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“CONCILIATION, NEGOTIATION AND CONSULTATION”

RELEASE OF THE 1991 NSW CABINET PAPERS

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1. THE 1991 ELECTION

At the beginning of 1991, the Liberal/National Coalition Government under Nick Greiner was well ahead in the polls. Greiner was considerably more popular than Opposition Leader Bob Carr, who was seen by a significant group in the Labor Party as a failure. After the spectacular financial disasters ALP Governments had presided over in South Australia and Victoria, Greiner's major economic reforms appeared increasingly far-sighted.¹

To take advantage of this strong position, Greiner made the decision to call an election on 25 May, a year ahead of time. Another factor in his thinking was a warning from Treasury of adverse economic conditions on the horizon that would necessitate a tough Budget. Confidence of victory was high in the Liberal camp, an opinion that was shared by most of the media. After the 1991 redistribution, the Government notionally held 59 of the 99 seats. The Opposition needed a swing of 6% to win enough seats to form government.

The Government ran on its record of far-reaching economic and public sector reform. It was a significant achievement, but not carried through without pain. Greiner asked for a mandate to continue the task. The Liberal campaign strategy was to market him as a strong, decisive leader who was not afraid to take tough but necessary decisions in the interests of the State. The slogan was: 'Nick Greiner: leadership that's working'. The style of the campaign was widely described as 'presidential'. Headquarters was established in the luxury Regent Hotel in the CBD and Greiner often flew in and out of campaign events by helicopter. There was an air of complacency about the Government campaign.

Carr refused to accept the fate that most commentators forecast for him: defeat and deposition. He possessed iron determination, strong self-discipline, and superior stamina. In spite of his bookish image, Carr was an effective campaigner and communicator. He realised that Greiner's reform program had created a reservoir of resentment in some sections of the community and worked hard at unleashing it.

One tactic was to exploit the perception that Greiner was arrogant and insensitive to the cares of ordinary voters. The style of the Liberal campaign played into his hands. Carr emphasised that he would be running a 'grass roots' campaign - he would not be bunkering down in a five-star hotel or travelling in luxury.

The Opposition Leader attempted to undermine the Government's claim to being a superior economic manager by claiming there was widespread waste and mismanagement in the public sector: 'We will focus heavily on the increases in taxes and charges and the unprecedented levels of government waste. We will stress how every family is \$1,300 a year worse off under Greiner – and will be another \$400 a year worse off if he is re-elected'.² Carr was assisted in this endeavour by the work of Labor Legislative Councillor Michael Egan,³ who set up a Wastewatch Committee, in reality consisting of himself. It released a stream of highly publicised accusations about 'wasteful' Government expenditure. Egan's most significant achievement was organising for Carr to take the media on an unauthorised tour of vacant floors of a government office block. Carr's claim that high rents were being paid to accommodate public servants while this space was empty received wide coverage.

Greiner's well-deserved reputation for probity, a key asset, was damaged by ill-advised public sector appointments. The appointment of the Premier's wife Kathryn to the board of the Electricity Commission early

¹ For more detail on the election see: A Green, '1991' in M Hogan and D Clune eds, *The People's Choice: electoral politics in twentieth century NSW*, Parliament of NSW and University of Sydney, 2001, vol 3; I Hancock, *Nick Greiner: a political biography*, Connor Court, 2013; M Dodkin, *Bob Carr: the reluctant leader*, UNSW Press, 2003.

² Quoted in Antony Green, '1991' in M Hogan and D Clune eds, *The People's Choice: electoral politics in twentieth century NSW*, Parliament of NSW and University of Sydney, 2001, vol 3, p306.

³ Egan was Leader of the ALP in the Legislative Council 1991 – 2005 and Treasurer 1995 – 2005.

in 1991 was much criticised as nepotism. The Director-General of the Cabinet Office, Gary Sturgess, unsuccessfully urged Greiner to veto the appointment:

Nick had not put her name forward – that is a matter of fact. And he felt that she was a talented woman who would do the job well, and he had no right to stand in her way, particularly with so few women on government boards. He also took the view that she had had to give up her career. I said that it was terribly unfair, but that didn't make it right. It was one of those cases where private ethics don't track into public ethics. His personal position was entirely ethical. But it was wrong in terms of the public interest.⁴

In March 1991, Greiner announced Minerals and Energy Minister Neil Pickard would be the next New South Wales Agent-General in London, a position Greiner had said he intended to eliminate. Pickard's seat had been abolished in the redistribution, with much of it moving into the Premier's electorate. The appointment was widely seen as a pay-off to Pickard for going quietly. Carr was able to claim that, in spite of the talk of integrity in government, Greiner was not above opportunistic appointments when it suited him.

