

Legislative Council

Monday, 8 February 1982

LEGISLATIVE COUNCIL: 150th ANNIVERSARY SPECIAL SITTING

The PRESIDENT (the Hon. Clive Griffiths) took the Chair at 8.00 p.m., and read prayers.

Visitors: Welcome

THE PRESIDENT (the Hon. Clive Griffiths): Honourable members, ladies and gentlemen, I wish personally to welcome everyone to this historic meeting of the Legislative Council. In particular, I would like to acknowledge the presence on this occasion of the Hon. Harold W. Young, President of the Australian Senate; the Hon. J. R. Johnson, President of the Legislative Council of New South Wales; the Hon. Selwyn John Muller, Speaker of the Legislative Assembly in Queensland; and the Hon. William C. Hodgman, O.B.E., Q.C., President of the Legislative Council of Tasmania. I hope you all have an enjoyable evening.

JOINT SITTING

Governor's Speech: Delivery

His Excellency the Governor (Rear-Admiral Sir Richard John Trowbridge, K.C.V.O., K.St.J.) entered the Council Chamber at 8.05 p.m.; and, the members of the Legislative Assembly having also attended in the Chamber obediently to summons. His Excellency was pleased to deliver the following Speech—

Mr President and Honourable Members of the Legislative Council:

Mr Speaker and Members of the Legislative Assembly:

This joint sitting of both Houses of Parliament has been called to mark an outstanding milestone in the history of the Government of our State, and it was exactly 150 years ago yesterday, that the first meeting of the Legislative Council took place in a building near the site at present occupied by Council House.

At that first meeting, four people were present: the Governor, Captain James Stirling, the senior officer of His Majesty's land forces, Captain Frederick Chidley Irwin, the Colonial Secretary, Peter Broun, Esquire, and the Advocate General, William Henry Mackie, Esquire, the Surveyor

General, Captain John Septimus Roe, was also a member of the Council, but was unable to attend this and other early meetings.

It says a great deal for the origins of our Parliamentary background, that at this very first meeting, a number of the rules adopted for the conduct of the Council are still contained in the standing orders of our present Parliament and the considerable foresight of those original members of the Council again becomes clear when it is recalled that at a subsequent meeting, held on 10th February, 1832, a bill to establish a court of civil judicature was passed, thus becoming the first Act to be placed on the statute book, and that many of the provisions of that Act still appear in our statutes today.

Since those far off times when meetings were held *in camera*, and all the members of the Council were nominated by the Governor, there have been great changes.

Today and for many years past, the Constitution Act provides that there should be a Legislative Council and a Legislative Assembly and authorises the Sovereign, by and with the advice and consent of the Council and the Assembly, to make laws for the peace, order and good government of this State.

To mark the 150th anniversary of the Legislative Council, messages have been exchanged between the Council and Her Gracious Majesty, Our Sovereign, Queen Elizabeth II and it now gives me considerable pleasure to read to you the contents of these two messages:

To The Queen's Most Gracious Majesty

May it please Your Majesty

We, the Members of the Legislative Council of Western Australia, as we approach the one hundred-and-fiftieth anniversary of the foundation of the Council, humbly beg leave to offer to Your Majesty our respectful greetings.

We are proud of our Parliamentary traditions, our country and the Commonwealth, and we acknowledge our duty to preserve our heritage.

We accordingly claim the privilege of offering this loyal tribute of esteem. It is offered in the earnest hope that Your Majesty will long continue in happiness, good health and prosperity to reign over your loyal and devoted subjects.

CLIVE GRIFFITHS

President

To the President of the Legislative Council of Western Australia

Thank you for the message from the Members of the Legislative Council of Western Australia, marking the 150th anniversary of the first meeting of the Council.

I congratulate you on one-and-a-half centuries of Parliamentary government in the State and express my confidence that the deliberations of the House will continue to further the happiness and prosperity of the people.

My husband and I and many other members of our family have had the pleasure of visiting Western Australia on a number of occasions. We have always been impressed by the progress we have seen.

The founder Members of the Legislative Council could hardly have foreseen that their labours would have led to the remarkable developments which have shaped the State of 1982.

