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‘DRIVEN BY ASPIRATIONS FOR REFORM’

RELEASE OF THE 1990 NSW CABINET PAPERS

Dr David Clune OAM

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1. THE CONTEXT

The Liberal-National Party Coalition Government under Nick Greiner proceeded with its wide-ranging program of reform in 1990. Effective, transformative management of the public sector and the economy remained the bedrock of Greiner's approach. Major areas of activity were parliament and the electoral system, education, industrial relations, and the environment.

The Premier summarised the economic record in September 1990 when delivering his third Budget - as it transpired the last in his first term. Key objectives were being met: freezing the size of government and redirecting resources to priority areas, infrastructure renewal, containing debt, tax reform. The Government would deliver on its commitment to complete its first term with the real size of its operations no larger than when it began. Recurrent expenditure, in fact, declined by 1.4% in real terms over the Government's first three years.

At the same time, we continue to fund growth in the priority areas of health, education and law enforcement by reallocating resources and efficiency savings. A number of important initiatives to assist the disadvantaged have also been possible. To fund these enhancements, the programs of productivity dividends, portfolio savings, and global budgeting to allow priorities to be met have continued.

The proceeds of the disposal of assets had enabled the Government to reduce borrowings by 42% since 1987/88, lowering interest repayments substantially. At a time when other States were increasing charges, NSW, thanks to the Government's reforms, was 'projecting a significant real fall in 1990/91'.

In terms of micro-economic and public sector reform, the Government was overhauling its business enterprises to make them cost efficient and customer responsive.

This has meant: more rational pricing so that charges more accurately reflect costs, elimination of overstaffing and restrictive work practices, and increased exposure to private sector competition. The seven largest government trading enterprises have reduced their staff numbers by 18% in the first two years of the Coalition Government and are expecting a 31% decrease by the end of 1992/93.

Productivity was 25% higher in these enterprises and was estimated to increase by 65% by 1992/93.¹

Politically, the Government had a turbulent year. Reform may, in the long term, benefit the many but, in the short term, those who lose out become vocal and visible opponents, in this case, retrenched public servants, teachers with increased workloads, parents whose local school had closed, those paying higher taxes and charges, vested interests shaken out of their comfort zone by deregulation, user pays and competition.

The Legislative Council was an obstacle to the Government's program. It had a solid majority in the Legislative Assembly but in the upper house the crossbench held the balance of power. Labor had 24 of the 45 MLCs, and the Coalition 19. Reverend Fred Nile's Call to Australia Party (CTA, Christian Democrats from September 1997) had three MLCs and the Australian Democrats two, Elisabeth Kirkby and Richard Jones. One of the CTA MLCs, Marie Bignold, fell out with the Niles in 1988 and became an Independent. Fred and Elaine Nile usually voted with the Government but it struggled to get Democrat support and Bignold was unpredictable. As well as the

¹ NSW Budget Speech 1990-91 Delivered by Hon NF Greiner MP Premier and Treasurer on 11 September 1990, Budget Paper No 1.

Niles, the Government needed at least one other crossbench vote to win divisions. The result was that it suffered significant defeats in the Council.²

John Hannaford became a Liberal MLC in 1984 and a Minister in 1990. He was Leader of the Government in the Legislative Council 1992-95 and Leader of the Opposition 1995-99:

I think there was community awareness amongst organisations—interest groups—that if you had lost the debate with government then you may be able to influence the debate in the upper house. We had to focus on how we governed. We had to put in processes to negotiate with the crossbenchers. We had to put in place better communication measures between upper and lower house ministers, and we had to understand that the process could take time. I do not think the Government through to the 1991 election fully came to grips with the need to take time. It was a Government that was driven by aspirations for reform. It was focussed more on reform than the process of community involvement in governing.³

A significant development was the resignation in July 1990 over minor taxation offences of Education Minister Terry Metherell whose aggressive, *blitzkrieg* approach had made him a symbol of electoral discontent with the Government. The values underlying Metherell's agenda were orthodox 'Greinerism'. Ian Hancock has described them as 'a diversity of educational offerings, freedom of choice, a core curriculum, increased community involvement and self-management of schools'. As Hancock goes on to note, the criticism Metherell attracted was 'as much about style as substance'.⁴ Gary Sturges has commented:

Nick fully agreed with the thrust of his reforms, which is one of the reasons he continued to back him. It took the Premier a while to wake up to just how offensive his "style" was. The fact that the teachers were complaining didn't cut much ice – it seemed that they always complained, at everything. Previous Labor Education Ministers such as Rodney Cavalier had been at war with the Teachers' Federation. The real shock was when the government found that the parents were outraged (although the Parents' and Citizens' Association had to some extent been captured by the teachers' union).⁵

Metherell was replaced by the ameliorative Virginia Chadwick, who put much effort into repairing relations with teachers, parents and the community.⁶

According to the polls, the Government was recovering its popularity by the end of 1990. Antony Green has observed:

In August, the Coalition pulled ahead of Labor in the Morgan Poll for the first time in ten months, and was to pull further ahead as the year passed. Suddenly, the financial rectitude of the Greiner Government made sense, as the financial disasters of the Labor Party in Victoria were revealed. General public concern over financial management also increased with the collapse of the Victorian-based Farrow group of building societies and Estate Mortgage Trusts. Premier Lawrence agreed to a

² D Clune, *At Cross-purposes? Governments and the Crossbench in the NSW Legislative Council, 1988-2011*, Legislative Council of NSW, History Monograph No 4, 2019.

³ NSW Legislative Council Oral History Project, interview 16 July 2013, <https://www.parliament.nsw.gov.au/lc/roleandhistory/Documents/170904%20Hannaford%20dc.pdf>

⁴ I Hancock, *Nick Greiner: a political biography*, Connor Court, 2013, p222.

⁵ Email, 28.8.2020.

⁶ Metherell's responsibilities were divided, with Chadwick becoming Minister for School Education and Youth Affairs. Industrial Relations Minister John Fahey took over Further Education, Training and Employment.