The election result was a disaster for the Government. The Coalition's substantial 1988 majority which, on past indications, should have ensured at least one further term, possibly two, was gone. According to Antony Green:

The Coalition's primary vote declined by 4.86%, but Labor's primary vote crept up only 0.56% from its 1988 result. There was an estimated 3.3% swing to Labor on a two-party basis, enough to cost the Coalition its majority of seats, but not enough to put Labor into office. The Coalition won an estimated 52.7% of the state-wide two-party preferred vote, but the loss of Coalition seats to Independents, and Labor's success in winning several key contests, was much more important than the state-wide vote.⁵

Green adds:

After the election, there was some criticism that the Liberal Party had thrown away the advantage of incumbency by going to an election so soon after the redistribution. In many electorates, sitting Liberal MPs barely had time to introduce themselves to their new constituents before the election was called. However, in calling an early election, the loss of incumbency had been weighed against the declining state of the economy and the electoral consequences of introducing yet another harsh Budget. If the election had been fought on the old boundaries, it is likely the election would have produced a minority Labor government.⁶

Greiner has commented:

It is interesting to speculate on why an unusually high two-party-preferred vote of close to 53% didn't translate into a more decisive victory. My interpretation is that we, both the Party and my office, did not put enough emphasis on marginal seats, believing that the high tide would lift all boats. It is also specifically true that I was confident about the re-election of pro-Liberal Independents in Balmain, Newcastle and Swansea. This perceived buffer in safe Labor seats added to the view about the overall strong position.⁷

⁴ Email to the author, 24 October 2021.

⁵ Antony Green, '1991' in M Hogan and D Clune eds, *The People's Choice: electoral politics in twentieth century NSW*, Parliament of NSW and University of Sydney, 2001, vol 3, p313.

⁶ Antony Green, '1991' in M Hogan and D Clune eds, *The People's Choice: electoral politics in twentieth century NSW*, Parliament of NSW and University of Sydney, 2001, vol 3, p304.

⁷ Email to the author, 27 October 2021.

John Ryan was elected as a Liberal Legislative Councillor in 1991:

Liberal Party candidates went into the election expecting to absolutely thrash the Opposition. Nick Greiner had been an incredibly competent Premier, in our view. The Labor Party was in disarray. The expectation was that we were comfortably going to win a second term ... My first parliamentary party meeting was a pretty sombre occasion. We went through the motions of re-electing the Party Leader and then we had the inevitable post-mortem. Being a brash young whippersnapper, I confidently opined: "You guys have been doing a lot of good work but you have not been telling people what is in it for them". It had been all about, "We've got to reduce the debt, we've got to make the public sector more efficient", and all of that microeconomic reform for which Nick Greiner is now famous. But the payback to people had not been well explained. No one had explained why it was good that the Government did not have a big debt and that it would now be able to do more things.⁸

According to Sturgess:

My wife and I visited the Greiners in their hotel room on the night of the election, when the results were clear, but before he went down to speak to the party faithful. I have a diary note written several days later when things quietened down a little, reporting Nick's comment that night about how tough the electorate was and how hard it was to make real reforms. As I left, he said "Sorry", signalling his awareness that reform was going to be much more difficult thereafter.⁹

2. MINORITY GOVERNMENT

PROPOSED AGREEMENT WITH MEMBERS FOR BLIGH, MANLY AND SOUTH COAST

After the election, the Coalition had 49 seats (48 after appointing a Speaker) and Labor 46. Four Independents held the balance of power in the 99 seat house. Worse was to come for the Government. On 2 October, former Education Minister Terry Metherell resigned from the Liberal Party to sit as an Independent. On 11 December, the Liberal MP for The Entrance, Bob Graham, was unseated by the Court of Disputed Returns. On 18 January 1992, Labor won the ensuing by-election.

Tony Windsor had left the National Party over a preselection dispute and won Tamworth as an Independent. He was basically sympathetic to the Government, which he agreed to support on supply and confidence motions for a package of concessions, mainly for his electorate.

The other three Independents were a very different proposition.¹⁰ John Hatton had been re-elected in his rural seat of South Coast, as had Clover Moore in inner-city Bligh. Local general practitioner Peter Macdonald had defeated Local Government Minister David Hay in Manly. Under Hatton's guidance, they banded together as the unaligned Independents. They realised the locus of their power was in the Legislative Assembly and leveraged it to the maximum.

Greiner was forced to enter into discussions with the unaligned Independents to maintain his hold on office. Minister for the Environment and Leader of the House, Tim Moore, was given responsibility for liaising with them. Hatton had been a long-time crusader for parliamentary reform, more openness and accountability in government and the exposure of official corruption. He was determined not to waste the opportunity he had

⁸ NSW Legislative Council Oral History Project, interview 15 June 2018, https://www.parliament.nsw.gov.au/lc/roleandhistory/Documents/Corrected%20transcript_Ryan.pdf

⁹ Email to the author, 24 October 2021.

