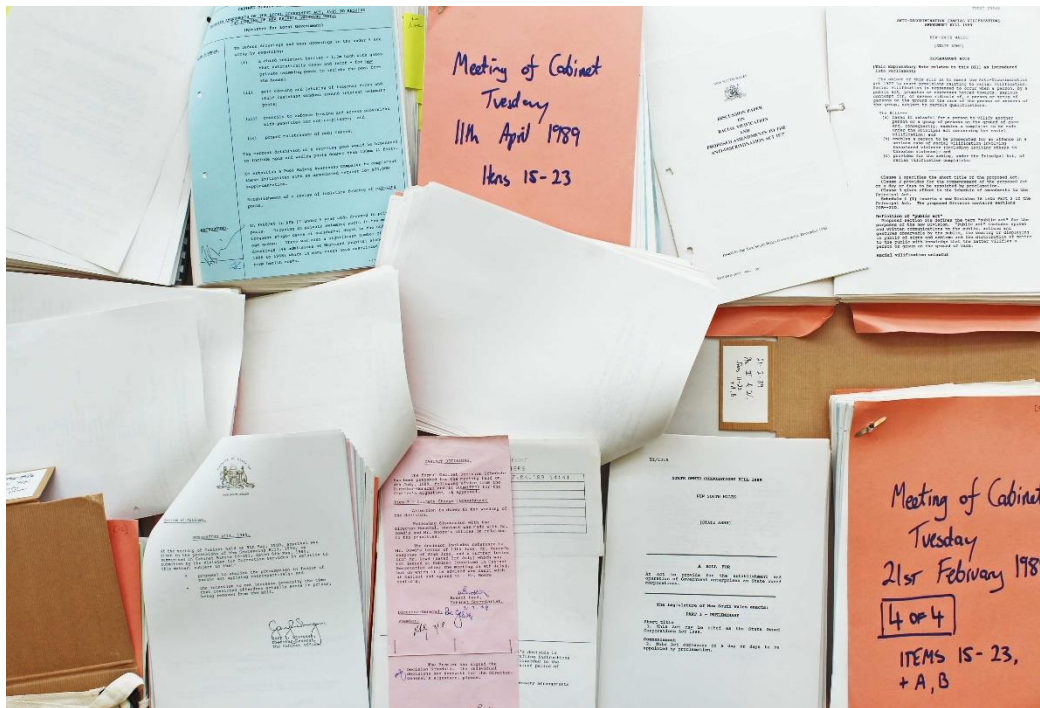




# 'WARM, DRY AND GREEN'

RELEASE OF THE 1989 CABINET PAPERS  
DR DAVID CLUNE



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## 1. THE CONTEXT

As it entered its second year, the Nick Greiner/Wal Murray Liberal/National Coalition Government could look back on a rapid-fire start to the implementation of its program.

In a speech delivered not long before the 1988 election, Greiner foreshadowed the principles he intended to govern by.<sup>1</sup> He was a believer, he said, in 'practical liberalism', a philosophy that made a virtue out of 'making government produce results. It means running government in the interests of its consumers and owners, rather than the politicians and the bureaucrats. This kind of practical politics tests the suitability of an idea not by its ideological integrity, but by the very simple question, does it work?'

Greiner saw the role of Premier as that of managing director of NSW Inc. As such, he wanted to make it 'crystal clear' that he would be concerned with 'results, not ideology purity'. His Government would

*above all, be consumer oriented. In some of its programs, the clients are the disadvantaged, and in these programs, as elsewhere, our first priority will be to deliver first-rate service. Secondly, as Premier, I will be concerned to obtain better results for the shareholders of NSW Inc. Taxpayers don't object to funding public works or hospital deficits – as long as they can see that they are getting value for money ... Finally, as managing director I will want better results for the employees of NSW Inc – better management, more satisfying working conditions, better productivity. There is nothing to be gained by the Liberal Party indulging in public servant bashing.*

Laffin and Painter have observed that while Greiner presented himself as 'a non-ideological and even non-political Premier with a no-nonsense, get-down-to-business style of leadership' his approach did contain elements of market liberal ideology which stressed 'the superiority of market mechanisms over government and politics. Greiner, his key advisers and certain ministers shared the market liberal view that the central problem was "government failure". The public interest could not emerge from the interplay of interest groups, party and parliamentary politics, but required government to be re-organised to give markets or market-mimicking mechanisms a greater role'.<sup>2</sup> Corporatisation, privatisation, deregulation and contracting out were all part of the new agenda but Greiner saw them as tools to achieve his goal of a NSW that worked better rather than as ends in themselves.

Fortunately for the Premier, National Party Leader and Deputy Premier Wal Murray was also a believer in the new agenda. He kept his colleagues, previously characterised as 'agrarian socialists', behind Government initiatives - some of which were damaging to the interests of country dwellers, such as the closure of court houses and rail lines - in the interest of the greater good.

Greiner drove his agenda with energy, ability and determination. He advocated a 'big bang' approach to reform. While this got results and conveyed the message dramatically that a new era had begun, it generated resistance from interest groups and stakeholders. Sections of the electorate found the

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<sup>1</sup> Speech to 20<sup>th</sup> National Young Liberal Convention, 4 January 1988.

<sup>2</sup> M Laffin and M Painter, 'Introduction' in M Laffin and M Painter eds, *Reform and Reversal: lessons from the Coalition Government in NSW 1988-1995*, Macmillan, 1995, p1.

Government's program unpalatable and the pace of change bewildering. Education Minister Terry Metherell's aggressive approach to education reform engendered much public hostility. Some Ministers and MPs, who did not share Greiner's ideology, became increasingly nervous as the Government began to slip in the polls. However, the Premier's commitment to reform did not waver in 1989.

## 2. THE CABINET PROCESS

The Greiner Government divided the Premier's Department into the Cabinet Office and a restructured Department that incorporated the public sector management responsibilities of the old Public Service Board, grouped together as the Office of Public Management.

The Director-General of Cabinet Office was Gary Sturgess, a key adviser to Greiner in Opposition. Personally and philosophically close to the Premier, Sturgess was an influential figure in the Government. As Cabinet Secretary, he attended meetings 'in a broad secretarial role, advising the Premier in setting the agenda, taking minutes during the meeting itself and afterwards interpreting those decisions as they are later implemented'.<sup>3</sup> The Cabinet records show that strict processes were in place to ensure proposals were circulated in advance, relevant ministers were consulted, and their input considered and sometimes agreed to.