Royal Commission into WA Inc in December, and in February 1991, the enormous losses of the South Australian State Bank were finally revealed.⁷

2. REGIONAL CABINET MEETINGS

In 1990, Cabinet met on 46 occasions, the same number of times as in 1989. There were four meetings outside the CBD, at Terrigal (3-4 February), Goulburn (13 February), Griffith (3-4 October), Kyogle, Grafton and Casino (1-2 November).

The Terrigal meeting was styled a Cabinet conference and held at the exclusive resort of Peppers on Sea. The original invitation to Ministers stated: 'It is not proposed that wives attend'. In her acceptance letter, Minister for Family and Community Services Virginia Chadwick commented acerbically: 'I would also like to thank you for advising that it is not proposed that wives attend – as it would have been difficult for me to arrange this'. In the event, spouses were included.

The conference was basically about strategy. There were reports on opinion polls, electoral and parliamentary reform, and on 'warm issues'. A session was devoted to the Government's strategy for the next election. Each Minister was expected to deliver a brief presentation on future directions for their portfolios. The Premier's hand-written notes on the agenda paper give an idea of his key themes: 'media image; analysis of Opposition; how political without losing dividend?'. He also wanted to remind his colleagues of areas where internal discipline was needed: 'Rules: backbench, city versus country, Liberal versus National; collective responsibility; private loyalty'.

Another session discussed a paper prepared by a small unit within the Cabinet Office, the Office of Strategic Priorities, entitled 'How Green? Responding to the Environment Debate'. The Director-General of Cabinet Office, Gary Sturgess, was driving the effort to formulate a policy that acknowledged community concern about the environment and outlined a set of principles to guide future decisions. He recalls that the paper began with

a brief discussion of the gulf between the general public, who saw the environment primarily as a quality of life issue, and the hard-core environmentalists, for whom it had ideological or quasi-religious significance. It laid down the major elements of the proposed policy – managing the "commons", the oceans, the air and the rivers, land use conflict and waste management. It summarised the emerging new approaches to environmental policy overseas: better regulation, the use of economic instruments and new conflict resolution machinery.

Sturgess recorded that the reaction of Ministers, including the Nationals, was 'very positive. A win. Agreement. We had produced a green model they could live with'.⁸

The other regional meetings, all in Coalition seats, were more prosaic, business-like affairs. The intention was to show that the Government was sympathetic to rural concerns and to support local MPs. The visits coincided with the announcement of programs, initiatives and grants for the area. Ministers were asked to provide a summary of contentious issues relating to their portfolio with suggested responses. Local Councils sent submissions in advance which were discussed with Cabinet on the visit. This did not always go smoothly. The Shire Clerk of Kyogle wrote to the Premier complaining that Council had put a great deal of effort into its submissions but 'insufficient time was made available to give Council representatives the opportunity to discuss the subject matters'. He received an emollient reply saying that the Premier had noted Council's submissions and that the relevant Ministers would soon respond directly.

⁷ 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.

⁸ Email to the author, 20 August 2020.

3. THE NEW AGENDA

PRIVATE PRISONS; COMMERCIALISATION OF STATE LOTTERIES OFFICE

A major initiative was the State's first private prison. As well as according with the Government's ideological commitment to privatisation, a cost-effective solution had to be found to relieve prison overcrowding. Another attraction for the Government was that the militant prison officers' union (the Prison Officers' Vocational Branch of the Public Service Association) would be excluded from a private prison. Given the crisis-ridden history of the public correctional system, the Government could credibly argue that private management would be an improvement.⁹

Another option was to reduce the prison population. The Deputy Director-General of Cabinet Office, Roger Wilkins, sent a memorandum to the Premier on 6 April describing Corrective Services Minister Michael Yabsley's approach as 'throwing good money after bad. The Minister should actually be looking at bringing in community based orders in substitution for parole, reviewing the composition of the current Probation and Parole Service, spending money on attendance centres rather than more prisons'. George Zdenkowski has commented: 'Although logically a reduction in the prison population through strategies to reduce imprisonment both as a sentencing sanction and in length of sentence was an option, the Government's commitment to a punitive approach excluded such options'.¹⁰

On 10 April, Cabinet decided to construct a new prison at Junee and to consider private management of this facility. Subsequently, it was decided that both construction and management would be out-sourced to the private sector. It was very much a Yabsley initiative. According to the Cabinet Office advice of 6 April: 'The strategy which was agreed at the meeting between the Premier and Minister Yabsley was that private management should be trialled at Junee in order to see whether the predictions of cost savings put forward by the Minister could be confirmed'.

Cabinet approved the necessary legislative amendments on 13 November. The Cabinet Office Minute commented: 'The major advantages claimed for private management relate to the opportunity for the introduction of innovative prison design and management techniques ... It may be that privatisation will offer a lever for breaking down restrictive work practices and attitudes within existing institutions'.

The Minute continued:

The most difficult aspect of this proposal is the friction between ensuring on the one hand that the private contractor has sufficient autonomy and flexibility to manage effectively and innovatively, and on the other hand ensuring that there is proper public accountability and control of privately managed prisons. Ultimately, the Government will always be held responsible for any difficulties that do arise in privately managed prisons and effective means of control consistent with this responsibility must be maintained.

When introducing the Bill, Yabsley addressed a number of issues of concern:

The private operator will be acting as agent for the Director-General [of the Department of Corrective Services], thereby still leaving the Director-General ultimately responsible and accountable for the prison ... Second, public accountability will additionally be ensured by the Ombudsman having the same rights of access and inquiry as in the public system, by the public having access to documents

⁹ For the background see G Zdenkowski, 'Punishment policy and politics' in M Laffin and M Painter eds, *Reform and Reversal: lessons from the Coalition Government in NSW 1988-1995*, Macmillan, 1995.