¹⁰ The following account draws on D Clune and G Griffith, *Decision and Deliberation: the Parliament of NSW, 1856-2003*, Federation Press, 2006, chapter eight.

been given. After a process of intensive consultation with various advisers, the three Independents drew up a Charter of Reform which they presented to Greiner on 12 June as the basis for an agreement to secure their support.

The negotiation process was complex and protracted. On 9 September a draft agreement was provided to the Independents and considered by Cabinet the next day. According to the Premier's Minute:

Extensive discussions by a Cabinet Committee have been held with the other three Independent Members on their proposed "Charter of Reform" and reports provided to Cabinet on these issues from time to time. A number of the detailed matters relating to parliamentary processes have been presented to Cabinet, as Cabinet Discussion Papers by the Minister for the Environment as part of this process. After Cabinet consideration, these measures have been announced, publicly, and the Cabinet Discussion Papers released to the community. The Independent Members have been involved in this process prior to release of this material.

The proposed agreement was now 'close to a "signable" version'.

Cabinet approved an agreement with the Independents providing for:

- the Government to bring forward amendments to the *Constitution Act* (and to entrench where appropriate) to reform and protect the independence of the Parliament;
- reform of the procedures of the Parliament;
- reform of the legislative process;
- scrutiny of the election [funding] process;
- guaranteeing open and accountable Government by improvements to the *Freedom of Information Act* and increased scrutiny of statutory authorities;
- introduction of Whistleblower [protection] legislation;
- defamation laws [reform];
- improved external scrutiny of the legal profession;
- increased independence for the Ombudsman and the Auditor-General;
- investigate further third-party rights [in environmental litigation];
- investigate further class actions;
- prepare a paper on options for the introduction of an [Administrative Appeals Tribunal];
- provide for Parliamentary scrutiny of appointments of the Ombudsman, Auditor-General and the Commissioner of the [Independent Commission Against Corruption].

After further fine-tuning, a Memorandum of Understanding between the Government and the unaligned Independents was finally signed on 31 October. Although the negotiations had been arduous, Greiner, and particularly Moore, embraced the spirit of the Charter of Reform. The Premier described it as 'the most far-reaching change ever in the governance of New South Wales'.¹¹ In return for implementation of the Charter the three Independents would vote with the Government on appropriation and supply bills and no confidence motions, except where 'matters of corruption or gross maladministration' were involved. Otherwise, the Independents were free to vote as they saw fit.¹²

The Independents did not always vote as a bloc. Initially, Hatton and Macdonald voted with the Coalition about as often as with Labor. Clover Moore was more supportive of the Opposition from the beginning. As the 1991-

¹¹ *NSW Parliamentary Debates (NSWPD)*, 31 October 1991

¹² See *NSWPD*, 31 October 1991 for full details. For an analysis of the implementation of the Charter of Reform see S Reynolds, 'Minority Government from the Other Side of the Fence: policy outcomes for the NSW Independents 1991-95 and the Tasmanian Greens 1989-92' in *Legislative Studies* [now *Australasian Parliamentary Review*], vol 13 no 1, Spring 1998, pp31-2.

95 Parliament progressed, all three were more inclined to vote against the Government.¹³ The Independents were not, however, *de facto* Labor supporters. Proof of this is that the Government, albeit after compromise and negotiation, was able to pass many of its market liberal reforms with their support.¹⁴

The Coalition's lack of control of the Assembly meant that it operated in an entirely different way. The Government could not be sure that its legislative proposals would be passed unamended or passed at all. To try and ensure the best outcome for its program, the Government negotiated regularly with the Independents through Environment Minister Tim Moore. This was a slow and sometimes tortuous process. The Independents needed time to make their own assessment of proposals and to consider the views of interest groups and the Opposition. Under the new regime, committees were often established on legislation and other matters, the Government was not able to gag debate, and the time set aside for Private Members' business was greatly increased. In previous Parliaments, governments were rarely, if ever, defeated in the Assembly; from 1991-95, the Government lost 192 divisions. The number of amendments to bills increased significantly: 27% of bills passed in the 1991-95 Parliament were amended compared to 14% in the previous Parliament.

Ironically, the Government's position improved in the Legislative Council which had previously frustrated important parts of its legislative agenda. The Coalition had 20 MLCs, Labor 18, the Australian Democrats 2 (Elisabeth Kirkby and Richard Jones), and Call to Australia 2 (Fred Nile and his wife Elaine). The Niles usually voted with the Government, which won 88% of divisions in the 1991-95 Parliament.

