



BICENTENARY
of the
LEGISLATIVE
COUNCIL

THE SPARK

A large, unrolled roll of parchment is the central focus, glowing with a golden light. The word 'SPARK' is written in large, white, serif capital letters across the middle of the roll. The background is dark with golden bokeh lights and rays emanating from behind the parchment.

The Act that brought Parliament and the Supreme Court to NSW

13 - 14 November 2023
NSW PARLIAMENT HOUSE

IT'S GREAT TO HAVE YOU WITH US...

Over two eye-opening days, together we're stepping back in time to explore intriguing stories, fascinating figures and critical developments connected to the NSW Act of 1823, through ***The Spark: The Act that brought Parliament and the Supreme Court to NSW.***

The conference sessions are being delivered by a who's who of authorities in their fields. We'll be hearing from esteemed historians and parliamentary experts, together with respected authors and academics - not to mention a host of special guests, including Chief Justice of NSW the Hon Andrew Bell, state Treasurer the Hon Daniel Mookhey, and NSW Auditor-General Margaret Crawford. You can learn more about our presenters in the following pages.

What's so special about the NSW Act? When it was passed by the British Parliament back in 1823, this landmark piece of legislation allowed for the establishment of both the Supreme Court and first Legislative Council in the NSW colony. It was truly the 'spark' that would ignite critical developments and create important institutions here in Australia, laying the foundations for 200 years of evolving parliamentary democracy and rule of law.

Our exploration of these early times through *The Spark* conference is just one of the many ways we're commemorating the Bicentenary of the NSW Legislative Council, and our shared anniversary with the Supreme Court of NSW. Visit www.parliament.nsw.gov.au/bicentenary to learn more.



A handwritten signature in gold ink, which appears to be 'Ben Franklin'.

THE HON BEN FRANKLIN MLC
President of the NSW Legislative Council



It's my sincere hope that our Bicentenary conferences leave a lasting legacy of scholarly discussion and new perspectives on our early colonial history. Our first conference in particular had a focus on untold stories and unheard voices from the time, including those of the Aboriginal community and women. In this latest program, we look closer at the NSW Act and ensuing developments in power and politics in the colony. It's going to be fascinating.

Look for additional events to be added to the 2024 Bicentenary program at www.parliament.nsw.gov.au/bicentenary, including those capturing further First Nations perspectives and other diverse stories.



DAVID BLUNT AM
Clerk of the Parliaments



SESSION RECORDINGS

After the conference, you'll find recordings of the sessions and related materials at

www.bit.ly/the-spark-conference

DAY 1 SCHEDULE

Monday 13 November 2023

9:00 AM	Registration
9:30 AM	Welcome with President of the Legislative Council the Hon Ben Franklin MLC, Clerk of the Parliaments David Blunt AM and Usher of the Black Rod Jenelle Moore
10:00 AM	NSW in the World of Empire with Professor Stephen Garton AM <i>Introduced by the Hon Chris Rath MLC</i>
11:00 AM	Morning tea
11:30 AM	The 1823 Act: From Debate to Enactment with Bret Walker AO SC and Lynn Lovelock <i>Introduced by the Hon Penny Sharpe MLC</i>
12:45 PM	Lunch
2:00 PM	Depart for our afternoon session (a short walk across the road to the Supreme Court)
2:30 PM	The Chief Justices of NSW over 200 years with Chief Justice the Hon Andrew Bell, Virginia Bell AC and Keith Mason AC KC <i>Introduced by David Blunt AM</i>
4:10 PM	Optional tour of St James Court

DAY 2 SCHEDULE

Tuesday 14 November 2023

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| 9:30 AM | <p><i>The Colonial Treasury</i>
with the Hon Daniel Mookhey and Associate Professor Carol Liston AO
<i>Introduced by the Hon Damien Tudehope MLC</i></p> |
| 10:15 AM | <p><i>Not Just Numbers: 200 Years of Audit Impact</i>
with Margaret Crawford PSM
<i>Introduced by Speaker the Hon Greg Piper MP</i></p> |
| 11:00 AM | <p>Morning tea</p> |
| 11:30 AM | <p><i>Law and Justice in NSW After 1823: The Architecture and Aftermath of the NSW Act</i>
with Associate Professor David Andrew Roberts and Professor Lisa Ford
<i>Introduced by the Hon Rod Roberts MLC</i></p> |
| 12:15 PM | <p>Lunch</p> |
| 1:30 PM | <p><i>Political Hack and the Mad Macs</i>
with Sue Williams
<i>Introduced by President the Hon Ben Franklin MLC</i></p> |
| 2:15 PM | <p><i>The NSW Legislative Council's Place in the Political Landscape in the 1820s</i>
with Professor Frank Bongiorno AM
<i>Introduced by the Hon Jeremy Buckingham MLC</i></p> |
| 3:00 PM | <p>Afternoon tea</p> |
| 3:15 PM | <p><i>The Constitution Act of 1842 and the Struggle for Responsible Government</i>
with Professor Emerita Anne Twomey
<i>Introduced by Ms Abigail Boyd MLC</i></p> |
| 4:00 PM | <p>Optional tour of Parliament and Boomalli exhibition</p> |