¹⁰ G Zdenkowski, 'Punishment policy and politics' in M Laffin and M Painter eds, *Reform and Reversal: lessons from the Coalition Government in NSW 1988-1995*, Macmillan, 1995, p227.

relevant to the management of the institution under the provisions of the Freedom of Information Act 1989, by the Minister maintaining the power to appoint official visitors and visiting justices to investigate any problems and by the Independent Commission Against Corruption being able to investigate any alleged corrupt practices ... In addition, the successful tenderer will be bound by contract to minimum standard guidelines which will specify aspects of prison management that will need to be maintained. These guidelines will form part of the contract performance evaluation. A performance monitor will be appointed by the Director-General to work at the Junee prison, to monitor, access and evaluate contract performance ... Third, health care standards will be monitored by the Director of the Prison Medical Service.¹¹

The *Prisons (Contract Management) Amendment Act* was passed with Democrat and CTA support and assented to on 13 December 1990.¹²

Cabinet approved the commercialisation of the State Lotteries Office on 7 August. Cabinet Office commented that the proposal accorded with the Government's

commercial objectives for establishing this type of trading enterprise and the current proposal is directed at the removal of out-moded management practices which have essentially restricted the Office's operations. Achievement of pronounced efficiency improvements and greater operational flexibility in such key areas as marketing and product development are the intended goals of the new Board structure. From a market perspective, the moves by the Government to relax restrictive controls over management represent positive steps toward exposing the activities of the Office to market disciplines. More proactive commercial behaviour by the agency will be facilitated and, more importantly, accelerated by the presence of appointees from business and industry on the proposed Lotteries Board.

4. EDUCATION

EDUCATION REFORM BILL; ESTABLISHMENT OF TAFECOM

The centrepiece of Terry Metherell's reform program was the *Education Reform Act*. It enshrined in legislation many of the changes he had already made administratively. The legislation was largely based on the recommendations of an inquiry conducted by former Liberal Senator and Education Minister, Sir John Carrick. It also incorporated curriculum requirements set out in the Government's November 1989 White Paper, 'Excellence and Equity'. Draft legislation was tabled in Parliament at that time. Wide-ranging consultations followed, leading to modifications to the Bill.

Metherell stated in his Cabinet Minute of 26 March: 'It is clear that this has been the most extensive consultative exercise undertaken in respect of any piece of legislation in the Education portfolio. I have given a public commitment that this process will continue even during the passage of the Bill through the Parliament'. The Bill set out new registration and accreditation procedures for government and non-government schools, established minimum curriculum standards, provided for basic skills testing in State primary schools, and established the Board of Studies to develop school curricula.

A controversial feature was that the Bill gave the Minister control over the Board of Studies and thus the curriculum. Metherell's Cabinet Minute commented:

¹¹ *NSW Parliamentary Debates*, 20 November 1990.

¹² After a competitive tendering process, the contract for design, construction and management of Junee Prison was awarded to Australian Correctional Services, a consortium of Thiess Contractors, ADT Australia and the Wackenhut Corrections Corporation. Junee was opened in March 1993 with capacity for 600 inmates.

It is right and proper that the responsible Minister exercise these responsibilities and be accountable to Parliament for them. Under existing arrangements Ministers can and have influenced the direction of syllabus development indirectly and in a covert and non-accountable way. It is fundamentally wrong for the Minister to exercise this influence without public knowledge or scrutiny, and without giving a public account of his or her reasons ... The Bill in providing these powers to the Minister, also provides for public disclosure where the Minister does not approve of the syllabus for a course of study recommended by the Board.

The Bill passed through the Legislative Council with its main features intact and was assented to on 1 June 1990.

The Government commissioned management consultant Brian Scott to prepare a series of reports on education. One was on Technical and Further Education (TAFE). According to Metherell's Cabinet Minute, Scott recommended that TAFE

be restructured as a statutory authority. Dr Scott found that TAFE lacked direction because of its ambiguous roles as government department, educational organisation, quasi-social welfare organisation and competitive market-place provider of training. The establishment of a statutory authority, TAFECOM, would enable the quick implementation of structural changes and would clearly define TAFE's mission. This would result in a body more able to respond to industry and business needs and provide students with training relevant to today's and the future's workplace.

On 15 May, Cabinet decided to release an exposure draft bill based on Scott's recommendations.

When introducing the Technical and Further Education Commission Bill in the Legislative Council in November, Virginia Chadwick said that the consultation process had led to significant changes to the legislation. The feedback received

drew attention to the need to correct the perception that the new TAFE would be focussing its efforts almost exclusively on commercial ventures and servicing the needs of industry. Important as these areas are, this bill before the house embodies the Government's commitment to maintaining the diversity of TAFE's education and training responsibilities. New directions for TAFE will not be taken at the expense of "second chance" education programs or programs which meet the needs of the community as well as industry. This legislation seeks to establish an overall framework for the restructuring of TAFE into a commission charged with the vital role of preparing the workforce not only of the next decade but of the 21st century.¹³

The Act was assented to on 18 December 1990 and commenced in February 1991.

5. INDUSTRIAL RELATIONS

INDUSTRIAL RELATIONS BILL 1990 AND INDUSTRIAL COURT BILL 1990; INDUSTRIAL ARBITRATION (VOLUNTARY UNIONISM) AMENDMENT BILL 1990; INDUSTRIAL ARBITRATION (ENTERPRISE AGREEMENTS) AMENDMENT BILL 1990

Reform of industrial relations was an important part of the Greiner agenda. Suzanne Jamieson has noted that the Greiner and Fahey Governments 'took a generally market-oriented approach to managing industrial relations in NSW but they were not alone in doing this. There seemed to be a tide of market liberal reform that was sweeping all governments along'.¹⁴

¹³ NSW Parliamentary Debates, 29 November 1990.

¹⁴ 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, p152.