3. ACCOMMODATING THE INDEPENDENTS

CONSTITUTION (FIXED TERM PARLIAMENTS) SPECIAL PROVISIONS BILL; CONSTITUTION (FIXED TERM PARLIAMENTS) AMENDMENT BILL

A key demand in the Charter of Reform was for fixed term parliaments. The calling of early elections for politically opportunistic reasons was a particular concern of Hatton's:

The fact is that that has been the story of Australian politics federally and in all the States. They will go to the polls whenever it suits them and will trick the electorate whenever it suits them. They will take advantage of suddenly arising circumstances, or circumstances that they are able to engineer by causing strikes, so that they can gain the maximum advantage. That is not good enough. This legislation is historic because that will not be able to happen in future.¹⁵

According to the Cabinet Office Minute:

The proposed legislation provides for fixed four-year terms of Parliament. The package contains two Bills, one to deal with the current Parliament and one to deal with the longer term. Because the longer-term Bill may take the term of the Parliament over the four-year maximum currently provided for in the *Constitution Act* (in certain exceptional circumstances) that Bill will require approval at a referendum.

Both Bills were to be entrenched so that they could not be repealed without a referendum.

¹³ R Smith, 'Parliament' in M Laffin and M Painter, *Reform and Reversal: lessons from the Coalition Government in NSW 1988-1995*, Macmillan, 1995 pp29-30.

¹⁴ R Smith, 'Parliament' in M Laffin and M Painter, *Reform and Reversal: lessons from the Coalition Government in NSW 1988-1995*, Macmillan, 1995 pp31-2.

¹⁵ *NSWPD*, 11 December 1991.

The Constitution (Fixed Term Parliaments) Special Provisions Bill provided for the next general election to be held on 25 March 1995. The Constitution (Fixed Term Parliaments) Amendment Bill specified that future general elections would be held on the fourth Saturday in March every four years, unless the Legislative Assembly was dissolved earlier by the Governor. The Governor would only be able to dissolve if:

A motion of no confidence in the Government is passed (or the Assembly has rejected a Supply or Appropriation Bill or has failed to pass such a Bill by the time it is required) and no Government which has the confidence of the Assembly is formed within eight clear days. This would require either the existing Government to regain confidence or the Governor to commission a new government within that period. Three clear days' notice is required to be given of the motion of no confidence.

Cabinet Office commented:

The Government's proposal does not substantially alter the *status quo* in relation to the role of the Governor and the dissolution of Parliament after a no confidence motion, except that it means that the Governor cannot dissolve Parliament until eight days have expired after the no-confidence motion ... All the other conventions remain unaltered. The Governor must generally act on the advice of his Premier and Ministers. In a situation where a no confidence motion has been passed, the Governor's primary responsibility is to attempt to ensure stable Government. In such a situation the Governor does have the power to decline the Premier's advice and investigate whether there is an alternative stable Government. In exceptional cases, the Governor does have the power to dismiss the Premier and Ministers and appoint a new Government.

Cabinet approved the Bills on 29 October.

Given the 'landmark' nature of the reform, the Constitution (Fixed Term Parliaments) Special Provisions Bill was referred to a Joint Select Committee of the Parliament for investigation and consultation. The Committee's findings were incorporated in the legislation. In his second reading speech, Macdonald acknowledged 'the work that has been done by the Leader of the House and also by the Premier in bringing these bills to this point. It is an example of what can be done through the process of conciliation, negotiation and consultation, which has been a feature of the past few months'.¹⁶ The Bill was passed unopposed in the Legislative Assembly on 11 December and assented to on 17 December. The Constitution (Fixed Term Parliaments) Amendment Bill was passed in 1993. The referendum was held on the day of the 1995 election and passed with 76% in favour.

4. THE GREINER AGENDA

PRIVATISATION OF GRAINCORP; PRIVATISATION OF THE GOVERNMENT INSURANCE OFFICE; PRIVATISATION OF PORT PILOTAGE SERVICES; CORPORATISATION OF THE HUNTER WATER BOARD; PROPOSED CORPORATISATION OF THE ELECTRICITY COMMISSION.