ELIZABETH REGINA

Mr President and Honourable Members of the Legislative Council:

Mr Speaker and Members of the Legislative Assembly:

God save the Queen and bless this land of ours.

[His Excellency then withdrew from the Chamber, and the President resumed the Chair.]

Congratulatory Messages

THE PRESIDENT (the Hon. Clive Griffiths): Honourable members, ladies and gentlemen, I have received the following messages. The first is from the Rt. Hon. Lord Hailsham, Speaker of the House of Lords, which reads, in part, as follows—

As Speaker of the House of Lords I send to you my cordial congratulations on your first 150 years of parliamentary government, and my best wishes for the next 150 years.

The second message is from the Rt. Hon. Malcolm Fraser, Prime Minister of Australia, and reads as follows—

The one hundred and fiftieth anniversary of the first meeting of the Legislative Council is a noteworthy occasion in the history of Western Australia. From the days when the Council was originally selected by the Governor it has come a long way in the great Westminster democratic tradition developed during the nineteenth and twentieth centuries.

The Council can look back with pride on the achievements of this State and the part it has played in them for the past one hundred and fifty years.

I regret that my wife and I are unable to be with you on this historic occasion of the joint sitting of both Houses of the Western Australian Parliament. I would like to extend our best wishes to the Council on this significant occasion.

Messages of congratulation and regret at not being able to be present tonight were also received from—

The Rt. Hon. Sir Billy Snedden, Speaker of the House of Representatives.

The Hon. A. M. Whyte, President of the Legislative Council of South Australia.

The Hon. F. S. Grimwade, President of the Legislative Council of Victoria.

The Hon. R. G. Davies, Speaker of the House of Assembly of Tasmania.

The Hon. L. B. Kelly, Speaker of the Legislative Assembly of New South Wales.

The Hon. S. J. Plowman, Speaker of the Legislative Assembly of Victoria.

The Hon. B. C. Eastick, Speaker of the House of Assembly of South Australia.

[The Speaker and members of the Legislative Assembly then withdrew from the Chamber.]

Address-in-Reply: Motion

THE HON. I. G. MEDCALF (Metropolitan—Leader of the House) [8.22 p.m.]: I move, without notice—

That the following Address be transmitted to His Excellency the Governor for presentation to Her Majesty the Queen—

We, the Members of the Legislative Council of the State of Western Australia, in Parliament assembled, desire to express our loyalty to the Throne and to Her Majesty the Queen and our appreciation of the honour that has been conferred upon this Legislative Council by Her Majesty's gracious message of congratulations on the celebration of the one hundred and fiftieth anniversary of the first meeting of the Council.

This special joint sitting of Parliament has been arranged for the purpose of receiving the Message from Her Majesty the Queen, conveyed to us this evening by His Excellency the Governor,

commemorating the first meeting of the Legislative Council in Western Australia on 7 February 1832. One hundred and fifty years later we recognise that historic meeting as the beginnings of Parliament in Western Australia and the introduction to this part of the world of a system of government that had been maturing over many centuries.

This is also an appropriate and opportune time for us, as Western Australians, to pay tribute to the early settlers of this State and to our pioneer legislators. The first settlers arrived at the Swan River in June 1829. Under an Act passed in that year by the Imperial Parliament certain officials were appointed to provide "for the Government of His Majesty's settlement in Western Australia on the coast of New Holland".

Then, on 1 November 1830, an Order-in-Council was issued in England "for the establishment of a Legislative Council to make all necessary laws and to constitute all necessary courts for the peace, order and good government of the Settlement". After some delay, the Order-in-Council was published in Western Australia on 29 December 1831, and consequently the first meeting of the Legislative Council was not held until 7 February 1832.

Amongst the records of the Legislative Council is the first minute book recording that meeting over which His Excellency, James Stirling Esquire, Governor and Commander in Chief, presided. Captain Stirling at that time was only 41 years of age, although he had already had an adventurous career. Other members present were the Hon. F. C. Irwin, senior officer of His Majesty's Land Forces; the Hon. Peter Broun, Colonial Secretary; and the Hon. W. H. Mackie, Advocate General. Captain John Septimus Roe, Surveyor General, was also a member of the Council, but did not attend the first meeting.