Sturgess has given a frank description of his role:

*I didn't have untrammelled freedom in the management of the Cabinet process, as some have suggested. I was Secretary and acted in conjunction with and under the direction of the chair, the Premier. There were occasions where Greiner wanted to use the process to delay submissions that he was uncomfortable with, and I had to explain to him that we had dealt with all of the technical issues, and the matter must proceed to Cabinet if he was not prepared to speak to the Minister about it directly. I was Secretary to Cabinet and not just an instrument of the chair. And while I was fully trusted in the political domain, I was no longer a political adviser (not that had ever been my principal role). Of course, people in these positions must be politically aware and astute, but without being political themselves. I was never a member of the Liberal Party, so there had always been limits on what advice I could give on the political side.<sup>4</sup>*

An essential function of Cabinet Office was to prepare a briefing for the Premier on issues on the agenda. Sturgess has observed:

*Officials needed to write the briefing that I wanted to give as Secretary and Director-General. But my part of the compact was that I had to respect the professionalism of my people. What I could bring to the arrangement was a highly granular understanding of what advice and what arguments would work best with the Premier and with Cabinet more broadly, but the briefs were never just my own – they were a collective production of the Cabinet Office. The result*

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<sup>3</sup> G Sturgess, 'The Cabinet process in NSW' in B Galligan, J Nethercote and C Walsh eds, *Decision-making in Australian Government: the cabinet and budget processes*, Centre for Research on Federal Financial Relations and Royal Australian Institute of Public Administration, 1990, p144.

<sup>4</sup> Email, 15.10.2019.

*was that my advice to the Premier was always a professional or a collegiate one, rather than strictly personal.*<sup>5</sup>

A characteristic of the Government was the importance of 'Cabinet solidarity and corporate purpose'. In Greiner's view, Cabinet had to be 'the main focus of ministerial loyalties. Nevertheless, Greiner believed in letting ministers run their own show, much as he was happy to delegate to officials'.<sup>6</sup>

An indication of the emphasis on solidarity is a paper endorsed by Cabinet on 8 August entitled Collective Responsibility and the Pre-Announcement of Government Policy. It was in response to a press story about a submission to Cabinet by a Minister. The paper concluded:

- Ministers should not make any announcement of major Government policy unless and until it has been approved by Cabinet or cleared by the Premier;
- Ministers should not make any statement concerning a matter that is on the Cabinet Agenda, is before Cabinet, has been submitted to the Cabinet Office, or will be considered by Cabinet at some future date, without the prior approval of the Premier or Cabinet;
- Ministers should not at any time state that a matter is on the Cabinet Agenda, is being considered by Cabinet or has been submitted for Cabinet consideration;
- It should be noted that Cabinet includes committees of Cabinet.

### 3. THE NEW AGENDA

STATE OWNED CORPORATIONS BILL; STATE BANK (CORPORATISATION) BILL; GRAIN HANDLING AUTHORITY (CORPORATISATION) BILL; MARINE ADMINISTRATION BILL; ELECTRICITY COMMISSION AMENDMENT BILL; CLOSING THE GOVERNMENT PRINTING OFFICE; COMPETITIVE TENDERING AND COMMERCIALISATION; ACCELERATED ROAD SAFETY AND ROAD IMPROVEMENT PROGRAM

Treasury Secretary from 1985-94, Percy Allan, has said that with the election of the Greiner Government

*a concerted effort was made to accelerate the commercialisation and corporatisation of government businesses, which had advanced haphazardly. A formal framework was adopted to clarify the principles and pathway that would define the desired changes in the way government businesses were to operate. New Zealand had already gone down this path, so NSW drew on its experience to enunciate a model that other States (and the Commonwealth) largely replicated.*<sup>7</sup>

<sup>5</sup> Email, 15.10.2019.

<sup>6</sup> M Laffin, 'The public service' in M Laffin and M Painter eds, *Reform and Reversal: lessons from the Coalition Government in NSW 1988-1995*, Macmillan, 1995, p77.

<sup>7</sup> P Allan, *Reform, Retreat and Relinquishment: lessons from historic state ownership of businesses in NSW*, Centre for Independent Studies, Policy Paper 23, 2019, p3.

An integral part of the new agenda was the *State Owned Corporations Act*. Approved by Cabinet on 1 August, the Bill provided for SOCs to be established as companies under the *Companies (NSW) Code* with five shareholders. The Treasurer and the portfolio minister were to be the voting shareholders. The principal objective of every SOC was to operate as a successful business. Provision was made for clearly identified Community Service Obligations: 'Ministers may direct a SOC to provide unprofitable goods or services to any persons'. Cabinet Office commented that the bill aimed to 'achieve the right mix of commercial freedom and accountability. The Bill will result in the establishment of a commercial environment for SOCs similar to that which exists in the private sector'.

Sturgess has revealed that approval by Cabinet was far from a foregone conclusion: 'Greiner had to pull the corporatisation submission at the first meeting because it was going to lose. He told me to get out and speak to the key ministers and address their concerns'.<sup>8</sup> This was duly done. The bill originally provided for a special minister for SOCs to be the other voting shareholder. However, after discussion in Cabinet, this was changed to enable the Premier to nominate the responsible portfolio minister as the other voting shareholder. Few ministers willingly yield turf to another. Sturgess observes: 'It shows that Greiner was not able to pull off a 1-19 vote all the time, as some have suggested, (this only ever happened a couple of times to my recollection). By and large, Greiner worked with the prevailing views, although he did what he could to change them'.<sup>9</sup>

After passage of the bill, legislation was passed in 1989 to corporatise the Grain Handling Authority and the State Bank. Both were subsequently privatised.

Cabinet approved the restructuring of other government businesses to make their operations more commercial. The Electricity Commission's coal contracts were subjected to competitive tendering. The Maritime Services Board's management and organisational structure were reorganised to incorporate user pays and cost recovery principles. The reconstituted Board was directed to address the separation of commercial and regulatory powers as a matter of urgency. Severing these incompatible roles was a major objective of the Government. Capture of the regulators by the supposedly regulated had been a characteristic of the operation of such bodies in the past.