In spite of his weakened political position, Greiner pressed on with his microeconomic reform agenda. Gary Sturgess remembers that in early 1991 the Government was discussing reform of

the State Transit Authority (buses), the Electricity Commission, the Hunter Water Board, the Public Works Department (where the decision was to restructure rather than corporatise), the Fish Marketing Authority (privatised in 1994), the dairy industry, forestry, irrigation and waste. There was already discussion of an independent pricing tribunal (set up in 1992). The privatisation of the State Bank was

¹⁶ NSWPD, 11 December 1991.

actively being pursued (privatised in 1994). These discussions on liberalisation or privatisation continued after the election, albeit with more pushback from some Ministers.¹⁷

On 29 January, Cabinet approved the privatisation of GrainCorp, the corporatised New South Wales Grain Handling Authority. In April 1992, GrainCorp was sold to the Premium Wheatgrowers' Association. It was later floated on the stock exchange and became a multi-national agribusiness. Greiner commented that it was a major step in the Government's program

of getting out of businesses in which it has no place. More importantly perhaps, it is part of the program of improving the efficiency of our major export industries, of which the wheat and grain industry is a most significant one. This move has the full support of the New South Wales Farmers Association ... The basis for the sale recognises the volatility of the wheat industry due to the vagaries of weather and markets. It will provide the Government with a minimum of \$90 million in present value terms and, if there is a series of large crops, as much as \$110 million.¹⁸

A major achievement was the privatisation of the Government Insurance Office (GIO). The Premier stated in his Cabinet Minute:

There is no rationale for continued public ownership of financial institutions operating in competitive markets provided that the sale proceeds that can be achieved by privatisation are in excess of retention value ... In the case of the GIO, interstate and overseas expansion and the GIO's entry into new markets and products would absorb substantial amounts of capital funds which should be dedicated to higher priority social purposes such as health, education and law and order.

A task force under Minister Assisting the Premier, George Souris, was established to prepare the GIO for sale. Bankers Trust was appointed financial adviser.

The proposed legislation would establish

an appropriate structure for the GIO which will permit it to be sold either by public float or by tender. It is proposed that this be achieved by providing for the GIO statutory authority to be converted to a public company limited by shares. Under this proposal the GIO entity will continue in existence although its form will change from statutory authority governed by legislation to a company subject to the provisions of the Corporations Law.

Cabinet approved the Bill on 14 October. Sturgess recalls:

In speaking to his Minute on 14 October, George Souris said that this was the largest 100% privatisation in Australian history. It is worth noting that, based on what Souris told Cabinet, a survey of 1,500 policy holders had found that 64% were opposed to privatisation, and 59% of the general public were. The government was not fazed by this – this is what always happened with privatisation – at the outset, the public were opposed, but once it was done, assuming it had been done well, no one cared. That, of course, was the case with the GIO.¹⁹

The Bill passed the Legislative Assembly with Labor and Independent support and was assented to on 22 November. The GIO was publicly floated in August 1992.

¹⁷ Email to the author, 24 October 2021.

¹⁸ *NSWPD*, 30 April 1992.

¹⁹ Email to the author, 24 October 2021.

On 9 December, Cabinet approved Transport Minister Bruce Baird's proposal to privatise port pilotage services. It was a good example of the benefits of 'Greinerism'. According to the Cabinet Office Minute:

Inherited work practices have largely been responsible for making pilotage services both wasteful and inefficient. This is best illustrated by the operational overheads needed to support the pilot's role, ie:

- a pilot vessel, operated by a crew of three, is required to carry one pilot in open or unsheltered waters;
- similar function is performed by a smaller vessel, known as the pilot tender (two-man crew), for moving pilots within sheltered waters;
- five car drivers are employed to transport pilots as required in the Sydney Ports area.

Operationally, one substantial deficiency relates to the service's high operating costs which have meant a financial loss for the Maritime Services Board (MSB) of about \$700,000 per annum.

The Minute continued: 'Action to eliminate direct Government provision of pilotage services mirrors, in varying degrees, the reform principles which underpin the restructuring of Government businesses, viz: facilitate more rational pricing, so that charges more accurately reflect costs; elimination of overstaffing and restrictive work practices; maximising private sector involvement in port operations'.

The maritime industry raised no objections to the proposal. A request for expressions of interest in contracting for pilotage services yielded 13 positive responses, including one from the affected MSB pilots, out of a total of 21 bodies invited to respond. Amendments to the *Pilotage Act* to allow tendering for pilot services were assented to on 19 May 1992.

In September, Cabinet agreed to the corporatisation of the Hunter Water Board. The Bill successfully passed through Parliament and was assented to on 11 December. An attempt to corporatise the Electricity Commission was less successful. The legislation was approved by Cabinet in October but was withdrawn when the Independents 'insisted on linking it with strict environmental controls over power station emissions'.²⁰

5. INDUSTRIAL RELATIONS

INDUSTRIAL RELATIONS BILL 1991

The Legislative Council's blocking of the Government's industrial relations legislation was one of Greiner's justifications for calling an early election. In a stronger position in the upper house after the poll, the Government was able to proceed with its agenda with some prospect of success. On 20 August, Cabinet approved Industrial Relations Minister John Fahey's latest Bill. It contained most of the provisions that he had previously been unable to get through Parliament.

