us before we conclude the interview?

Mr DYER: Mike Egan did say on at least one occasion—probably on a number of occasions—he would stay a member of the House for only as long as it would take to abolish it. Well, I have never ever been of that view—never ever. I think that would be a mistake. I think when you look north of the border and see that there is no Queensland Legislative Council, and pardon me for being political for a moment, but looking back to the Joh Bjelke-Petersen era, that would have been the only brake that would have existed on the activities of the Bjelke-Petersen Government, but it applies to any government. There is safety in having an upper House. It is a safety valve and it is useful to have a delay mechanism so that a contentious matter can be considered carefully.

In its reformed state, the Council is an effective working legislative body. I would never see it as appropriate for the upper House to take over the budgetary role of the Legislative Assembly. However, in regard to all non-money bill matters, it is appropriate to say that the Legislative Council is useful—it justifies its existence, and I would never see it as a good thing to abolish the upper House here. Were that to happen, there would not be any delay mechanism. You would not have detailed consideration of various policies via parliamentary committees, and you would not have that cautionary second look at contentious legislation, which I think is very important.

Dr CLUNE: Thank you. They were typically lucid and informative Ron Dyer comments.

Mr DYER: Thank you very much, David.

Mr BLUNT: On that note, can I take the opportunity for the record on behalf of David and me, and also on behalf of the staff in the Department of the Legislative Council and future readers of this transcript, to thank you so much for your participation in this project. Can I also thank you on behalf of all those people for your contribution to the Legislative Council and to the people of New South Wales through your 23 years of service? Having had the honour of being a committee director who served and supported you for part of that time when you were chair of the Standing Committee on Law and Justice, I well know how conscientious, hardworking and thoughtful you were in that role as chair of that Committee. You have demonstrated that once again today in your approach to this interview. Thank you so much.

Mr DYER: Thank you very much for those remarks, David. I appreciate what you have said. My thanks to Hansard also. Could I say it might be a relief to Hansard I am no longer here, because even though my remarks might be lucid they were not always short. They were sometimes very detailed, I suppose. I miss being here in some ways. I always liked debating, and I suppose I became a better debater in the upper House than I was when I was in high school. I was pretty good then but the more experience you get, the better you become. It's been a great pleasure being here today.

(Interview concluded)