Much has been recorded of the exploits of Captain James Stirling, but I will recount just a portion of the work and good example he set in the founding of this State. It is said of him that during the early struggles of the settlers to get established after landing he worked hard with the rest and did not spare himself. His enthusiasm and personal exertions infused spirit into the others.

He took a deep interest in farming. Where the Helena River approached the Swan, Stirling had a farm extending from one river to the other. It became highly improved. This was Woodbridge. As a writer states, "So energetic was Governor Stirling's Administration that he not only prevented the abandonment of the colony,

which was suggested a few years after its establishment, but also he put it in a fair way to future success".

Captain Irwin, who came next to the Governor in seniority, was in charge of a detachment of the 63rd Regiment which arrived in HMS *Sulphur* soon after the *Parmelia*. During Captain Stirling's absence in England, Captain Irwin acted as Lieutenant Governor, and for a short period in 1847-48, as Governor.

Captain Irwin published a book in England in 1835 in which he displayed an earnest desire to advance the colony. He predicted in the book that Western Australia "is destined by providence to take a distinguished rank amongst the dependencies of the British Empire". That was at a time when many people could see no future for Western Australia.

Perhaps one of the most outstanding members of the first Council was Captain John Septimus Roe, RN, who in 1832 was but 34 years of age. He had been a member of Lieutenant King's expedition from Sydney in 1821. He left England in the *Parmelia* and was already a noted explorer. He took part in nearly every expedition of exploration in the colony in the early days. Probably his most notable journey was, when in September 1848 he set out from York with a party of six persons and 11 horses. The expedition returned five months later after severe privations, having explored the country along the south coast, a journey of 1 800 miles. Roe served no less than 42 years as Surveyor General and died in Perth in 1878.

The Colonial Secretary was Mr Peter Brown, who later reverted to the family name of Broun. It had been thought wise to change his name originally because of political troubles in Scotland. He had a couple of farms, one on the upper Swan and the other one, a highly improved property, in the neighbourhood of Guildford.

The fifth member of the first Legislative Council was Mr W. H. Mackie, a lawyer who subsequently became the colony's first judge. He is described as "a gentleman whose integrity, assiduity and professional talent are highly appreciated by the colonists", and who "administered the laws with vigour and impartiality".

So was constituted the first Legislative Council in Western Australia, and these were its members.

The first Bill to be passed was for the constitution of a civil court for the administration of justice.

The second Bill, which provided for "a summary remedy for trespasses committed by cattle and other livestock" was carried at the fourth meeting of the Council.

These and other such Bills were passed without amendment, but it is interesting to note that some of the problems encountered in 1832 are still experienced in the 1980s. I refer to questions such as liquor. With lawmakers then, as it is now, the liquor question was always a thorny subject to handle. Still, it had to be dealt with. Revenue was badly wanted; also the evils of drink were very apparent.

Legislation dealing with liquor was passed only after many postponements and amendments. Unlike all the previous proposals which passed through the Council in a single sitting and without alteration, the Bill to regulate the sale of spirituous and fermented liquors by retail had a difficult passage.

The Legislative Council today bears no resemblance to that first Council, so many changes having taken place in 150 years. Those changes up to 1890 illustrate and comprise the constitutional development of the State up to that time. Since 1890 the Legislative Council and the Legislative Assembly have shared responsibility for legislation.

The names of many members of the Legislative Council have loomed large in the making of this State: In 1883 Lord Forrest began his political career as a member of the Legislative Council and later achieved prominence as a member of the Legislative Assembly and in the House of Representatives in Melbourne; Sir Winthrop Hackett, whose great public services can never be forgotten, and for whom the University of Western Australia is an enduring and fitting monument; Sir James Lee Steere, a member of this Council for 22 years and its President for five years, later to become the first Speaker of the Legislative Assembly; Sir Henry Parker, afterwards Chief Justice; Alexander Forrest; Sir Luke Leake; Senator Kingsmill; Senator Sir Hal Colebatch; Senator Carrol; Sir Edward Wittentoom, and his son Mr Charles Wittentoom; Mr Samuel Richard Hamersley; Mr Edward Hamersley; several members of the Brockman and Dempster families—all these names are to be found amongst the membership rolls of the Council—and in more recent times the Hon. Harry Boan; the Hon. John Nicholson; the Hon. Leslie Craig; Sir Keith Watson, my predecessor in Metropolitan Province and a member of the secession delegation to the Imperial Parliament in 1934; Sir Charles Latham; Dr Gordon Hislop; the Hon. Frank Wise, a