In his second reading speech, Fahey said that the Bill put New South Wales

at the forefront of industrial relations reform in Australia. While in many respects it is an evolutionary piece of legislation, building on existing trends and developments, it does introduce a number of concepts that have not traditionally been part of the Australian industrial relations system. These include such matters as voluntary unionism, a focus on the enterprise, and the sanctity of awards and agreements. As I indicated previously, in the longer term it is the view of the Government that Australia

²⁰ M Painter, 'Microeconomic reform and the public sector' in M Laffin and M Painter eds, *Reform and Reversal: lessons from the Coalition Government in NSW 1988-1995*, Macmillan, 1995, p103.

should adopt a single, integrated industrial relations system. In many respects this Bill could become the model for such a system.²¹

The Bill was 333 pages long; 53 MPs spoke in the second reading debate in the Legislative Assembly. It passed through both houses relatively unscathed and was assented to on 11 November.

According to Suzanne Jamieson, the Industrial Relations Act 1991 was 'strongly enterprise focussed and, unlike the later Federal legislation, did not require trade union involvement'. It brought about 'an end to preference for unionists, the outlawing of closed shops and the creation of a new and separate industrial court'.²²

6. CASINOS

CASINO CONTROL BILL

The former Labor Government proposed to establish a casino at Darling Harbour in Sydney's CBD. However, the Police Board reported adversely on Hooker-Harrah who had been awarded the contract. In 1986, Premier Barrie Unsworth cancelled the contract but was unable to find an acceptable replacement before losing office. Greiner accused the Government of 'bungling the tendering process and promised that the Coalition would not proceed with the [Darling Harbour] casino because of the danger of infiltration by organised crime'.²³ When Greiner, in office, decided to establish a casino he was under much pressure to ensure the most rigid safeguards and highest integrity in the process.

In January, Cabinet considered a discussion paper from the Premier on the legalisation of casinos. Under the supervision of the Cabinet Sub-Committee on Casinos, legislation was drafted to provide for the establishment, operation and control of casinos in New South Wales. According to the Cabinet Office Minute, the Bill established the following division of responsibilities:

- the Minister determines public policy matters such as the location, number and style of casinos;
- a statutory authority (Casino Control Authority) will have responsibility for controlling legal casinos by issuing licences to operators and employees and taking disciplinary action if required;
- and there will be a separate entity (Director of Casino Surveillance) with the responsibility for day-to-day surveillance of casino operations.

The above ensures that there are sufficient checks and balances in the process and is designed to minimise the possibility for corrupt conduct.

The Bill made provision for 'a percentage of gaming revenue to be paid into a Community Benefit Fund for dispersal in accordance with recommendations by trustees pursuant to a trust deed. The objects of the trust deed will be as determined by the Government'. On 6 August, Cabinet approved the Casino Control Bill subject to a number of minor conditions.

In her second reading in the Legislative Assembly on 5 March 1992, the Chief Secretary, Anne Cohen, said:

This bill is introduced into the Parliament after an extended period of public review and examination unprecedented for any casino legislation known in the world. This bill has been subjected to analysis by Australian and international casino regulators and authorities. It has been scrutinised by such expert

²¹ NSWPD, 28 August 1991.

²² S Jamieson, 'Industrial relations' in M Laffin and M Painter eds, *Reform and Reversal: lessons from the Coalition Government in NSW 1988-1995*, Macmillan, 1995, pp148-9.

²³ J Hagan and C Clothier, '1988' in M Hogan and D Clune eds, *The People's Choice: electoral politics in twentieth century NSW*, Parliament of NSW and University of Sydney, 2001, vol 3, p260.

bodies as the Australian Institute of Criminology. It has been rigorously probed by law enforcement organisations such as the New South Wales Crime Commission and the New South Wales Police Service. The Independent Commission Against Corruption has been consulted on corruption prevention aspects of the bill. It represents the outcome of close co-operation between the governments of Victoria and New South Wales to develop, on a bipartisan basis, the strongest harmonious legislation in the world today. It has been widely distributed as an exposure bill for public comment. Finally, the bill has been examined and reported upon by the Hon. Sir Laurence Street, the former Chief Justice of New South Wales, as a specific term of reference for the inquiry into the establishment and operation of legal casinos in New South Wales.

Only Hatton, Macdonald, Metherell, and Clover Moore voted against the second reading in the Legislative Assembly on 4 August 1992. The *Casino Control Act* was assented to on 7 May 1992.

In May 1994, the Casino Control Authority awarded the right to operate Sydney's first casino to the Leighton-Showboat consortium. A temporary casino opened in 1995. Two years later, the casino, today known as The Star, commenced operations in its permanent home at Pyrmont.