SESSIONS & PRESENTERS

SESSION 1

Welcome to Day One

*with the Hon Ben Franklin MLC, David Blunt AM
& Jenelle Moore*

Be welcomed to the conference by the President of the NSW Legislative Council, the Hon Ben Franklin MLC, and take a look back at what we learned during our very first Bicentenary conference, *The State of the Colony: People, Place and Politics in 1823*, with Clerk of the Parliaments David Blunt AM and Usher of the Black Rod Jenelle Moore.



THE STATE OF THE COLONY
People, Place & Politics in 1823



Missed our first Bicentenary conference in 2022?

Scan the QR code to discover recordings and transcripts from two information-packed days.

SESSION 2

NSW in the World of Empire *with Professor Stephen Garton AM*

Explore NSW's place in the 'world of Empire' and discover a particularly interesting connection to the establishment of the Legislative Council in this session with Professor Stephen Garton AM.

Stephen says...

Colonial NSW was deeply embedded in the transnational networks of Empire that shaped much of its history, from the beginnings of colonisation and long thereafter.

While early NSW was a British colony, the colonial experience was shaped by the economic, social and administrative networks of Britain's vast Empire, including India, Canada, South Africa, Jamaica, Egypt and many other ports. Prominent colonists were eager participants in these networks and colonies like NSW became places of extraordinary international vitality and, importantly sites, for the development of novel experiments in political and administrative institutions.

ABOUT STEPHEN

Professor Stephen Garton is currently a Professor of History and Principal Advisor to the Vice-Chancellor at the University of Sydney. He is the author or co-author of seven books and more than 80 articles and chapters on various aspects of Australian social and cultural history, the history of the British Dominions and aspects of American history, focusing on themes such as the history of madness, crime, masculinity and the aftermath of war.



Stephen is a Fellow of the Australian Academy of Humanities, the Academy of Social Sciences in Australia, the Royal Australian Historical Society, and the Royal Society of NSW. He has also had a long career in university administration at the University of Sydney, serving as Head of the History Department (1996-8), Dean of the Arts Faculty (2001-9), Provost and Deputy Vice-Chancellor (2009-19) and Senior Deputy Vice-Chancellor (2019-21). He was also interim Vice-Chancellor and Principal in 2020-21.

SESSION 3

The 1823 Act: From Debate to Enactment *with Bret Walker AO SC & Lynn Lovelock*

Join esteemed barrister Bret Walker AO SC and former Clerk of the Parliaments Lynn Lovelock as they unpack the NSW Act of 1823 - with Lynn exploring the lively debates and the parliamentary processes back in England that helped shape and ultimately pass the Act, and Bret delving into the intent of the Act and its constitutional significance.

Bret says...

The NSW Act of 1823 was a landmark piece of legislation for the better governance of the growing colony, borne out of recommendations made by John Thomas Bigge following his extensive commission of inquiry into all matters concerning NSW. While the British Government was of the opinion that the colony wasn't ready for 'representational' government, the Act's provision for a Legislative Council was a critical first step on a journey towards 'responsible' government, which would unfold over the subsequent decades. Importantly, the Act also supported the growing independence of the judiciary from the government.

Lynn says...

Between 12 June and 18 July 1823, the bill had a somewhat tumultuous passage through the British Parliament. Often in the early hours of the morning - and squeezed between debates on such pressing matters as the import of leghorn bonnets, Irish linen and hemp manufacture, the East India Mutiny, the qualification of jurors in Britain, and the cruel and improper treatment of cattle - the bill was subject to postponements, divisions, petitions from former convicts objecting to its provisions, and at one point an attempt to kill it off with a 'this day 6 months' amendment. The bill polarised opinion in the House, and to that extent reflected the prevailing, and somewhat disparate, attitudes of members towards law, order and punishment. In the end it was a compromise, with a sunset clause, finally passed in the closing hours of the Session, on the same day as the Parliament was prorogued.

