



## Speech

Her Excellency the Honourable Margaret Beazley AC KC  
Governor of New South Wales

### Official Program Launch of the Bicentenary of the Legislative Council

18 October 2022  
NSW Parliament House

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*Bujari gamarruwa*  
*Diyn Babana Gamarada Gadigal Ngura*

I greet you in the language of the Gadigal, the Traditional Owners of this land and pay my respects to Gadigal Elders, past, present and emerging, and to the Elders of all the traditional lands across this State. The legacy of their custodianship is based in their understanding of the land, working with the rhythms of the seasons, living within their sophisticated systems of law where culture, the environment and sustained beliefs are an interwoven part of a greater whole.

Tonight, we meet in honour of another great institution of law and governance, the NSW Legislative Council, on the occasion of the launch of its Bicentenary. Established on 18 October 1823, by the *New South Wales Act 1823*,<sup>1</sup> no provision was made for recognition of traditional owners, part of a legacy which continues to impact them to this day.

No institution has an unblemished history. However, history requires lessons to be learned, mistakes to be acknowledged and the righting of matters that were wrong. None of that should diminish the stature of an institution especially one whose central tenet is the rule of law. Indeed, it should be - and needs to be - its strength.

It is necessary, however, to go back a little. When, in 1819, the Secretary of State, Lord Bathurst, appointed John Thomas Bigge of the Inner Temple Bar, and formerly Chief Justice of Trinidad, to conduct a Commission of Inquiry into New South Wales, it was, in the words of Professor Kirsten McKenzie, a “transformative moment in Australian history (but one) designed to control change rather than unleash it.”<sup>2</sup>

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<sup>1</sup> 4 Geo. IV, c.96

<sup>2</sup> BICENTENARY OF THE LEGISLATIVE COUNCIL THE STATE OF THE COLONY CONFERENCE PEOPLE, PLACE AND POLITICS: NEW SOUTH WALES IN 1823, NSW Parliament, 8 September 2022

This came as a surprise to many and, in particular, to Governor Lachlan Macquarie, whose initial belief was that Bigge had come to support his liberalising work in the colony. Little could be further from reality. Rather, Lord Bathurst's instructions to Bigge contained a direction that transportation should be made 'an object of real terror' and that Macquarie's 'ill-considered compassion for convicts' should be the subject of report.<sup>3</sup> Indeed, Bigge's Commission of Inquiry was directed as much to political heat in the House of Commons as it was concerned with genuine reform in the colony.

Bigge prepared three reports: *The State of the Colony of New South Wales*, *The Judicial Establishments of New South Wales and of Van Diemen's Land* and *The State of Agriculture and Trade in the Colony of New South Wales*.<sup>4</sup>

The first report, as its title suggests, dealt with prevailing conditions in the colony, including the convict system and relations between the social classes.

The response to Bigge's reports was mixed. What was dashed was Macquarie's liberalising vision for the colony, with the report's focus giving sway to imperial demands to preserve Crown power and to consolidate the rule of law and order in the Colony. The practical effect of this was the implementation of much harsher penal policies and practices.

However, the growing local appetite for local decision making was not so easily thwarted. Dr Matthew Allen of the University of New England has described this as the "democratic imaginary" - "a shared understanding that the colonial public had a right to voice their views on affairs and influence decision-making".<sup>5</sup>

Despite Bigge's often unfair criticism of Governor Macquarie, the first step in the establishment of democratic institutions in the colony was secured. The *New South Wales Act 1823* established both the Supreme Court and the Legislative Council. The Council was to consist of no more than seven and no less than five members. The first Legislative Council comprised five members: the Lieutenant-Governor, the Chief Justice, the Colonial Secretary, the Principal Surgeon and the Surveyor-General.<sup>6</sup>

The Council was empowered to enact laws for the good government of the colony: "the occasions of which cannot be foreseen nor without much delay and inconvenience be provided for" by the English Parliament.<sup>7</sup> It was thus that New South Wales had its first local legislature, although the Council could not initiate legislation: that function resided solely in the Governor. In essence, however, its purpose was to advise the Governor on matters of governance: "for the better administration of Justice in New South Wales and Van Diemen's Land, and for the effectual Government thereof."<sup>8</sup>