7. THE ENVIRONMENT

NATIONAL PARKS AND WILDLIFE (KARST CONSERVATION) AMENDMENT ACT; EXTRACTION OF SAND AND GRAVEL IN NON-TIDAL RIVERS; NATTAI NATIONAL PARK; ABORIGINAL CUSTODIANSHIP OF NATIONAL PARKS

The Government's environmental record, although to some extent over-shadowed by microeconomic reform, continued to be impressive. On 29 January, Environment Minister Tim Moore submitted a Cabinet Minute proposing literally ground-breaking legislation to permit a proper framework to be established in the *National Parks and Wildlife Act* 'for conservation of significant karst (limestone features/limestone cave) areas by either acquisition or conservation agreement over the karst area without necessarily acquiring title to (nor interfering with existing activities on) the surface above such karst areas'.

Acting Cabinet Office Director Roger Wilkins was not impressed. In a hand-written note to the Premier he said: 'I have reservations about this as [the National Parks and Wildlife Service] is already stretched in a management and budgetary sense. Also, it is not clear to me that there is a demand for this or what the implications may be down the track if we "lock up" subterranean land and resources in this way'.

Cabinet Office expressed reservations about the lack of a formal procedure for the National Parks and Wildlife Service (NPWS) to refer proposed conservation management arrangements to other authorities and departments:

The issue of referencing procedures is an ongoing problem. Whilst there is an administrative practice of referencing, it is a loose and often unsatisfactory arrangement which relies on the goodwill of NPWS. Formalisation of referencing procedures is advocated and whilst this could be addressed by the Natural Resource Management Council, consideration should also be given to providing a statutory requirement for referencing in the *National Parks and Wildlife Act*.

Cabinet Office also questioned Moore's statement that no additional resources would be required to implement the proposal as NPWS 'cannot currently afford lands that have been earmarked for acquisition to meet its existing conservation commitments'. The Cabinet Office Minute suggested that Moore discuss resource implications with Treasury and that there be a presumption in favour of conservation management agreements rather than acquisition.

On 12 March, Cabinet agreed to Moore's Minute subject to the concerns expressed by Cabinet Office being addressed. In his second reading speech, Moore, a keen speleologist, said: 'Caves are an important part of our environment. They are areas of great beauty and great fragility and, for those of us who enjoy going through them, who enjoy underground abseiling or climbing through the rivers and the passageways of the caves, they are places of great pleasure'.²⁴ He explained the novel legal approach adopted in the legislation as an endeavour to treat caves

as if they were a unit in a hierarchy in a building, for example a flat in a multi-storey block of flats. If one imagines that the flat on the top floor is the surfaced managed area of the land, the middle flat is the cave, and the bottom flat is the earth and material underneath, there is no reason why title to the top flat needs to be obtained to manage, enjoy or control access to that which is underneath it. The purpose of the legislation is to strata title cave systems ...²⁵

The *National Parks and Wildlife (Karst Conservation) Amendment Act 1991* was assented to on 11 December.

On 19 November, Cabinet approved a policy proposed by Natural Resources Minister, Ian Causley, to provide for improved monitoring and management of extraction of sand and gravel in non-tidal rivers. Cabinet Office commented:

Increased demand for sand and gravel, particularly on the North Coast, is contributing to river erosion. Legislation exists to control individual extraction sites, but there are limitations in dealing with cumulative effects of extraction on non-tidal rivers, and there are coordination problems in view of the number of government agencies involved. The management plans and other actions outlined in the policy are directed at overcoming these problems ... Overall, the policy signals a tightening of environmental constraints on extraction from non-tidal rivers and points to the need to develop alternative sources of sand and gravel.

Moore had for some time been urging his colleagues to preserve the area around the Nattai River valley in southern New South Wales. On 30 October, former Liberal Education Minister, now an Independent, Terry Metherell, a strong environmentalist, introduced a bill to make the Nattai area a national park. On 12 November, Cabinet agreed to Moore's submission that the Nattai had sufficient merit to warrant its reservation. Speaking on the second reading of Metherell's Bill on 15 November, Moore gave an undertaking that the Government would conserve 90,000 hectares in the Nattai region as State Conservation areas, a National Park, and a wilderness area under the *Wilderness Act 1987*, the first such declaration under the Act.²⁶ Cabinet gave its approval on 12 December and the areas were declared by the Governor the next day. Metherell's Bill lapsed.

In a submission to Cabinet on 14 February, Moore proposed pioneering legislation to 'provide a framework for acknowledgment of Aboriginal custodianship for significant discrete and dedicated areas within land reserved or dedicated under the *National Parks and Wildlife Act* whilst continuing their public dedication'. The sites would be leased back to the Minister for 99 years (with a renewal option) for rededication. Local Aboriginal Land Councils would be involved in management. Four sites were identified in Moore's Minute: Mungo National Park; Mootwingee Historic Site; Mount Grenfell Historic Site; Mount Yarrowyck Nature Reserve. Cabinet approved the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill on 23 April.