ABOUT BRET

Bret Walker was admitted to the New South Wales Bar and as a practitioner of the High Court of Australia in 1979. He was appointed senior counsel in 1993 and served as the President of the Law Council of Australia from 1997 to 1998, and later as the President of the New South Wales Bar Association. Bret was Australia's inaugural Independent National Security Legislation Monitor and has served as a member of numerous councils and foundations. He was the Chairman of the Law Council of Australia National Criminal Law Liaison Committee from 1998–2001, and continues to act as a Constitutional Law Advisor to the Law Council of Australia. Bret was also the Editor of the New South Wales Law reports from 2009 to 2018. He has been appointed to several inquiries as a Commissioner, including the Special Commission of Inquiry into Sydney Ferries (2007) and the South Australian Murray–Darling Basin Royal Commission (2018–2019). He most recently was appointed as Commissioner on the Special Commission of Inquiry into the Ruby Princess (2020).



ABOUT LYNN

A parliamentary pioneer, Lynn Lovelock was the first woman to hold the distinguished role of Clerk of the Parliaments and, prior to that, was the first female Usher of the Black Rod at the NSW Parliament. Lynn joined the Department of the Legislative Council in 1987, was Usher from 1988 and Deputy Clerk from 1991, before serving as Clerk from 2007 until her retirement from the role in 2011. She clerked the Legislative Council Privileges Committee from 1991 until 2007, and was actively involved in the establishment of a parliamentary code of ethics and the development of procedures to safeguard returns of privileged papers before the House.



Lynn has written widely in the fields of parliamentary law and practice, and made critical contributions to parliamentary procedure during her time at the Parliament – including as co-author of *New South Wales Legislative Council Practice*. In 2005, she undertook the first major revision of the Council's standing orders in nearly 110 years. Lynn was also involved in setting up and training members of the first independent National Parliament of East Timor, and championed the program of 'twinning' relationships with legislatures across the Pacific. Research and history are passions for Lynn, who has most recently spent time in the UK scouring early records to help chart the birth of the first Legislative Council in NSW while working on her second novel.

SESSION 4



The Chief Justices of New South Wales over 200 years

*with Chief Justice the Hon Andrew Bell,
Virginia Bell AC & Keith Mason AC KC*

On the afternoon of day one of the conference, join us for a special visit to the Supreme Court of NSW to hear from Chief Justice the Hon Andrew Bell who, together with Virginia Bell AC and Keith Mason AC KC, will explore NSW's first Chief Justices and those that followed, including the early pathways they forged for Australian case law. After this session, there'll be the opportunity to tour the original court building and hear about its colourful history.



ABOUT THE CHIEF JUSTICE

Appointed as President of the Court of Appeal on 28 February 2019, Andrew Bell was elevated to Chief Justice of NSW on 7 March 2022. After a succession of academic achievements at the University of Sydney and a Rhodes Scholarship to Oxford University, he became one of the foremost experts on private international law and transnational litigation. His Honour was admitted to the Bar in 1995 and was appointed Senior Counsel in 2006.



ABOUT VIRGINIA

Virginia Bell graduated from the University of Sydney with a Bachelor of Laws in 1977. After seven years as a solicitor with the Redfern Legal Centre, she was admitted to the New South Wales Bar in 1984. Between 1994 and 1997, Virginia was a counsel assisting the Royal Commission into the New South Wales Police Service. She was appointed a Senior Counsel in 1997. Virginia was appointed a judge of the Supreme Court of New South Wales in March 1999. 2021. She was appointed a judge of the New South Wales Court of Appeal in 2008. She was appointed to the High Court in February 2009, and served until her retirement in February 2021.



ABOUT KEITH

Keith Mason has been a solicitor, barrister, law reformer, Solicitor-General, President of the New South Wales Court of Appeal, law teacher and mediator. He has published on topics including judicial method, legal taxonomy, the law of restitution, and the interface of law, morality and religion. Currently he is adjunct professor at the University of New South Wales, President of the Appellate Tribunal of the Anglican Church of Australia, and Chairperson of the Electoral Commission of New South Wales. Keith was appointed a Companion of the Order of Australia in 2003 for service to the law and legal scholarship, to the judicial system in New South Wales, to the Anglican Church, and to the community.