Cabinet considered Industrial Relations Minister John Fahey's legislation for a comprehensive updating and revision of industrial law on 20 March and 3 May and approved it on 15 May. In his Minute, Fahey outlined the wide consultation process that had taken place:

The proposals stem from Volume One of Professor [John] Niland's Green Paper which was released in March 1989 and which has generated much public discussion. As a final step in the consultation process, a workable draft of the Industrial Relations Bill was released on 27 April to major employer organisations, the Labor Council, the principal conciliation commissioner and other interested parties for their perusal and comment.

A major aim of the legislation was to move from industry to enterprise bargaining to introduce more flexibility and productivity. Enterprise associations with the rights and obligations of trade unions would be able to enter into agreements with employers, thus providing a mechanism to bypass union involvement.

Speaking to the legislation, the Leader of the Government in the Council, Ted Pickering, said:

Through the implementation of these bills NSW may have the hope of escaping from the rigid, adversarial format, the "them and us" ethos, of industrial relations negotiations that has ensnared employers and employees in this State for far too long. It is through the provisions in these bills that parties, both employers and unions, will be required to honour their commitments and to abide by the umpire's decision. Surely that is not before time. Moreover, by force of these bills a timely and effective system of registration and accountability of representative groupings of employers and employees will be introduced ... I add that the protection of the rights of individuals at the workplace and before tribunals is also a paramount reform component to be pressed by this Government by way of this legislation.¹⁵

Democrats Leader Elisabeth Kirkby responded:

It is clear that the Government is determined in this instance to follow some new right agenda and ignore the views of responsible employer groups and many of those expressed by Professor Niland in his Green Paper. In spite of the many calls and letters the Australian Democrats have received, we will not defeat the legislation. Neither the Australian Labor Party nor the Australian Democrats will oppose it; but we will amend it substantially.¹⁶

On 4 June, Kirkby successfully moved that, as provided for in the *Constitution Act*, Fahey be invited into the Council to explain his legislation. On 23 August, he entered the Council chamber to participate in the Committee stage debate which lasted four weeks.¹⁷ Former Liberal MLC and Minister John Hannaford has observed: 'Notwithstanding advice to him that he should not turn up, John Fahey insisted that he wanted to be in the upper house as the minister is entitled to do. I think he would say today that it was not a wise decision. In these things you need an intermediary'.¹⁸ Of 81 divisions in Committee, the Government won only ten; over 300 amendments were successful.¹⁹

The Government withdrew the legislation and decided on a strategy of implementing its reforms in tranches. The first was the Industrial Arbitration (Voluntary Unionism) Amendment Bill to provide for 'greater voluntarism

¹⁵ *NSW Parliamentary Debates*, 23 August 1990.

¹⁶ *NSW Parliamentary Debates*, 22 August, 1990

¹⁷ This was the first and last time this procedure has been used.

¹⁸ NSW Legislative Council Oral History Project, interview 10 December 2015, <https://www.parliament.nsw.gov.au/lc/roleandhistory/Documents/2015%20Hannaford%20-%20transcript.pdf>

¹⁹ D Clune and G Griffith, *Decision and Deliberation: the Parliament of NSW, 1856-2003*, Federation Press, 2006, p585.

in union membership and to protect workers from victimisation which might otherwise be consequent upon their decision about union membership and participation'. It was approved by Cabinet on 13 November. In the upper house, the Democrats objected to the banning of preference in employment for unionists. The Bill was unacceptably amended and withdrawn.²⁰

Next came the Industrial Arbitration (Enterprise Agreements) Amendment Bill, approved by Cabinet on 20 November. A previous Bill in 1989 had been withdrawn and its provisions incorporated in the Industrial Relations Bill. In his Cabinet Minute of 16 November Fahey said that he was abandoning the concept of enterprise associations:

The Labor Party and Democrat Members do not object to enterprise agreements so long as a union is able to represent enterprise employees. They resolutely refuse to countenance enterprise bargaining units having the rights and obligations of unions ... I now intend that (besides unions) enterprise agreements may be entered into by a collective of individuals or a representative works committee established at the enterprise.

These entities would be able to negotiate enterprise agreements in non-unionised workplaces.

Fahey continued:

There was a resourceful public campaign conducted by the Labor Council to misconstrue the proposed legislative minimum conditions for enterprise agreement workers as subsistence or retrograde standards. This occurred despite the Government's insistence that they were really in the nature of social safety net standards designed to ensure non-exploitation of workers by unscrupulous employers.

Under the new Bill, the Industrial Commission would have to be satisfied that an enterprise agreement was not 'unfair, harsh or unconscionable' before registering it. The minimum conditions provisions could thus be abandoned as superfluous. The position of Commissioner for Enterprise Agreements would be created to advise and protect parties to an agreement. These changes were acceptable to the Democrats and the Act was assented to on 18 December.

6. PARLIAMENTARY AND ELECTORAL REFORM

CONSTITUTION (LEGISLATIVE ASSEMBLY) AMENDMENT BILL; CONSTITUTION (LEGISLATIVE COUNCIL) AMENDMENT BILL; AMENDMENT OF THE PARLIAMENTARY ELECTORATES AND ELECTIONS ACT 1912 AND THE CONSTITUTION ACT 1902

To strengthen its electoral position, the outgoing Labor Government had increased the size of the Legislative Assembly by ten to 109. The consequent redistribution resulted in electoral boundaries more favourable to the ALP. Under the existing legislation, a redistribution could only take place after two elections. However, if the Government honoured its election commitment to return the size of the Assembly to 99, a redistribution would follow which would provide an opportunity to redress the Coalition's disadvantage. If the upper house refused to pass the bill, under the deadlock provisions in the *Constitution Act 1902*, the Government could submit it to a referendum. It was a protracted, cumbersome process and Greiner needed to move expeditiously if a redistribution was to be held before the next election. The Government had also made an election commitment to reduce the number of Council Members and their term. Under the Constitution, such a change had to be submitted to a referendum.