²⁴ NSWPD, 1 May 1991.

²⁵ NSWPD, 1 May 1991.

²⁶ NSWPD, 15 November 1991. See also NSWPD, 5 December 1991.

The Bill was not passed before Parliament was dissolved for the 1991 election. Moore re-introduced it after the poll and subsequently introduced a revised version in 1992. In his second reading speech, he said that it was crucial that the legislation proceed in a bipartisan fashion:

It is very important that if we are to seek to pursue a path of reconciliation, of which this bill will be but a small fragment of the mosaic, we must do so in a fashion that will not exacerbate any tensions that might exist between Aboriginal and European communities in the areas of New South Wales where this arrangement is expected to be implemented. The importance of cultural symbolism to Aboriginal people cannot be allowed to be lost in any tensions that might arise about the nature of management of the dedicated areas or about neighbour and good neighbour relationships with surrounding landholders.²⁷

Moore referred the legislation to a Legislative Assembly Committee. After extensive investigations, the Legislation Committee recommended a number of changes in its November 1992 report.

The Bill did not proceed. Moore's successor as Environment Minister (since July 1992), Chris Hartcher, said that the Government had received advice that the Bill may have been inconsistent with the Commonwealth *Native Title Act 1993* and thus constitutionally invalid. Although still committed to the concept, the Government was not prepared to legislate until the legal uncertainty was resolved.²⁸ No legislation had been introduced by the time the Coalition lost office in March 1995.

In 1996, the Carr Government passed the *National Parks and Wildlife Amendment (Aboriginal Ownership) Act*. Speaking to the Bill, shadow environment minister, Brad Hazzard, said that Moore

should be recognised as the beacon on the hill because he cast the light that led others to recognise what this legislation should be. In 1991 and 1992 he made the point that it would be of great symbolic significance to Aboriginal communities across Australia and would indicate to the broader community that the New South Wales Parliament, and the Coalition, were serious about the process of reconciliation.²⁹

²⁷ NSWPD, 25 February 1992

²⁸ NSWPD, 12 October 1994.

²⁹ NSWPD, 27 November 1996.

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APPENDIX

Location in the State Archives Collection of Cabinet Papers Cited

The Cabinet Minutes for 1991 form part of the series *NRS-12082 Cabinet documents, 1922-2014* from the State Archives Collection.

- **Proposed agreement with Members for Bligh, Manly and South Coast:** [10 September 1991, Minute No: 91-215, NRS-12082-15-36-\[142\] pp 244-324](#)
- **Constitution (Fixed Term Parliaments) Special Provisions Bill:** [29 October 1991, Minute No: 91-259, NRS-12082-15-40-\[153\] pp 148-268](#)
- **Constitution (Fixed Term Parliaments) Amendment Bill:** [29 October 1991, Minute No: 91-259, NRS-12082-15-40-\[153\] pp 148-268](#)
- **Privatisation of GrainCorp:** [29 January 1991, Minute No: 91-13, NRS-12082-15-25-\[103\] pp 252-272](#)
- **Privatisation of the Government Insurance Office:** [14 October 1991, Minute No: 91-241, NRS-12082-15-38-\[149\] pp 165-230](#)
- **Privatisation of port pilotage services:** [9 December 1991, Minute No: 91-254, NRS-12082-15-43-\[163\] pp 121-212](#)
- **Corporatisation of the Hunter Water Board:** [3 September 1991, Minute No: 91-195, NRS-12082-15-35-\[140\] pp 2-151](#) ; [29 October 1991, Minute No: 91-261, NRS-12082-15-40-\[154\] pp 101-270](#)
- **Proposed corporatisation of the Electricity Commission:** [14 October 1991, Minute No: 91-242, NRS-12082-15-38-\[149\] pp 107-436](#)
- **Industrial Relations Bill:** [20 August 1991, Minute No: 91-80, NRS-12082-15-35-\[137\] pp 94- 200](#)
- **Casino Control Bill:** [6 August 1991, Minute No: 91-156, NRS-12082-15-34-\[134\] pp2-211](#)
- **National Parks and Wildlife (Karst Conservation) Amendment Act:** [12 March 1991, Minute No: 91-14, NRS-12082-15-27-\[109\] pp 323-410](#)
- **Extraction of sand and gravel in non-tidal rivers:** [19 November 1991, Minute No: 91-245, NRS-12082-15-42-\[158\] pp 173-360](#)
- **Nattai National Park:** [12 November 1991, Minute No: 91-280, NRS-12082-15-41-\[157\] pp 2-280](#)
- **Aboriginal custodianship of national parks:** [23 April 1991, Minute No: 91- 115, NRS-12082-15-31-\[123\] pp 244-276](#)