An example of the Government's 'king hit' approach to reform was the demise of the Government Printing Office (GPO) on 25 July:

*The closure of the GPO was the first major cutback by the Government; 700 jobs were lost, many of these through compulsory redundancy, although almost all appear to have found employment. It came to symbolise the new Government's determination to reform government and the weak labour movement resistance suggested the Government would face little opposition from this quarter.*<sup>10</sup>

A Cabinet Paper from Administrative Services Minister Robert Webster about printing policy said that a consultant's review into the GPO had 'highlighted the inefficiency of this operation and stressed the

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<sup>8</sup> Email, 15.10.2019.

<sup>9</sup> Email, 15.10.2019.

<sup>10</sup> M Laffin, 'The public service' in M Laffin and M Painter eds, *Reform and Reversal: lessons from the Coalition Government in NSW 1988-1995*, Macmillan, 1995, p87.

need to decentralise and deregulate the Government's printing operation'. The review recommended that the GPO be closed and 'a small group of experts be retained to provide appropriate advice and assistance to government departments and authorities. As a result a new State Printing Service is being established to ensure that the Government maintains areas of the previous printing service considered to be economical and viable'. The paper warned that this 'should not be seen as a signal for the proliferation of "in house" printing facilities. Any increase in the use of resources within departments and authorities to set up printing facilities will soon dissipate the expected economies to be achieved from the closure of the GPO'.

Webster's brief was basically to close down his Department. He has commented:

*We had all those government businesses which were so inefficient but which had been kept going because the unions wanted to keep them going. The Government Printing Office, the Government Clothing Factory, the Government Boot Factory. We had a factory making firemen's boots and policemen's boots. They did an evaluation of how much a pair of firemen's boots cost and it was in the thousands of dollars. We sold the Clothing Factory and the others. The Printing Office was a funny one because the printing unions were left wing. I remember being rung by, I won't name him but he was high up in the Labor Council at the time, after I closed the Printing Office and he thanked me.<sup>11</sup>*

Commercialisation and contracting out of government support services continued. The approach, on the whole, was gradualist and consultative. A Discussion Paper prepared for Cabinet by the Department of Health stated:

*The introduction of competitive tendering and commercialisation of health and hospital support services will improve the cost effectiveness of such services and generate savings and revenue which can be used to improve patient services. The UK experience suggests that savings in the order of 20% will be generated. The introduction of this process, however, takes time and needs to be carefully managed and monitored. The strategy proposed for the introduction of competitive tendering in NSW, combining competitive tendering of services for a specified number of projects and reducing the cost of in-house services in other cases, as well as the commercialisation of some services, will avoid some of the problems encountered in the UK and will facilitate the introduction of the policy ... The strategy will assist in reducing union opposition and will provide staff with time to improve the cost effectiveness of current operations so that they can compete on an equitable basis for the provision of services when more widespread tendering is introduced in 1990/91.<sup>12</sup>*

The management of Q-Stores, the government supply warehouse, was contracted out and the Government Cleaning Service restructured to make it more business-like, achieving significant

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<sup>11</sup> NSW Legislative Council Oral History Project interview, 16.7.2018, <https://www.parliament.nsw.gov.au/lc/roleandhistory/Documents/Corrected%20Transcript%20-%20Robert%20Webster.pdf>

<sup>12</sup> On the implementation of this policy see C Hall with S Domberger, 'Competitive tendering for domestic services: a comparative study of three hospitals in NSW' in S Domberger and C Hall eds *The Contracting Casebook: competitive tendering in action*, AGPS, 1995.

economies in both cases.<sup>13</sup> Interestingly, both were done at the Ministerial level and did not go to Cabinet.

The introduction of the '3x3' levy was an example of the Government preferring results to ideology – an old-fashioned tax rise to fund public works. On 14 March Cabinet approved a proposal to increase funding for road safety and improvement programs by \$840 million over the following three financial years by increasing fuel taxes by three cents per litre. Approximately half the sum raised would be allocated to rural roads. Cabinet Office argued that 'a limited fixed term taxation measure for a critical service is not considered inconsistent with the Government's general commitments to the reduction of the overall tax burden in the medium term, and the elimination of inner budget sector borrowings for non-revenue generating purposes'. Treasury estimated that motorists would pay approximately \$60 per annum as a result of the increase, or \$1.16 weekly. The Government anticipated some public hostility but the hypothecation of the funds raised to road construction diffused the backlash. The so-called '3x3' levy was in operation until 2000.

#### 4. THE PUBLIC SERVICE

##### SENIOR EXECUTIVE SERVICE

Public service reform was an imperative for Greiner. His central aims were 'exposing the public sector to market discipline and refocussing the public service on results rather than inputs and processes'. This meant 'a greater focus on the individual performance of senior public sector managers'. Greiner was not anti-public service, rather he wanted to 'raise the effectiveness and status of public servants'.<sup>14</sup> Hence, the introduction of the Senior Executive Service (SES). It was intended to drive cultural change in the bureaucracy. While much of the Government's reform agenda was facilitated by Sturgess, the SES was championed by the head of the Premier's Department, Dick Humphry, a former Victorian Auditor-General.

A discussion paper on the SES was considered at length and endorsed at a Cabinet meeting on 24 July. The objectives of the SES were to: attract and retain talented and experienced senior managers; facilitate lateral recruitment into the public sector; allow flexibility of remuneration arrangements; provide a work environment which fosters and rewards high levels of performance and has clear sanctions for inadequate performance.

The discussion paper canvassed potential criticisms and responses:

*There is potential for criticism of the Government for moving outside strict conformity with National Wage Guidelines while implementing significant productivity reforms resulting in loss of jobs in some agencies ie "Jobs go to fund pay rise for fat cats". It is emphasised that any major shift in remuneration will be based on rigorous and formal evaluation of work value,*

<sup>13</sup> The Government Cleaning Service was privatised in 1993. On Q-Stores see S Domberger, *The Contracting Organisation: a strategic guide to outsourcing*, OUP, 1998, p42.