former Premier; Sir Leslie Diver; and Sir Arthur Griffith.

We can include also the names of women who have entered the field of politics: in particular, the Hon. Ruby Hutchison, who in 1954 became the first woman member elected to the Legislative Council.

The first husband-wife partnership in any Australian Parliament came about in 1966 when the Hon. Ruby Hutchison and the Hon. Fred Lavery were married; they were both members of this Chamber but—probably very wisely—they did not sit together in the House.

I have named but a few from a long list of members whose names appear on the rolls of this Chamber, all of whom deserve an equal mention, and I could have named them. Indeed, there are many former members who have graced this gathering to participate in honouring all those who according to their lights have served their State and this nation in the Legislative Council. Also in attendance are some of the direct descendants of our early legislators and settlers.

On behalf of the Government, I thank you all for coming along to assist in our endeavours to pay tribute to these fine people who laid the foundations of a great State.

When we talk of our founding fathers we tend to conjure up a vision of venerable, perhaps decrepit, old men with long white beards. This is false. Most of those who sat in this Chamber were in the prime of life; mostly dedicated to their cause; conscious of their responsibilities and anxious to perform well their duties as lawmakers.

They were the leading figures of their generation. They had their strong views and their differences of opinion just as we do today. They argued about customs duties, Crown land regulations, public works, and the colony's limited Budgets.

They all agreed on the urgent need to improve internal communications. This led in 1877 to the greatest single achievement in the history of the colony's communications, when Perth was connected by the overland electric telegraph line to London via Eucla and Adelaide. This removed one of the major disadvantages of living in such a remote and isolated part of the British Empire.

I have said, the Legislative Council today bears no resemblance to the Council of 1832 because of the changes wrought by a century and a half of constitutional development. I am sure no member of this House would believe there may not be further changes. Of course there will be. The evolutionary processes of Government will continue, as that is a part of the nature of man's

institutions. How the Chamber will evolve is for the future to determine.

The Legislative Council, in common with other Houses of Parliament, has had its critics throughout the last 150 years and, whatever future changes occur, will still have critics. That too is part of the nature of man and his institutions. I do not believe it is appropriate to engage in a debate on that subject on this occasion. I wish only to state my profound belief that the Legislative Council—whatever its so-called faults are said to be from time to time—has been a major factor in giving the people of Western Australia a degree of stability in government which they would not have otherwise enjoyed and of which in my opinion they have been duly appreciative.

A motion of similar import to the one I have moved tonight was moved by the Leader of the Government in this House on the occasion of the centenary of the first meeting of the Legislative Council. It was moved by the then Chief Secretary, the Hon. Charles Baxter, who was a member of this House for 36 years.

I have purposely left any mention of this until now as it is a most appropriate point on which to conclude.

We have in this Chamber at the present time the Hon. Norman Baxter, the son of that distinguished member, and the period of representation by father and son in the Legislative Council now spans 68 years.

In moving the Address-in-Reply at that time, the Hon. Charles Baxter said—

So far as I am aware, this is the first time that the Parliament of this State has been honoured by receiving a message direct from His Majesty the King. In fact, I do not know—though I cannot be sure on the point—of any occasion when such a signal honour has been conferred upon any House of Parliament in Australia. It is therefore needless for me to impress upon this honourable Chamber the exceptional nature of the event and, as an expression of our appreciation and gratitude and sense of loyalty, I submit the motion I have read.

History will record that a signal honour has again been conferred upon this House of Parliament this evening by the receipt of the Message of congratulation from Her Majesty, Queen Elizabeth II, grand-daughter of His late Majesty King George V.