SESSION 5

The Colonial Treasury

*with the Hon Daniel Mookhey MLC
& Associate Professor Carol Liston AO*

In this special session with current NSW Treasurer the Hon Daniel Mookhey MLC and Associate Professor Carol Liston AO, step back in time to hear about the very beginnings of the Treasury - with the first Colonial Treasurer appointed following the Bigge Inquiry, at the same time the Legislative Council was coming into being.



ABOUT THE TREASURER

Daniel Mookhey was elected to the Parliament of NSW on 6 May 2015 as a member of the Legislative Council. The son of Indian migrants, he was the first MP in an Australian Parliament and the first Treasurer to be sworn in on the Hindu religious text, the Bhagavad Gita. Prior to entering the Parliament, Daniel held senior roles in the Australian Council of Trade Unions and at the Transport Workers' Union. Daniel is a formidable campaigner, parliamentary performer and policy developer. He describes himself as "a passionate advocate for the people of NSW, especially in rural and regional communities," adding that, "as Treasurer, I will continue to find ways to improve their lives and stand up for workers' rights".



ABOUT CAROL

Carol Liston is an Adjunct Associate Professor at Western Sydney University. She is former president of the Royal Australian Historical Society and past editor of its Journal. Carol's research covers early colonial history in NSW, with interests in people (convict, colonial born and free immigrant), local history, heritage and the built environment. Her particular interest is the colonial development of the County of Cumberland. Carol's publications include histories of Campbelltown, Parramatta and Liverpool, biographies of Sarah Wentworth and Thomas Brisbane, and accounts of social life under Governor Macquarie and the convict women at the Female Factory, Parramatta. Her current research project with Dr Kathrine Reynolds is an investigation of convict women transported from Britain to NSW between 1800 and 1836.

SESSION 6

Not Just Numbers: 200 Years of Audit Impact *with Margaret Crawford PSM*

With a Colonial Treasury comes the need for an Audit Office! In this session, the first female Auditor-General for New South Wales, Margaret Crawford PSM, will share insights on how legislative changes have enabled this integrity body to help Parliament hold government accountable for its use of public resources. This will include looking at some key areas the Audit Office has evolved since 1824, with the Auditor-General also sharing insights into some of the most impactful audits conducted during her time in office.

ABOUT THE AUDITOR-GENERAL

Margaret Crawford has many years of experience as a senior executive across large, complex public sector organisations - local, state and the Commonwealth governments - including the Victorian Department of Human Services, the Australian Taxation Office, the former NSW Roads and Traffic Authority, and Australia's largest local government, Brisbane City Council. Before becoming Auditor-General for NSW, she held the position of Deputy Secretary at the former NSW Department of Family and Community Services. Margaret has worked across a diverse range of sectors, including housing and homelessness, community and disability services, road transport policy and regulation, taxation administration, and gaming regulation.



SESSION 7

Law and Justice in NSW After 1823: The Architecture and Aftermath of the NSW Act with Associate Professor David Andrew Roberts & Professor Lisa Ford

The creation of the first Legislative Council under the NSW Act was a foundational moment in the reform of the colony's constitutional and legal architecture. Explore the 'aftermath' of the Act in the colony with this session, delivered by Associate Professor David Andrew Roberts and Professor Lisa Ford.

David and Lisa say...

A key outcome of the Royal Commission into the State of New South Wales (the 'Bigge Inquiry') and framed by the so-called NSW Act, the Council was actually a cautious compromise in the Age of Revolution. Designed to both temper the potential for tyrannical executive power and guard against the dangers of representative democracy, it was not so much a steppingstone towards liberal self-government as a careful constitutional reform for a socially suspect and politically boisterous colony.

Needless to say, it was a problematic compromise that appeased few. Instead of creating the assembly that many colonists craved - representing all free and freed subjects, or even just the colonial elite - the Council consisted of a handful of appointed crown officials who held precious little authority over the colony's very powerful governor. However, the body had enough say to be a font of serious bureaucratic controversy for the rest of the decade, as it grappled with the constitutional fallout of the colony's judicial and penal reform.

ABOUT DAVID

David Andrew Roberts is an Associate Professor of History at the University of New England, where he researches Australia's early history and edits the *Journal of Australian Colonial History*. He is best known for his work on the history and legacy of Australia's convict past. His research is currently funded by a collaborative Australian Research Council grant for the project 'Inquiring into Empire: Remaking the British world after 1815'.