Greiner submitted a Cabinet Minute on parliamentary reform on 16 February. The number of Members of the lower house would be reduced to 99. To prevent changing the size of the house being used as a political gambit

²⁰ The Government re-introduced the Bill in February 1991 with similar lack of success.

in the future, the size of the Assembly would be entrenched in the Constitution so that it could only be altered by a referendum. The Minute proposed a reduction in the number of Members of the Legislative Council from 45 to 40. Their term of service would equal two consecutive terms of the Legislative Assembly, a reduction from an unacceptably lengthy twelve years to 8. The reduction in the size of the Council would take effect following the next general election; the new electoral system would take effect at the following election.

A significant consequence of the changes to the Council would be the lowering of the quota needed for election from 6.25% to approximately 4.76%. Greiner's Minute commented:

It is claimed by some that such a quota reduction would inevitably lead to permanent control of the Legislative Council by minor parties. It is also claimed that minor parties would gain greater representation in the Legislative Council than that they presently enjoy. It is contended that the current level of representation enjoyed by minor parties in the Legislative Council at present is a function of the length of the term of service (three consecutive terms of the Legislative Assembly) rather than the quota ... These recommendations will lead to a reduction in the "natural" quota for election to the Legislative Council but cannot fairly be regarded as recommendations that will inevitably lead to greater representation of minor parties in that chamber.

It was a classic misjudgement. The crossbench has had the balance of power in the upper house since 1988. After the 2019 election, there were ten crossbench MLCs representing six parties and one Independent (a Green who left the Party after the election).

John Ryan was a Liberal MLC 1991-2007. He has described the process of negotiation that took place to ensure the bills were passed:

I was working in the office of the Liberal Leader in the Council, Ted Pickering, at the time when this plot was hatched. It was my job to deliver messages backwards and forwards to two crossbench members of the upper house, Elisabeth Kirkby and Fred Nile. Their agreement had to be secured to get the legislation through the upper house ... My role was writing briefing notes, preparing the Cabinet Minute and transmitting letters and correspondence from Mr Pickering to crossbench members in order to get the deal which eventually modernised the upper house.²¹

Democrats Leader Elisabeth Kirkby was a tougher proposition than Nile but Pickering finally reached an agreement with her, confirmed by the Premier in a letter of 21 May. In return for a package of concessions, the Democrats would provide the votes needed to ensure the passage through the upper house of the Constitution (Legislative Assembly) Amendment Bill and the Constitution (Legislative Council) Amendment Bill.²²

Greiner agreed to eliminate three not five MLCs, resulting in a quota of about 4.5%. Ryan commented:

The Coalition offered up National Judy Jakins, who I understand was not wildly happy about that decision; the Labor Party offered up Mick Ibbett who was intending to retire anyway; and the crossbench offered up Marie Bignold. In fact, Fred Nile offered her up. At the time Nile was at absolute war with Bignold ... The Coalition was to receive short-term control of the upper house through the votes of the Niles. Fred Nile was to be separated from a member of his own party who had become a

²¹ NSW Legislative Council Oral History Project, interview 15 June 2018, https://www.parliament.nsw.gov.au/lc/roleandhistory/Documents/Corrected%20transcript_Ryan.pdf

²² Democrat Richard Jones had misgivings at the last moment but finally voted for the legislation. See D Clune and G Griffith, *Decision and Deliberation: the Parliament of NSW, 1856-2003*, Federation Press, 2006, pp587-9.

*problem, and Kirkby could see that in the long-term the major parties would lose control of the upper house and that seemed a fair price to pay for a term of more limited influence.*²³

Under the deal, party affiliation would be included on ballot papers, and changes made to party registration, candidate deposit and electoral requirements – all to the advantage of minor party candidates. The proposed entrenchment of the size of the Assembly was dropped. Provision was made for an automatic redistribution to be held when more than 25% of electoral districts became malapportioned, subject to the qualification that there would not be more than one redistribution between consecutive general elections.²⁴ The Electoral Districts Commissioners would be able to take advice from a recognised demographer as part of the redistribution process.

The referendum to reconstitute the Legislative Council was held simultaneously with the 1991 election and passed with 57.74% in favour. The redistribution of Legislative Assembly seats was finalised in March 1991. According to Antony Green: ‘The Coalition was the clear winner on the new boundaries. Labor was reduced from 43 to 37 seats, the National Party from 20 to 19, and the Liberal Party from 39 to 37, with Liberal prospects improving in the Independent-held electorates of Bligh and North Shore, and the Balmain electorate of Independent Dawn Fraser abolished’.²⁵

7. ENVIRONMENT

COASTAL POLICY; WATER BOARD PRICING; PROPOSAL FOR NORTHERN EXTENSION TO WASHPOOL WILDERNESS; ESTABLISHMENT OF ENVIRONMENT PROTECTION AUTHORITY

In February 1990, Greiner delivered a major speech, ‘The New Environmentalism: a conservative perspective’. Building on the earlier ‘How Green?’ discussion paper, it outlined an innovative theoretical approach to environmental challenges and a practical blueprint for dealing with them. The Premier began by stating that environmentalism had come of age as a political issue:

No longer can the environment be dismissed as the private domain of hard-core environmentalists. No more can the major political parties relegate the environment to a footnote at the back of their policy platforms. Regrettably too many people on the conservative side of politics still view environmental consciousness as some sort of left wing conspiracy.

In a succinct statement of the Government’s direction, Greiner continued:

*The time has come for the Coalition Parties to develop - and to boldly articulate – an environmentalism tailored to the needs and values of middle Australia. Not only do I consider that there is no fundamental conflict between such a policy and the philosophies underlying the policies of the Liberal and National Parties, but I am firmly of the view that the key to an ecologically sound future for Australia lies in the economic rationalist policies which the NSW Government has pioneered over the past two years.*²⁶

Gary Sturgess has commented:

²³ NSW Legislative Council Oral History Project, interview 15 June 2018, https://www.parliament.nsw.gov.au/lc/roleandhistory/Documents/Corrected%20transcript_Ryan.pdf

²⁴ To date, this provision has not been used.