<sup>14</sup> M Laffin, 'The public service' in M Laffin and M Painter eds, *Reform and Reversal: lessons from the Coalition Government in NSW 1988-1995*, Macmillan, 1995, p76.



*and is required to attract and maintain skilled professionals and managers who are essential to meet Government's economic and social objectives.*

Another possible criticism was the potential for favouritism and politicisation. The discussion paper commented: 'The Premier will issue guidelines on the SES Selection and Appointment process which will emphasise fair selection processes. In addition, an interim grievance committee is proposed to deal with complaints during the establishment period. It has been suggested that Mr Easson, Labor Council, might be invited to participate in this committee'.<sup>15</sup>

## 5. DEREGULATION

### EGG INDUSTRY (REPEAL AND REREGULATION) BILL; DAIRY INDUSTRY (AMENDMENT) BILL; LIQUOR (AMENDMENT) BILL; STREAMLINED BUSINESS LICENSING; FENCING OF PRIVATE SWIMMING POOLS

Deregulation was a focus of Government policy, particularly when it made life easier for consumers. This was a departure from the thinking of previous Liberal administrations whose focus had been mainly pro-business. The Greiner Government tempered this with a pro-customer emphasis.

Marketing boards that regulated the sale of agricultural products had long been a feature of the NSW economy. The original intention had been to ensure small farmers received a fair return for their produce. Greiner considered them an anachronism, and Nationals Leader Wal Murray agreed.

Sturgess regards the abolition of egg licensing as a defining moment:

*The debate was all about what it would mean for consumers, instead of approaching it as "orderly marketing", which is how it had always been seen. Ken Baxter<sup>16</sup> had been head of the Egg Corporation under Labor. He had been responsible for prosecuting small farmers for the terrible crime of selling perfectly healthy eggs without a licence. He told me recently that Neville Wran told him that he was sick of being the Minister for F...g Eggs. Greiner regarded egg deregulation as totemic.<sup>17</sup>*

On 25 July Cabinet approved the Egg Industry Bill. The main aims of the legislation were to:

- repeal the egg quota system;
- reconstitute the Egg Corporation as a purely marketing authority;
- provide that the Corporation can be sold off;
- provide compensation for egg producers (approximate total \$61 million) as quotas had been a form of tradeable property right.

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<sup>15</sup> Michael Easson was Secretary of the NSW Labor Council 1989–1994.

<sup>16</sup> Baxter was head of the Office of Public Management under Greiner and Director-General of the Premier's Department under Bob Carr.

<sup>17</sup> Email, 11.9.2019.

Cabinet Office estimated the existing regulatory regime added '\$22m to the price of eggs each year. Consequently abolition of the system should see a fall in prices for eggs in the medium term between 50 cents and 70 cents per dozen on the wholesale price'.

Out-moded regulations on the sale of dairy products were removed and restrictions on alcohol consumption liberalised. Another initiative was Cabinet's decision on 11 April to create a 'one stop shop' for business licensing. It did not eventuate, partly due to the need to reconcile the interests of the many Departments involved and, more importantly, the lack of technological capability at the time. It was, however, a precursor of the O'Farrell Government's successful creation of Service NSW in 2011.

On one occasion, Cabinet showed flexibility in dealing with current issues by increasing regulation. Local Government and Planning Minister David Hay submitted a Minute proposing mandatory fencing of new swimming pools as a response to drownings of children under five in pools. Some in Cabinet had reservations, considering it an extension of the 'nanny state'. After discussion, Cabinet resolved on 12 December that stringent regulations be imposed on new pools and an extension to existing ones be considered.

## 6. LAW AND JUSTICE

SENTENCING BILL; CRIMES (LIFE SENTENCES) BILL; BAIL (AMENDMENT) BILL; CONFISCATION OF PROCEEDS OF CRIME BILL; CRIMES (COMPUTERS AND FORGERY); AMENDMENT BILL WORKERS COMPENSATION AMENDMENT BILL; DUST DISEASES TRIBUNAL BILL; GAMING AND BETTING (TWO-UP) AMENDMENT BILL

An important part of the Coalition's policy for the 1988 election was getting tough on law and order. After the scandals of the Wran era, which saw Correctives Services Minister Rex Jackson imprisoned for corruptly releasing prisoners, integrity in the administration of justice was a priority issue for Greiner. Corrective Services Minister Michael Yabsley, when opposition shadow minister, had campaigned heavily on alleged weaknesses in the sentencing, parole and prison systems. A number of measures considered by Cabinet were related to this.

On 9 May, Cabinet approved the Sentencing Bill. Yabsley's Cabinet Minute summarised the main purposes of the legislation as to 'promote truth in sentencing by requiring convicted offenders to serve in prison (without any reduction) the minimum or fixed term of imprisonment set by the court; and to provide that prisoners who have served their minimum term of imprisonment and who are of good behaviour may be released on parole for the residue of their sentences. It is not intended to increase generally by the Bill the time that convicted offenders actually serve in prison'. In response to the Rex Jackson affair, the legislation removed the power of the Minister for Corrective Services to recommend the release on licence of prisoners serving life sentences.

George Zdenkowski has noted that, in practice, the *Sentencing Act* meant that a prisoner would serve

*a minimum of 75% of his or her total sentence in custody. This represents a substantial increase on pre-existing practice, unless the total sentence is adjusted downwards to accommodate the increase. Moreover the law abolished all forms of remission without giving any guidance to*

*the courts to take account of the impact of this measure. As predicted, this law has been at least partly responsible for an explosion in NSW's already over-crowded prison system.<sup>18</sup>*

Amendments to the *Crimes Act* concerning life sentences were approved by Cabinet on 25 July to implement the Coalition's election commitment to make 'life equal life'. The Cabinet Office Minute stated:

*A life sentence will mean just that, not an unspecified period as at present, nor a period of 20 years as suggested in the election undertaking. However, the judge will be empowered to set a determinate sentence for murder in lieu of a life sentence. This accords with truth in sentencing principles. The Offenders Review Board (Serious Offences) will not be able to consider for release any offender sentenced under the proposed legislation. The [Attorney-General's] Minute also proposes that a maximum term of 25 years be set for offences other than murder which presently carry a life penalty.*

Sturgess has said of these 'truth in sentencing' measures:

*The Life=Life legislation was about forcing the judges to say exactly what they meant. For many years, when a judge sentenced someone to gaol for life, they knew they would be in for about 14 years. The executive wore the opprobrium of supposedly releasing them early. This and the primary truth in sentencing legislation arose out of the Jackson scandal. But this did wind up having the unintended effect of people spending more time in gaol. And (quite separately) toughening up on bail restrictions (pushed by the Police not the Government) contributed to more people in prison.<sup>19</sup>*

Approval for the Bail Amendment Bill was given by Cabinet on 20 April.