The first meeting of the Council was held on 25 August 1824 at which His Excellency, Governor Sir Thomas Brisbane, administered the Oath of Office to members of Council, other than the Lieutenant-Governor, William Stewart Esq, whose absence was not

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<sup>3</sup> *Australian Dictionary of Biography*: Bigge, John Thomas: J.M. Bennett 1966

<sup>4</sup> <https://adb.anu.edu.au/biography/bigge-john-thomas-1779>

<sup>5</sup> BICENTENARY OF THE LEGISLATIVE COUNCIL THE STATE OF THE COLONY CONFERENCE PEOPLE, PLACE AND POLITICS: NEW SOUTH WALES IN 1823, NSW Parliament, 8 September 2022

<sup>6</sup> <https://www.parliament.nsw.gov.au/about/Pages/1822-to-1842-The-First-Legislature.aspx>

<sup>7</sup> *The New South Wales Act 1823*, 4 Geo. IV, c.96

<sup>8</sup> <https://www.parliament.nsw.gov.au/about/Pages/1822-to-1842-The-First-Legislature.aspx>

considered to preclude the Council from proceeding with business.<sup>9</sup> On 28 September 1824, the Council passed its first statute: the *Currency Act*, which formalised British sterling as the official currency system of New South Wales.<sup>10</sup>

A more interventionist and militaristic Governor, Governor Darling, succeeded Governor Brisbane, and soon came into conflict with the Legislative Council, the Chief Justice and the growing independent press.

The flashpoint came in 1825 with the sentencing of two soldiers, Joseph Sudds and Patrick Thompson, who had been convicted of theft, a crime they reputedly committed to escape military service.<sup>11</sup> Sentenced to seven years transportation to another penal colony, Governor Darling, determined to maintain strict order in the colony, intervened and increased the sentence to seven years hard labour. Placed in chains and road-ganged, an already-ill Sudds died.<sup>12</sup> Chief Justice Forbes considered the Governor's intervention to be unlawful and he was stridently criticised in the press.<sup>13</sup>

In July 1825, the Legislative Council was expanded to consist of seven members. Four of these members were members on the Executive Council. The remaining three non-executive members, including John Macarthur, represented the influential landed interests, the wealthy free settlers and squatters.

The local press was not impressed. *The Sydney Gazette and New South Wales Advertiser* of Monday, 9 January 1826 reported: "The formation of an Executive Council may be rendered to appear rather anomalous to those who have not duly pondered the matter, or by others who have not had sufficient time to bestow upon the subject, since there are members in every community who have something more efficient to occupy their thoughts than the dry and too frequently uninteresting themes of politics." The article concluded with the observation that the "Governor is not ... one jot more shackled in His administrative powers than he was when unblessed with this appendage."

The ensuing years saw significant agitation for change, particularly by advocates calling for representative government and for trial by jury. In 1828, the *Australian Courts Act 1828* was passed by the Legislative Council whereby English laws were formally received as laws of the colonies of New South Wales and Van Diemen's Land. It also provided for trial by jury in the Supreme Court in civil cases and empowered the Governor to introduce general trial by jury in criminal matters.<sup>14</sup>

The 1828 Act expanded the Legislative Council to comprise members 'not exceeding fifteen or less than ten.'<sup>15</sup> Although members of the Council were still appointed by the Crown, the Act has been described as "a significant move away from autocratic rule in the

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<sup>9</sup> Minutes of Council No 1, 25 August 1824

<sup>10</sup> Until 1966

<sup>11</sup> State Library Archive

<sup>12</sup> *The Governors of New South Wales 1788-2010*, eds David Clune and Ken Turner, The Federation Press, page 160-161

<sup>13</sup> State Library Archives.

<sup>14</sup> <https://www.moadoph.gov.au/blog/australian-courts-act-1828/#>

<sup>15</sup> *Australian Courts Act 1828*

colonies.”<sup>16</sup> Meetings of the Council were presided over by the Governor, who was to “[act] with the advice and consent of the Council.”

Representative and responsible government, the two cornerstones of democracy gradually followed.