²⁵ 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.

²⁶ NF Greiner MP, Premier of NSW, *The New Environmentalism: a conservative perspective*, Earth Day, 22 April 1990.

We needed to develop an environmentalism that resonated with middle Australia. The middle class cared about the environment, but their values were not the same as the deep-green environmentalists who usually spoke up on such issues. The second pre-condition was to make sure that the policy direction remained true to both Parties' philosophical roots and their grass-root supporters. We had to bring all of Cabinet along on this – the conservative wing of the Liberal Party, and the Nationals. In order to be authentic and to be believable, the new policy had to be consistent with Greiner and "Greinerism" – it had to speak in managerial and economic terms. At the time, property rights and economic approaches were at the cutting edge of environmental regulation. It is probably difficult for people today to grasp just how radical ideas such as a pollution/carbon tax or tradeable water/fishing/pollution rights were at that time.²⁷

Coastal protection was a key challenge for the Government. Greiner's 'new environmentalism' had to be reconciled with pressure for more development and the negative economic impact of conservation measures. The views of progressive Liberals, such as Environment Minister Tim Moore, and those of pro-development Nationals had to be accommodated. To complicate the situation, the July 1990 report of the Independent Commission Against Corruption investigation into north coast land development found that planning decisions had been improperly influenced by political donations and that corrupt dealings had taken place. Deputy Premier Wal Murray and Water Resources Minister Ian Causley were cleared of corruption but were found to have created 'a climate conducive to corruption' by their actions.²⁸

Greiner took charge of the Government's coastal policy. An extensive public, stakeholder and internal consultation process took place. Cabinet considered the draft policy on 26 June and 7 August. An initial proposal to include the creation of marine national parks was dropped after objections from Nationals Ministers. Key features of the draft policy were:

- an acquisition, reservation and management program for the most sensitive land
- a comprehensive management system to address coastline hazards and a commitment to implementing the NSW Greenhouse Strategy
- the preparation of a coastal urban strategy to ensure that development proceeds in a planned and orderly fashion
- the establishment of clear environmental assessment procedures and development control measures
- stricter controls on mining on beaches and frontal dunes
- a clear planning framework for consideration of heavy mineral sands mining which confirms the existing policy of no mining in National Parks and Nature Reserves and formalises the presumption against mining in wetland areas.

Cabinet Office commented:

Although it could be argued that the policy constrains development and may have an adverse impact on industry, it should be welcomed by developers who have been waiting for an unambiguous statement on the types of coastal development which will be acceptable. There will be particular debate about the restrictions imposed on heavy mineral sands mining. While there is no doubt that the industry is of vital importance to the economic development of NSW, the fact remains that the community sees mining as an environmentally intrusive activity, irrespective of its economic benefit. Attempts to modify the prohibitions placed on heavy mineral sands mining should be resisted.

²⁷ Email to the author, 7 August 2020.

²⁸ I Hancock, *Nick Greiner: a political biography*, Connor Court, 2013, pp 227-8.

Cabinet approved the coastal policy on 7 August. It also decided that all relevant local councils would be provided with a Coastline Management Manual to assist in the development and execution of Coastline Management Plans.

Environment Minister Tim Moore put a submission to Cabinet for a major restructuring of the Sydney Water Board's pricing structure, including an 8.3% increase in water, sewerage and drainage charges. After twice being deferred because of its complex and controversial nature, a revised Minute was considered and approved on 29 April. Cabinet had already approved an \$80 environmental levy for a five-year period from 1 July 1989 and increased trade waste charges from 1 January 1990. Cabinet Office commented that Moore's proposed changes would allow

the gradual introduction of desirable pricing reforms. The most significant reform is that a true user pays philosophy will underlie the charging system. The user pays components are: customers will now pay for all water used rather than the present 250 kilolitre "free" water allowance; the stepped tariff structure where higher water usage is penalised by higher tariffs; and quarterly meter reading linked with quarterly billing. The imposition of water charges on government bodies is also in keeping with the operation of market principles within the public sector.

The new pricing regime came into effect from 1 July 1991.

In 1982, the Wran Labor Government decided to protect large areas of rainforest in northern NSW. Most of the Washpool forest near Grafton became a national park but forestry operations were permitted in the remaining northern third. In 1990, the Forestry Commission announced its intention to log the area, resulting in protests by the environment movement. In a Cabinet Minute dated 3 September, Moore argued that there was a substantial case for preservation of the northern Washpool forest. He outlined five options, ranging from complete reservation as a national park to preserving the *status quo*. Moore advocated the first position. Minister for Tourism, Lands and Forests Garry West and Chief Secretary and Minister for Water Resources Ian Causley, the local MP, protested vehemently, as did the local timber industry and Grafton Council. Cabinet decided to adhere to the *status quo*.²⁹

A significant reform was the establishment of the Environment Protection Authority (EPA). Moore's aim was to create a comprehensive, integrated agency that would co-ordinate environmental protection, regulation, rehabilitation, enforcement and education. He presented a discussion paper to Cabinet in May, which was followed by a public discussion paper in July. Some Ministers opposed Moore's proposal as poaching on their territory and others were wary of giving too much power to a progressive Environment Minister.

After the consultation process, Moore presented a Minute to Cabinet in November. Cabinet Office commented that the new proposal was a 'significant refinement of the original concept. In essence, the Authority will be limited to a pollution control and prevention role and will not have all-embracing environmental protection functions related to flora and fauna or national parks'. The EPA would absorb the State Pollution Control Commission, the Ministry for the Environment, and much of the Waste Management Authority.

The *Protection of the Environment Administration Act* was passed in December 1991 and the EPA commenced operations in March 1992. It was an agency with significant independence from government that became a proactive force for environmental protection.

8. SOCIAL ISSUES

²⁹ The Washpool area was the subject of a complex, long-running struggle. Moore created the Washpool Wilderness area of 24,500 ha in 1992. The Carr Government protected the rest of the area in 1996.