Cabinet approved a proposal from Attorney-General John Dowd on 18 April to make the *Crimes (Confiscation of Profits) Act 1985* more effective, particularly against drug traffickers. The new provisions: created the offence of money laundering; facilitated the identification, location and quantification of property acquired through crime; enabled restraining orders to be issued not just against the possessions of a defendant but also property in the effective control of a defendant. On conviction, the onus of proof was reversed so that the Court was able to assume that the whole of the defendant's assets and any property which had passed through his hands in the previous six years were the proceeds of drug trafficking. The Independent Commission Against Corruption would be able to utilise the expanded information-gathering powers of the Act.

The information technology era gave rise to new forms of crime such as 'hacking'. On 26 April Cabinet responded to this by approving amendments to the *Crimes Act* to: create the offences of unauthorised access to and the damaging of data in computers; extend the definition of deception to acts done with the intention of causing computer systems to make unauthorised responses. Attorney-General Dowd commented:

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<sup>18</sup> 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.

<sup>19</sup> Email, 11.9.2019.

*The activities of people who break into computers must be curtailed, and these offences are required to criminalise this antisocial and potentially dangerous and disruptive practice. The Government has moved quickly to rectify problems in this area of the law and to create new offences that are called for in the light of advances in technology.<sup>20</sup>*

The Coalition had promised to restore the common law right to sue for compensation for work-related injuries, abolished by the Unsworth Labor Government. After a nine month review, Cabinet on 26 April approved a package of legislative reforms to WorkCover including: increased statutory benefits; restored limited common law entitlements with a 33% disability threshold; restoration of the Compensation Court's jurisdiction to deal with WorkCover claims; abolition of 'to and from work' claims. Suzanne Jamieson has observed that the Coalition's changes to workers' compensation 'built on those of the previous Labor Government, plus some reversion to common law rights in recognition of the civil liberties claims of the Bar. Overall, there was strong emphasis on commercial principles in the construction and management of the scheme and on minimising the costs of doing business in NSW'.<sup>21</sup>

The common law right to sue had been retained for miners. According to Cabinet Office: 'Because of the promises made by the former Government to mining unions that no reduction in entitlements would occur for that industry, the right to take action at common law was also retained for persons suffering from dust diseases. The bulk of dust disease claims come from mineworkers, asbestos workers and persons involved in grain handling'. The Cabinet Office Minute added that 'to settle a long running dispute by Elcom workers which came to a head in June 1988, the present Government undertook to create a special tribunal to expedite consideration of claims by Elcom workers'. Cabinet approved the Dust Diseases Tribunal Bill on 11 April.

When introducing the legislation, Attorney-General Dowd said it would create a tribunal with jurisdiction to hear

*claims in tort for negligence and breach of statutory duty relating to death or personal injury attributable to specified dust diseases and other dust-related conditions. Honourable members will be aware of the considerable delays that exist in the common law jurisdictions of both the Supreme Court and the District Court, which this Government inherited. Delays, of course, are particularly critical for plaintiffs with dust diseases, such as mesothelioma, which have a long latency period but, once diagnosed, resulting in rapid deterioration and usually lead to death within 12 to 18 months. The Government is committed to these claims being dealt with expeditiously by the creation of a separate tribunal that will provide a fast-track mechanism.<sup>22</sup>*

Greiner was concerned by reports Police were preparing to raid illegal 'two-up' games on Anzac Day. He faced a dilemma as a Government recently elected on an anti-corruption platform could not tell the Police to ignore the law. Equally, raids on RSL clubs on Anzac Day would be seen as heavy-handed

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<sup>20</sup> NSW Parliamentary Debates, 3.5.89, p7328.

<sup>21</sup> 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, p151.

<sup>22</sup> NSW Parliamentary Debates, 3.5.89, p7398.

and lead to intense criticism. The decision was made to legalise two-up on Anzac Day. A proposal was quickly drafted and placed before Cabinet. Cabinet Office commented that the game was 'widely accepted as part of traditional Anzac Day activities and is openly played on Anzac Day in registered clubs, hotels, race-courses, other public places and private premises'. The legislation provided that two-up would only be lawful on Anzac Day and that proceeds must be distributed to charities. It was approved on 18 April and passed through Parliament with bipartisan support before Anzac Day.

## 7. ENVIRONMENT

### OZONE PROTECTION BILL; NATIONAL PARKS AND WILDLIFE (MINING PROHIBITION) AMENDMENT BILL; ENVIRONMENTAL OFFENCES AND PENALTIES BILL

The environment had an important place in the Greiner Government's agenda. In Opposition, Greiner had described the Coalition's philosophical approach as 'warm and dry'. In Government, particularly due to the commitment of Environment Minister Tim Moore, it became 'warm, dry and green'. The challenge was to develop policies that were environmentally progressive within the Government's overall ideological framework.

Moore has commented:

*In Opposition, we had discussed how we would approach the "brown" and "green" ends of the environment. The former was a primarily an urban concern about pollution, including the Sydney Water Board sewage discharges from North Head and Malabar. The "green" end of the environmental spectrum - national parks, forestry and wilderness issues - was of greater sensitivity for the National Party, resulting in more political care being engaged in our approach to such issues. Because the "brown" end of the spectrum was primarily urban in its focus, the National Party accorded Nick Greiner and myself great freedom to reform the Sydney Water Board and the State Pollution Control Commission and the various legislative areas involved with them.<sup>23</sup>*

In fulfilment of an election promise, Moore submitted a Cabinet Minute on 13 April to prohibit mining in national parks, nature reserves, historic sites and Aboriginal areas. The previous Labor Government had introduced a similar bill in 1987 but it had not been passed before Parliament was dissolved for the 1988 election.