I consider it would be difficult to improve upon the humble acknowledgment expressed by the

Hon. Charles Baxter 50 years ago, and the address is couched in similar terms.

As an expression of our appreciation and gratitude and sense of loyalty to Her Majesty the Queen, I commend the motion to the House.

THE HON. D. K. DANS (South Metropolitan—Leader of the Opposition) [8.37 p.m.]: I have pleasure in seconding the motion of loyalty to the Sovereign as proposed by the Leader of the House. I thank him also for his thumbnail sketch of the history of the Council.

The Opposition has made well known its objections in relation to these celebrations.

What, within the meaning of any concept of parliamentary democracy, is there to celebrate

In the opinion of this gathering, do the people of Western Australia expect us to celebrate the anniversary of an institution merely because of its existence?

We of the Opposition do not believe that is the expectation of Western Australians generally. Yet in relation to the Legislative Council of this State, and in relation to this 150th anniversary, Government members expect exactly that.

Do we celebrate the anniversary of anything merely because it occurred—merely because it happened? I do not believe we do, and I do not honestly think anyone here would feel we should.

In our attempts to define meaning for that first sitting of the Legislative Council of Western Australia on 7 February 1832, we of the Australian Labor Party have been accused of childish behaviour, of acting not out of a sense of pure decency, of acting in a purely political way, and of crying and weeping. The conviction enshrined in those criticisms is laughable.

There always has been this curious assumption by Government members that the event of that first sitting of the Council can somehow be divorced from historical fact in relation to that institution's subsequent role in the persistent distortion of the political process in this State.

We of this Opposition are firm in our belief that to deny the role of the Legislative Council in the distortion of the political process in this State, is to deny historical fact.

The documentation of decisions which have prolonged the sham of parliamentary democracy associated with this institution is as vast as it is damning.

That role of distortion has been one synonymous with malapportionment and gerrymander, with anachronism and preserve of privilege.

Since the inception of so-called responsible government in 1890 there has never been a Labor majority in the upper House, despite a total of some 35 years of control by the Labor Party in the lower House.

The assertion that the Legislative Council fulfills a function of review has always been a hollow one. With Labor in control in the lower House, that function has been one of obstruction and the entrenchment of conservative interests. With a lower House under conservative control, that function has been essentially one of a mere rubber stamp.

Statistics reinforce those functions. During the 12 years of the Brand Liberal-Country Party Government, the Council rejected only one item of Government legislation. During the eight years of the Court Government, no Government Bill was lost in the Council.

During the Tonkin Labor Government's three-year term, however, the Council rejected 21 Bills and made ineffectual many others.

The Council has for a long time abrogated its responsibility for parliamentary democracy towards the people of this State with its decisions based on an assertion of power, not of reason.

While the faces in the Council may have changed, the methods by which conservative interests and privilege have been maintained, have remained unchanged apart, perhaps, from the level of sophistication used.

History already has passed judgement on an electoral system whereby in the Council a restricted property franchise which allowed for plural voting was abolished only in the year prior to the Tokyo Olympic Games—in 1963.

History also will no doubt condemn an electoral system due to come into effect at the next election whereby fewer than a quarter of a million electors living outside Perth will be represented in the Council by 20 members, but almost half a million electors in the metropolitan area will be represented by only 14 members.

Gross malapportionment will persist in this State, notwithstanding the fact that the United States Supreme Court has held since 1962 that the essence of democracy is to do away with the concept of weighted electorates.

Hardly a bastion of radicalism, *The West Australian* of 25 July 1981 recently proffered—

W.A.'s electoral system is so appallingly unbalanced that the Labor Party is entitled to use virtually any non-violent political tactic to focus attention on the issue and motivate pressure for change.

We of the Opposition acknowledge that agreement with us in making use of this forum—this joint sitting of State Parliament—to again bring to the attention of all Western Australians the thinly-disguised mockery of a celebration such as this.

I will give a thumbnail sketch of some of the Bills that have been introduced by the Labor Party in the few years since 1972 in an endeavour to use the parliamentary processes to promote some form of change.