FURTHER REGULATION OF THE FENCING OF PRIVATE SWIMMING POOLS; ADULT ACCESS TO ADOPTION INFORMATION; ABOLITION OF COMPULSORY RETIREMENT; AMENDMENTS TO THE ABORIGINAL LAND RIGHTS ACT 1983

Community concern over the drowning of young children in private swimming pools continued to be an issue. In December 1989, Cabinet agreed to make isolation fencing of new pools mandatory. A summit of stakeholders subsequently recommended that compulsory isolation fencing be extended to existing pools. Local Government Minister David Hay submitted a Minute on 29 March supporting this. Cabinet Office was strongly opposed, describing it as 'retrospective legislation. The implementation of such a measure would be inequitable, ineffective and imprudent. The Minute offers no substantial support for retrospectivity and is not sensitive to cost implications and community reactions'. However, Cabinet decided that the need to prevent deaths of young children over-ruled such considerations and agreed to the inclusion of existing as well as new pools in the legislation. The *Swimming Pools Act* was passed with bipartisan support and came into effect in August 1990.³⁰

On 9 June 1988, the Government established two Legislative Council Standing Committees, State Development and Social Issues. The first reference the Government gave to the Social Issues Committee was the contentious issue of allowing adopted persons the right to access their original birth records once they turned 18. Although the membership crossed the ideological spectrum, from Labor left to Fred Nile, it produced a unanimous report in favour.³¹

On 3 July, Cabinet decided to legislate to implement the Social Issues Committee's recommendations. A Sub-Committee consisting of Minister for Family and Community Services Robert Webster (Chair), Health Minister Peter Collins and Attorney-General John Dowd was established to investigate implementation issues. The draft legislation, as modified in the light of the sub-committee's recommendations and other Ministers' submissions, was approved on 21 August. Webster recalled that the bill was challenged in the Government party room because

*there were a number of prominent constituents in the electorates of some of my Liberal colleagues who had adopted children and had decided not to tell their children they were adopted. I remember meeting with a chap and he and his wife had adopted four children back in the 1950s, so his children were in their 40s, and they had never told them. You understand the way the bill operated: the adopted children and their birth parents had access to the files, unless there was a contact veto put on by the individuals. But if the children didn't know they were adopted, then they could theoretically be contacted by their birth parent, and that is what this guy was worried about. He wanted me to change the legislation. I said, "I can't. This legislation is in place around the world. It has been sought after by adopted people and their birth parents for years". He said, "What's your advice?" I said, "Well, if you are as close to your children as you tell me you are, get them in a room and tell them. Explain to them why you didn't tell them". I don't know what he did, but that was my advice to him. I had a big debate with John Laws about it because he had a few people ring up and say this sort of thing. I said the same to Laws and he accepted it.*³²

The *Adoption information Act* was assented to on 26 October 1990.

³⁰ As Cabinet Office had anticipated, the legislation provoked a backlash and was replaced in 1992 by a new Act with less stringent provisions for existing pools. See *NSW Parliamentary Debates*, 7 May 1992.

³¹ For the background see D Clune, *Keeping the Executive Honest: the modern Legislative Council committee system*, Legislative Council of NSW, History Monograph No 1, 2013.

³² NSW Legislative Council Oral History Project, interview 16 July 2018, <https://www.parliament.nsw.gov.au/lc/roleandhistory/Documents/Corrected%20Transcript%20-%20Robert%20Webster.pdf>

In a pioneering move to combat what is now known as 'ageism', Cabinet agreed to make it unlawful for a person to be compulsorily retired on the basis of age. Greiner's Minute said the legislation would: give employers greater access to a range of skills that might otherwise be lost by retirement at an arbitrary age barrier, counter the effects of a shrinking labour force, and lessen the dependence of older people on government support. It would also promote 'the self-esteem of older workers who face poverty and the loss of dignity associated with compulsory retirement when they are still quite capable of making valuable contributions in the workplace'. The *Anti-Discrimination (Compulsory Retirement) Amendment Act* came into effect on 1 January 1991.³³

Greiner originally wanted to repeal the *Aboriginal Land Rights Act 1983* and 'mainstream' Aboriginal services by placing them in the relevant department. An Aboriginal Affairs and Land Rights Commission would replace the Aboriginal Land Council and subsume the Office of Aboriginal Affairs in the Premier's Department as a transitional move. However, aware of the sensitivity and complexity of the subject Greiner decided to consult and listen. The Aboriginal Land Council and other groups vigorously protested against the proposals.

In 1989, the Government commissioned the former head of the Commonwealth Department of Aboriginal Affairs, Charles Perkins, to prepare a report on the proposed changes. Perkins rejected the repeal of the 1983 Act, mainstreaming, and the creation of an Aboriginal Affairs Commission, and made a number of suggestions for reform.

The Government accepted Perkins' recommendations but the Aboriginal Land Council opposed some of them. Further consultation then took place which resulted in agreement being reached. The Aboriginal Land Rights (Amendment) Bill was approved by Cabinet on 11 September. The Aboriginal Land Council and the Office of Aboriginal Affairs were retained largely unaltered. However, administrative improvements were made, particularly in regard to accountability.

When introducing the legislation, Greiner said:

*The Government looks forward to working closely with the Land Councils in the future to ensure that real progress is made in improving the socioeconomic independence of Aborigines in this State ... The Government is concerned that despite the seven years that have now passed since land rights legislation was first introduced in this State and despite the more than \$1 billion that has been spent on Aboriginal affairs in the past decade, most Aborigines in NSW are not significantly better off than they were a decade ago. The NSW Aboriginal Land Council agrees that the current Act contains a number of inadequacies which need to be remedied if this situation is to improve.*³⁴

He concluded:

Though the bill may not solve all the problems currently facing Aborigines in this State, it represents significant step forward. With greater co-operation between Government and the Aboriginal community, real progress can be made. This Government has already displayed its preparedness to listen to the views of the Aboriginal community and its willingness to work together with the Aboriginal people to find solutions.