Deputy Premier and Minister for State Development and Public Works Murray supported a ban in existing national parks. However, in regard to areas being considered for future parks he believed that 'the State should ensure that the full economic potential of that area is evaluated in relation to its benefits to NSW and that any decision to make an area a national park or similar should be taken in full knowledge of the information available'. Murray also argued that public as opposed to private exploration for mineral resources should be permitted in national parks. Minerals and Energy Minister Neil Pickard had similar reservations to Murray. He noted that the mining industry strongly opposed the proposal.

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<sup>23</sup> Email, 1.11.2019.

In response, Moore said that he would support a provision in the legislation for public exploration subject to the approval of the Minister administering the *National Parks and Wildlife Act*. Notice of intent to grant such a permission would be subject to disallowance in Parliament. The 1987 Labor bill had contained a similar provision.

On this occasion, Cabinet Office came out swinging. Its advice on the Minute was uncompromisingly against permitting public exploration:

*This Government's commitments and decision-making clearly reflect a policy of excluding all mining activities, whether public or private, from national parks and equivalent areas. The amendment will therefore not enshrine Government policy in law. The final proposal will serve no real purpose as political pressure will still be brought to bear to allow private mining exploration via a de facto system of public mining exploration. Even if this Government does not succumb to this pressure, the mechanism has been provided and highlighted for use at a later date. It could be argued that by allowing public exploration this Government is signalling a major change in policy in this area. The proposal provides a mechanism for an eventuality that may never occur. In doing so the risk is that the community will see the whole proposal as a sham. The alternative is to prohibit all mining and exploration at this stage and to cross the bridge of essential mining or exploration (if we ever come to it) by way of special legislation.*

Cabinet decided to the contrary. A provision for public prospecting was inserted in the bill. Moore was asked to prepare a submission on consultation procedures within the public sector for new national park proposals. A Cabinet Sub-Committee would be established to deal with the questions of resource assessment before gazettal of national parks.

On 23 May 1989, Moore submitted a Cabinet Minute proposing legislation to ban the sale or distribution of products likely to damage the ozone layer. Essentially, the bill would establish a framework for the making of regulations to control processes involving potential or actual release of ozone depleting substances. It went further than the existing Commonwealth legislation.

In addition, the Minute proposed that the Minister for the Environment, in consultation with relevant Ministers, co-ordinate the Government's response to climate change and ozone depletion matters. Written by Moore himself, the Minute contained detailed background material warning of the effects of climate change, stating 'the greenhouse effect will happen; if it does not, then the current knowledge of the laws of nature are wrong. Therefore, the question is not will it happen, but when and by how much'.

Moore's Minute was controversial. Sturgess objected to the fact that 'Tim was proposing to pass blanket legislation and to put through regulations as required (and to a large extent, as determined by himself)'.<sup>24</sup> The Minute triggered a turf war with Local Government and Planning Minister Hay. He supported ozone legislation but objected to Moore assuming a co-ordinating role for climate change. Hay had previously submitted a proposal to Cabinet proposing that he should have this function and that Moore's responsibility should be limited to technical matters. Agriculture Minister Ian Armstrong, Natural Resources Minister Ian Causley, and Minerals and Energy Minister Neil Pickard made submissions supporting Hay.

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<sup>24</sup> Email, 22.10.2019.

On 4 July, Cabinet supported the introduction of the Ozone Protection Bill. However, in view of the opposition to Moore's Minute, it decided that a Cabinet Sub-Committee would be formed to consider climate change policy and regulations under the legislation and make recommendations to Cabinet. Chaired by Moore, it would consist of Hay, Armstrong, Causley, Pickard, and Minister for Business and Consumer Affairs Gerry Peacocke.

The Environmental Offences and Penalties Bill was pioneering legislation. The sharp increase in penalties it contained, including for the first time imprisonment, sent a clear message that the Government was serious about dealing with pollution. In his 3 July Cabinet Minute Moore said:

*The Bill seeks to catch anyone who wilfully or negligently disposes of waste, conspires or abets in that activity, or contributes substantially to the leak, spill or escape of pollutants. The seriousness of the penalties, and the need for the Minister or State Pollution Control Commission to launch prosecutions, will mean that the Bill is not used against relatively inconsequential offenders. Most of these will continue to be prosecuted under existing Acts.*

Jennifer Norberry has observed that historically penalties for pollution offences had been low and there had been little in the way of enforcement:

*The first dramatic changes appeared in Australian environmental offence and penalty provisions with the introduction of the Environmental Offences and Penalties Act 1989 (NSW). As originally formulated, the Act provided for aggravated pollution offences carrying a maximum penalty of \$1million for a corporation and \$150,000 or seven years imprisonment, or both, for an individual.<sup>25</sup>*

According to Moore:

*A significant area of concern in Opposition had been what we considered to be the entirely inadequate criminal law structure available for environmental law enforcement. In this regard, there were two major challenges. The first was designing and legislating a new, much tougher environmental criminal law framework that applied across water, air and other pollution areas, whilst the second was to address the question of the immunity from environmental prosecution of government departments and instrumentalities. This immunity had arisen as a consequence of a policy that had been adopted, from my memory, in the late 1950s. We substituted a regime where, if I discussed the prosecution with the relevant portfolio Minister and they agreed, it was initiated. I remember the first prosecution involved a Government transport facility in Newcastle. The portfolio Minister, Bruce Baird, was an enthusiastic supporter of the changes and readily granted his consent. The second involved the Hunter*

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<sup>25</sup> A 1990 amendment introduced a graduated three tier penalty system. Tier one was for aggravated offences, tier two dealt with substantive breaches, and tier three penalised minor offenders without the need to resort to litigation. J Norberry, 'Australian pollution laws: offences, penalties and regulatory agencies' in N Gunningham, J Norberry and S McKillop eds *Environmental Crime: proceedings of a conference held 1-3 September 1993, Hobart*, Australian Institute of Criminology, 1995, <https://aic.gov.au/sites/default/files/publications/proceedings/downloads/26-norberry.pdf>

*Water Board, an entity within my own responsibility. Understandably, I agreed with myself that the prosecution was entirely appropriate!*<sup>26</sup>

## 8. WATER RESOURCES

### RURAL WATER SUPPLY PROGRAM; WATER RESOURCES COUNCIL; RURAL WATER PRICING

On 2 February, Cabinet approved the creation of a Rural Water Supply Program to provide financial assistance of 50% of the capital cost of rural water projects. This was in fulfilment of an election promise to restore a scheme abolished by the Wran Government. In this instance, the user pays principle was submerged by the needs of rural voters.