The *New South Wales Constitution Act 1842*, an Act of the UK Parliament, established partial representative government with an expanded Legislative Council of 36 members, 12 of whom were appointed by the sovereign on the advice of her Ministers. The remaining 24 members were elected by males who had the required property qualifications to vote.<sup>17</sup>

In 1851, the Council was again expanded, this time to 54 members with the same proportion of one third members appointed, and two thirds being elected members.

Responsible government came with the passage of the *New South Constitution Act 1855* and the establishment of a bicameral parliament. The Legislative Assembly was a fully elected body although the franchise remained limited to eligible property qualified male voters. Somewhat contrarily, the Legislative Council reverted to an appointed body.

A fully enfranchised electorate was achieved with the *Women’s Franchise Act 1902*; a new Constitution was passed in the same year, following Federation in 1901. The passage of the *Status of Women Act 1918* enabled women to be elected to and to act as members of the Legislative Assembly; the Legislative Council was reconstituted in 1932, with the indirect election of Councillors by the members of both Houses acting as a joint electoral college.

Today, following reforms introduced in 1977 and implemented by the 1978 General Election, the Legislative Council is elected on a proportional basis by the voters across the State, unlike the Legislative Assembly where a member is elected by the constituency of a specific electoral district.

The establishment of the first and oldest legislative body in Australia in 1823 may have stemmed from the Crown’s “desire to control rather than unleash change”,<sup>18</sup> which was the point of Bigge’s Inquiry, but it was to have defining and profound impacts.

As the current President of Legislative Council has said, the passage of the *New South Wales Act 1823* and the establishment of the Legislative Council “was Australia’s *Magna Carta* moment.”<sup>19</sup>

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<sup>16</sup> <https://www.moadoph.gov.au/blog/australian-courts-act-1828/#>

<sup>17</sup> <https://www.parliament.nsw.gov.au/la/roleandhistory/Pages/The-history-of-the-Legislative-Assembly.aspx>

<sup>18</sup> Professor Kirsten McKenzie, BICENTENARY OF THE LEGISLATIVE COUNCIL THE STATE OF THE COLONY CONFERENCE PEOPLE, PLACE AND POLITICS: NEW SOUTH WALES IN 1823, NSW Parliament, 8 September 2022

<sup>19</sup> The Honourable Matthew Mason-Cox: BICENTENARY OF THE LEGISLATIVE COUNCIL THE STATE OF THE COLONY CONFERENCE PEOPLE, PLACE AND POLITICS: NEW SOUTH WALES IN 1823, NSW Parliament, 8 September 2022

Having taken over the northern wing of what was originally part of Sydney Hospital, at that time referred to as 'The Rum Hospital',<sup>20</sup> the Legislative Council has operated continuously in this building since 1829. Since the introduction of responsible government in 1856, there have been at least 38 peaceful transfers of power in NSW.<sup>21</sup>

Different arms of government are more or less assertive at different times. This is especially so under a Constitution where there is no formal separation of powers. Occasionally these disputes are resolved by legal decisions, but more frequently, political accommodations are reached. That is the nature and essence of democracy.

As an 18-year-old in first year Law at Sydney University, I was first exposed to both the New South Wales and the Australian Constitution. The one provision that left an all-abiding impression on me, and which remains with me today, is s 5 of the New South Wales Constitution. That section provides:

*"The Legislature shall, subject to the provisions of the Commonwealth of Australia Constitution Act, have power to make laws for the peace, welfare and good government of New South Wales in all cases whatsoever."*

A democracy whose Parliamentary function is to make laws for the 'peace, welfare and good government' of its constituency is a prized possession to be honoured and protected. This democracy sits gently but firmly in your hands - the elected members and the officers of this Parliament who support them, in the procedures of the Parliament. Thank you, and, on this day in particular, thank you to the past and present members of the Legislative Council for your careful custodianship.

I therefore have great pleasure, as Patron, in launching the Official Program of Events for the Bicentenary of the New South Wales Legislative Council.

**ENDS**

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<sup>20</sup> Until 1881: <https://www.seslhd.health.nsw.gov.au/sydney-eye-hospital/about-us/our-history#>:

<sup>21</sup> Parliament of New South Wales