³³ The *Anti-Discrimination (Amendment) Act 1994* went further and prohibited age-based discrimination.

³⁴ *NSW Parliamentary Debates*, 13 September 1990.

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David Clune was for many years the Manager of the NSW Parliament's Research Service and the Parliament's Historian. He is currently an Honorary Associate in the Department of Government and International Relations at the University of Sydney and Consultant Historian to the NSW Legislative Council History Project. Dr Clune has written extensively about NSW politics and history. He is the author (with Gareth Griffith) of *Decision and Deliberation: the Parliament of NSW, 1856-2003*, editor (with Ken Turner) of *The Premiers of NSW, 1856-2005* and *The Governors of NSW, 1788-2010*, and author of *Inside the Wran Era: the Ron Mulock Memoirs*. Dr Clune was a member of the Sesquicentenary of Responsible Government in NSW Committee and the Governor Macquarie Bicentenary Committee. He was awarded the Centenary of Federation Medal in 2001 and the Order of Australia Medal in 2011.

APPENDIX

Location in the State Archives Collection of Cabinet Papers Cited

The Cabinet Minutes for 1990 form part of the series NRS 12082 Cabinet documents, 1922-2014 from the State Archives Collection.

- **Regional Cabinet Meeting, Terrigal:** 3-4 February NRS 12082_16_130, pp106-112, 213-217
- **Regional Cabinet Meeting, Goulburn:** 13 February NRS 12082_16_09 to NRS 12082_16_16
- **Regional Cabinet Meeting, Griffith:** 3-4 October NRS 12082_18 to NRS 12082_16_23
- **Regional Cabinet Meeting Casino, Grafton and Kyogle:** 1-2 November NRS 12082_16-24 to NRS-12082_16_32
- **Prison Management and Development:** 10 April Minute 90-36 NRS 12082_15_24 pp 1-247
- **Proposed Amendment of the Prisons Act Relating to Private Prison Management:** 13 November Minute 90-229 NRS 12082_15_85 pp 231-379
- **Prisons (Contract Management) Amendment Bill, 1990:** 20 November Minute 90-323 NRS 12082_15_90 pp 30-60
- **Commercialisation of the State Lotteries Office:** 7 August Minute 90-156 NRS 12082_15_46 pp 1-40
- **Education Reform Bill:** 20 March Minute 90-57 NRS 12082_15_18 pp 84-156
- **Proposed legislation to establish TAFECOM:** 15 May Minute 90-117 NRS 12082_15_35 pp 2-93
- **Proposed legislation to restate and reform the law relating to industrial relations in NSW:** 3 May Minute 90-104 NRS 12082_15_30 pp 120-205
- **Industrial Relations Bill 1990, Industrial Court Bill, 1990:** 15 May Minute 90-125 NRS 12082_15_34 pp 183-264
- **Industrial Arbitration Voluntary Unionism Amendment Bill, 1990:** 13 November Minute 90-300 NRS 12082_15_85 pp 117-141
- **Industrial Arbitration (Enterprise Agreements) Amendment Bill, 1990:** 20 November Minute 90-313 NRS 12082_15_89 pp 251-301
- **Proposed Parliamentary Reform:** 20 February Minute 90-14 NRS 12082_15_11 pp 35-74
- **Constitution (Legislative Council) Amendment Bill 1990:** 26 February Minute 90-24 NRS 12082_15_12 pp 82-138
- **Proposed Amendment of the Parliamentary Electorates and Elections Act, 1912 and the Constitution Act, 1902:** 23 October Minute 90-246 NRS 12082_15_76 pp 1-129

- **Constitution and Parliamentary Electorates and Elections (Amendment) Bill, 1990:** 20 November Minute 90-320 NRS 12082_15_90 pp 259-365
- **Coastline Management Manual:** 7 August Minute 90-144 NRS 12082_15_47 pp 1-315
- **Draft of NSW Coastal Policy:** 7 August Minute 90-145 NRS 12082_15_46 pp 47-352
- **Proposed Amendment of the Coastal Protection Act, 1979:** 29 October Minute 90-177 NRS 12082_15_58 p 70. 1 November Minute 90-247 NRS 12082_15_78 pp 64-135
- **Water Board Urban Development Charges:** 23 February Minute 90-20 NRS-12082_15_24 p 36 withdrawn 8 February 1991
- **Water Board Water, Sewerage and Drainage Pricing:** 23 February Minute 90-21 NRS 12082_15_12 p 46. 19 March Minute 90-28 NRS 12082_15_18 pp 180-313. 29 March Minute 90-44 NRS 12082_15_18 pp 188-310
- **Proposal for Northern Extension to Washpool Wilderness:** 4 September Minute 90-187 NRS 12082_15_55 pp 173-264
- **Proposal to Establish the Environment Protection Authority for New South Wales:** 11 December Minute 90-310 NRS 12082_15_99 pp 2-39.
- **Proposed legislation to further regulate the fencing of private swimming pools:** 3 May Minute 90-70 NRS 12082_15_30 pp 207-378
- **Swimming Pool Bill, 1990:** 15 May Minute 90-131 NRS 12082_15_35 pp 200-225
- **Proposed Legislation to abolish Compulsory Retirement:** 1 November Minute 90-236 NRS 12082_15_77 pp 234-371
- **Anti- Discrimination (Compulsory Retirement) Amendment Bill, 1990:** 22 November Minute 90-314 NRS 12082_15_91 pp 201-230
- **Proposed legislation on adult access to adoption information:** 3 July Minute 90-85 NRS 12082-15-41 pp 2-360
- **Adoption Information Bill:** 21 August Minute 90-166 NRS 12082_15_51 pp 35-96
- **Amendments to the Aboriginal Land Rights Act 1983:** 3 April Minute 90-71 NRS 12082_15_21 pp 301-366