A review into the water resources industry had been set up in 1988. Natural Resources Minister Ian Causley noted that almost every submission recommended 'the establishment of a high level co-ordinating committee for the effective management of water resources. Most submitted that a strong co-ordination mechanism was sadly lacking, and stressed its importance in view of the fact that water interests were spread over at least four portfolios'. He supported the review's recommendation to establish a Water Resources Council 'to ensure the Minister for Natural Resources, as resource owner, obtained comprehensive advice and to provide a forum for formal co-ordination at the chief executive level'.

Bureaucratic in-fighting had been a feature of water policy. Cabinet Office noted that major agencies such the Public Works Department had, in the past, been 'reluctant to co-operate on cross-portfolio issues'. Acting on the Review's advice that 'turf fights be resolved at Ministerial level', Causley recommended that the Council report to the Natural Resources Sub-Committee of Cabinet through the Minister for Natural Resources. He strongly advocated an independent, high-calibre figure as Chair: 'This should help avoid the Council being labelled as a tame rubber stamp owned by, say, the Department of Water Resources, and should also help eliminate petty bickering. In fact, past experience suggests that the Council will only be totally effective with an independent Chairperson'. Cabinet approved the formation of the Council as recommended in Causley's Minute on 2 February.

Cabinet agreed to introduce a commercially oriented water pricing policy for irrigators on 4 July. In this instance the Government moved cautiously. Cabinet decided that immediate privatisation 'was not feasible because irrigators will not accept ownership while infrastructure remains in its poor state (requiring \$200M for rehabilitation)'. A package of 'sweeteners' was endorsed to ameliorate the effect of cost-recovery pricing. The Department of Water Resources believed that it could 'placate the irrigation community if the package is endorsed in its entirety and carefully negotiated (with minor concessions, if necessary)'.

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<sup>26</sup> Email, 1.11.2019.



## 9. NEW ISSUES AND SOCIAL TRENDS

### RACIAL VILIFICATION BILL; ABORIGINAL AFFAIRS

The 1980s saw new trends and issues come to prominence in State politics. It is sometimes overlooked that the Greiner Government was responsive to these developments.

The Government issued a discussion paper on proposed legislation to outlaw racial vilification in December 1988. This was very much a Greiner initiative. On 20 April, Cabinet approved legislation to amend the *Anti-Discrimination Act* to provide that 'it shall be unlawful for any person by a public act to vilify a person or a group of persons on the ground of that person's or group of persons' race'. An exemption was provided for 'an act done reasonably and in good faith for general artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate'. The emphasis of the Bill was on mediation and conciliation with prosecution a last resort. NSW was the first State to enact racial vilification legislation. It was a clear statement that such behaviour was no longer acceptable.

Greiner came to office with reservations about the *Aboriginal Land Rights Act*. However, he launched an extensive consultation program. A Cabinet document said:

*The Greiner Government is not satisfied that public expenditure on programs for Aboriginal advancement to date has achieved adequate results. After examining submissions commenting on its September 1988 Discussion Paper, the Government proposes to legislate for significant changes in the administration of Aboriginal affairs and in the administration of Aboriginal lands. These changes are designed to help Aboriginal people to improve their socio-economic status, better manage their land and their assets, and achieve real self-determination and economic independence.*

The *Aboriginal Land Rights (Amendment) Act* was passed in 1990.<sup>27</sup> In his biography of Greiner, Ian Hancock has observed that he 'dropped his opposition to what he had criticised as separatism to focus on accountability and management, on applying code of conduct principles to officials, and on socio-economic development. For someone with supposedly "bad political instincts", he was acutely aware that politics was about the possible'.<sup>28</sup>

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<sup>27</sup> For a detailed account of the background see B Morris, *Protests, Land Rights and Riots: postcolonial struggles in Australia in the 1980s*, Berghahn Books, 2015.

<sup>28</sup> I Hancock, *Nick Greiner: a political biography*, Connor Court, 2013, p241.

## AUTHOR ACKNOWLEDGMENT

I would like to thank Nick Greiner, Tim Moore and Gary Sturgess for their assistance. At NSW State Archives and Records, I would like to acknowledge the support of Martyn Killion, Fiona Sullivan and Suzanne Upton, and at Create NSW, Emma Blong and Kristoff Clark. The responsibility for errors and omissions remains my own.

## APPENDIX

### Location in the State Archives Collection of Cabinet Papers Cited

The Cabinet Minutes for 1989 form part of the series NRS 12082 Cabinet documents, 1922-2014 from the State Archives Collection.