In 1972 the Hon. T. D. Evans, who was then the Attorney-General in the Labor Government, introduced the Legislature of Western Australia Bill. The proposal was to establish a unicameral Legislature for the State of WA in place of the existing Legislative Council and Legislative Assembly. The Bill was defeated on 1 November 1972.

In 1976 Mr Ron Bertram introduced the Electoral Act Amendment Bill. The proposal in that case was to establish a system of elections based on a principle of proportional representation. That measure was defeated on 6 October 1976.

In 1977 Mr Bob Hetherington introduced the Constitution Acts Amendment Bill, which proposed that a power of veto entrusted to the Legislative Council be limited in time. This Bill was defeated on 10 November 1977.

Mr Hetherington also introduced the Conjoint Elections Bill. The proposal in this case was that if it refused supply, the Legislative Council be obliged to face the people in the event of an election. The move was defeated on 15 November 1977.

In 1978 Mr Colin Jamieson introduced the Proportional Representation Bill. The Bill proposed to establish a principle of proportional representation in the Legislative Council. It was defeated on 22 November 1978. He also introduced the Conjoint Elections Bill to ensure the obligatory nature of conjoint elections whereby half of the members of the Legislative Council retire when an election is held for the Legislative Assembly. This measure also was defeated on 22 November 1978.

In 1979 Mr Arthur Tonkin introduced the Constitution Acts Amendment Bill, the purpose of which was that if supply were withheld in the Legislative Council and an election ensued, both Houses would be required to face the people. That Bill was defeated on 6 December 1979.

In the same year Mr Jamieson introduced the Electoral Act Amendment Bill, which was designed to add to ballot papers the party

designations of candidates in the election. That measure was defeated on 24 October 1979.

In 1980 Mr Peter Dowding, who sits behind me, introduced the Electoral Amendment Bill, the aims of which were the removal of the restriction on the classes of people entitled to witness enrolment claims; the removal of the difference between enrolment requirements of Aboriginal people and those of non-Aboriginal descent; and to provide that the responsibility for instituting proceedings under the Electoral Act rested with the Minister. That legislation was defeated on 12 November 1980.

Mr President, in this Chamber we hear a great deal about the law. We are constantly reminded that we are all equal before the law in this State. However, we are not all equal in the making of those laws.

In 150 years of parliamentary government in this State, the second part of the Westminster system has not been enacted. The first part is that there be a parliamentary system, and the second part, of course, is that it be democratically elected. Tonight we are still as far away from that second part of the Westminster system as we were in 1832.

It is high time that we had a good look at where we are going. My party has a proposal that, in future, this House be elected on a proportional representation system. What does this mean? As I see it, it is a more democratic process than that by which we elect our senators—maybe only marginally so, but more democratic. It would mean simply that all people would have votes of equal value, and the party which received the most votes would have the most members elected. There is nothing wrong with that.

It astounds me that it is not so long since our Prime Minister (the Rt. Hon. Malcolm Fraser), in the forums of the world Governments, was urging majority rule for Zimbabwe—and that means one-vote-one-value. The Mother of Parliaments acceded to a request from the Rhodesian Government, as it then was, to supply Lord Soames as the Governor in and over the colony of Rhodesia. We know what happened there! Perhaps I might appeal to the Rt. Hon. Malcolm Fraser one day to use for the State of Western Australia the good offices he used in bringing majority rule to Zimbabwe.

Last but not least, might I add a little sting in the tail. These celebrations, whether I agree or disagree with them, could quite easily have been held during the formal opening of the Parliament in March. After all, it is only one month away. The same things could have been done. Perhaps it may have received greater publicity for both sides of the argument. We have wasted a great deal of money on these celebrations; and that need not have occurred.

With those few words, I support the motion.

Question put and passed.

ADJOURNMENT OF THE HOUSE: SPECIAL

THE HON. I. G. MEDCALF (Metropolitan—
Leader of the House) [8.50 p.m.]: I move—

That the House at its rising adjourn to a date to be fixed by the President.

Question put and passed.

House adjourned at 8.51 p.m.