- **COLLECTIVE RESPONSIBILITY AND THE PRE-ANNOUNCEMENT OF GOVERNMENT POLICY:** Cabinet Discussion Paper, 8 August , pp 63-65 NRS 12082\_34\_[56]
- **STATE OWNED CORPORATIONS BILL:** Cabinet Minute No. 89-258, 26 July, pp 50 -100 NRS 12082\_34\_[52]
- **STATE BANK (CORPORATISATION) BILL:** Cabinet Minute No. 89-410, 14 November, pp 231-254, NRS 12082\_34\_[82].
- **GRAIN HANDLING AUTHORITY (CORPORATISATION) BILL:** Cabinet Minute No. 89-298, 11 September, pp 148-193 NRS 12082\_34\_[66]
- **MARINE ADMINISTRATION BILL:** Cabinet Minute No. 89-177, 2 May, pp 29-53 NRS 12082\_34\_[32]
- **ELECTRICITY COMMISSION AMENDMENT BILL:** Cabinet Minute No. 89-302, 8 September , pp 83-147 NRS 12082\_34\_[66]
- **CLOSING THE GOVERNMENT PRINTING OFFICE:** Discussion Paper, 8 August, pp 105-111, NRS 12082\_34\_[56].
- **COMPETITIVE TENDERING AND COMMERCIALISATION OF HEALTH AND HOSPITAL SUPPORT SERVICES:** Cabinet Discussion Paper, 26 June, pp 291-313 NRS 12082\_34\_[42].
- **ACCELERATED ROAD SAFETY AND ROAD IMPROVEMENT PROGRAM:** Cabinet Minute No. 89-54, 14 March, pp 93-188, NRS 12082\_34\_[12]; Cabinet Minute No. 89-130, 18 April, pp 323-343, NRS 12082\_34\_[22]; Media release, 26 September, pp 53-54, NRS 12082\_34\_[70]; Cabinet Minute No. 89-310, 26 September, pp 278-314, NRS 12082\_34\_[70]; Cabinet Minute No. 89-313, 26 September, pp 2-154, NRS 12082\_34\_[71]; Cabinet Minute No. 89-408, 16 November, pp 209-217, NRS 12082\_34\_[83]; Cabinet Minute No. 89-408, 21 November, pp 278-305, NRS 12082\_34\_[86].
- **SENIOR EXECUTIVE SERVICE:** Discussion Paper, 24 July, pp 15-39, NRS 12082\_34\_[48].
- **EGG INDUSTRY (REPEAL AND REREGULATION) BILL:** Cabinet Minute No. 89-249, 25 July, pp 245-326, NRS 12082\_34\_[50].
- **DAIRY INDUSTRY (AMENDMENT) BILL:** Cabinet Minute No. 89-326, 17 October, pp 210-244, NRS 12082\_34\_[74]; Cabinet Minute No. 89-428, 21 November, pp 264-277, NRS 12082\_34\_[86].

- **LIQUOR (AMENDMENT) BILL:** Cabinet Minute No. 89-77, 21 March, pp 149-260, NRS 12082\_34\_[13]; Cabinet Minute No. 89-95, 4 April, pp 334-466, NRS 12082\_34\_[16].
- **STREAMLINED BUSINESS LICENSING:** Cabinet Minute No. 89-66, 11 April, pp 2-70, NRS 12082\_34\_[20].
- **FENCING OF PRIVATE SWIMMING POOLS:** Cabinet Minute No. 89-457, 12 December, pp 254-332, NRS 12082\_34\_[92].
- **BAIL (AMENDMENT) BILL:** Cabinet Minute No. 89-27, 11 April, pp 240-261 NRS 12082\_34\_[21]; Cabinet Minute No. 89-162, 19 April, pp 467-493 NRS 12082\_34\_[24].
- **SENTENCING BILL/CRIMES (LIFE SENTENCES) BILL:** Cabinet Minute No. 89-191, 9 May, pp 188-223, NRS 12082\_34\_[35]; Cabinet Minute No. 88-351, 25 July, pp 28-60, NRS 12082\_34\_[50]; Cabinet Minute No. 89-380, 14 November, pp 169-192, NRS 12082\_34\_[80]; Cabinet Minutes No. 89-380 & 89-447, 30 November, pp 2-159, NRS 12082\_34\_[89].
- **CONFISCATION OF PROCEEDS OF CRIME BILL:** Cabinet Minute No. 89-147, 18 April, pp 2-71, NRS 12082\_34\_[23]; Cabinet Minute No. 89-421, 21 November, pp 264-348, NRS 12082\_34\_[85].
- **CRIMES (COMPUTERS AND FORGERY) AMENDMENT BILL:** Cabinet Minute No. 89-89, 11 April, pp 239-282, NRS 12082\_34\_[18]; Cabinet Minute No. 89-160, 26 April, pp 99-131, NRS 12082\_34\_[25].
- **WORKERS COMPENSATION AMENDMENT BILL:** Cabinet Minute No. 89-115, 26 April, pp 202-274, NRS 12082\_34\_[28]; Cabinet Minute No. 89-212, 27 June, pp 62-320, NRS 12082\_34\_[41]; Cabinet Minute No. 89-261, 27 July, pp 332-349, NRS 12082\_34\_[52]; Cabinet Minute No. 89-266, 1 August, pp 48-170, NRS 12082\_34\_[55]; Cabinet Minute No. 89-403, 14 November, pp 296-344, NRS 12082\_34\_[81]; Cabinet Minute No. 89-425, 21 November, pp 245-263, NRS 12082\_34\_[86].
- **DUST DISEASES TRIBUNAL BILL:** Cabinet Minute No. 89-91, 11 April, pp 391-427, NRS 12082\_34\_[18]; Cabinet Minute No. 89-176, 2 May, pp 2-28, NRS 12082\_34\_[32].
- **GAMING AND BETTING (TWO-UP) AMENDMENT BILL:** Discussion Paper, 11 April, pp 273-278, NRS 12082\_34\_[21]; Cabinet Minute No. 89-142, 18 April, pp 331-356, NRS 12082\_34\_[23].
- **OZONE PROTECTION BILL:** Cabinet Minute No. 89-203, 4 July, pp 199-402, NRS 12082\_34\_[43].
- **NATIONAL PARKS AND WILDLIFE (MINING PROHIBITION) AMENDMENT BILL:** Cabinet Minute No. 89-136, 20 June, pp 99-196, NRS 12082\_34\_[40]; Cabinet Minute No. 89-283, 5 September, pp 80-94, NRS 12082\_34\_[63].
- **ENVIRONMENTAL OFFENCES AND PENALTIES BILL:** Cabinet Minute No. 89-230, 3 July, pp 184-187, NRS 12082\_34\_[44].
- **RURAL WATER SUPPLY PROGRAM:** Cabinet Minute No. 89-13, 2 February, pp 226-272, NRS 12082\_34\_[4].
- **WATER RESOURCES COUNCIL:** Cabinet Minute No. 88-416, 29 November 1988, pp 71-79, NRS 12082\_34\_[4].
- **RURAL WATER PRICING:** Cabinet Minute No. 89-216, 4 July, pp 2-174, NRS 12082\_34\_[44].
- **RACIAL VILIFICATION BILL:** Cabinet Minute No. 89-149, 20 April, pp 143-258, NRS 12082\_34\_[24]; Discussion Paper, 2 May, pp 212-222, NRS 12082\_34\_[32].
- **ABORIGINAL AFFAIRS:** Discussion Paper, 21 February, pp 367-369, NRS 12082\_34\_[8].