ABOUT LISA

Professor Lisa Ford is a legal historian whose prize-winning work explores ideas and practice of order in the British Empire and the Early National United States from 1763 to 1850. Her work is notable for recovering the role of quotidian colonial contests in shaping national, imperial and international law. Lisa has published three monographs: *The King's Peace* (Harvard, 2021), *Rage for Order* (Harvard, 2016), co-authored with Professor Lauren Benton, and *Settler Sovereignty* (Harvard, 2010). She has also co-edited two significant collections, *Between Indigenous and Settler Governance* (Routledge, 2013), with Tim Rowse, and the forthcoming *Cambridge Legal History of Australia*, with Peter Cane and Mark McMillan. Lisa's work has been supported by multiple Australian Research Council grants. She is currently an ARC Future Fellow.



SESSION 8

Political Hack and the Mad Macs with Sue Williams

Delve behind the scenes of the very first Legislative Council in this colourful session with author Sue Williams, exploring the personal trials and tribulations of the Council's inaugural members. The gentlemen included Francis Forbes as Chief Justice; Frederick Goulburn as Colonial Secretary; William Stewart as Lieutenant-Governor; John Oxley as Surveyor-General; and James Bowman as Principal Surgeon.

Sue says...

The first five Legislative Council members were schemers and dreamers, behind the scenes nursing broken hearts and loyalties split between the emancipist passions of Lachlan Macquarie and the evangelical exclusivism of John Macarthur.



ABOUT SUE

Sue Williams is an award-winning journalist and travel writer, and a best-selling author of both non-fiction and historical fiction. Her novels have concentrated on the early colonial days of NSW and include *Elizabeth & Elizabeth*, about Elizabeth Macquarie and Elizabeth Macarthur, and *That Bligh Girl*, about Mary Bligh and her father, Governor William Bligh. Sue is currently working on a book about the previous Governor, Philip Gidley King, entitled *The Governor, His Wife and The Mistress*.

SESSION 9

The NSW Legislative Council's Place in the Political Landscape in the 1820s with Professor Frank Bongiorno AM

Consider the early Legislative Council in the context of the shifting and emerging political tapestry of the day in this session with Professor Frank Bongiorno AM, including an exploration of the unique political and public culture in which the Council was established.

Frank says...

When the Legislative Council first met in 1824, it 'dropped' into a political culture that already had identifiable features. Distinctive factions were emerging, the colony was on the cusp of developing a popular press, and it was on the brink of a period of sustained political contention. Political life was often conducted in a face-to-face way, in which a snub or a toast could be a highly meaningful political gesture. The courtroom, the banquet room and the tavern were places of political expression, as was the annual feast at which Governors dined with First Nations peoples. This session will explain the place that the new Legislative Council occupied in this emerging politics, suggesting that the Council itself was barely political in its early years - if we consider politics as a process by which contending interests compete and seek conciliation in the public sphere, in the context of a public opinion. The Council's appearance signalled the beginning of a more institutionalised politics rather than a transformation.

ABOUT FRANK

Frank Bongiorno is Professor of History at the Australian National University and President of the Australian Historical Association. His latest book is *Dreamers and Schemers: A Political History of Australia* (2022). Frank is a Fellow of the Royal Historical Society, the Academy of the Social Sciences in Australia, and the Australian Academy of the Humanities.



SESSION 10

The Constitution Act of 1842 and the Struggle for Responsible Government

with Professor Emerita Anne Twomey

Down the line from the NSW Act of 1823, the Constitution Act of 1842 gave the colony of NSW 'representative government', but it was more than a decade later that 'responsible government' was granted. Explore what this meant for the Council and the colony in this session with Professor Emerita Anne Twomey.

Anne says...

The Constitution of 1824 meant that a majority of the members of the Legislative Council were elected by the people, but with one-third still being appointed by the Governor to run the government. This led to a struggle with the British Government to achieve 'responsible government' in two contexts. First, the colonists wanted ministers to be drawn from those elected members who commanded the confidence of the lower house and were responsible to it, as occurred in the Westminster Parliament. Second, they wanted to ensure that local matters were determined by, or on the advice of, responsible NSW ministers, rather than by officials or ministers in London. This desire for responsible government led to a grand 'remonstrance' and hints at revolution, before the British took a more conciliatory approach and responsible government - to a degree - was granted in 1855.



ABOUT ANNE

Anne Twomey is a Professor Emerita of the University of Sydney, where she taught constitutional law for many years. She has also worked for the High Court of Australia, the Commonwealth Parliamentary Research Service, the Senate Legal and Constitutional Committee and the Cabinet Office of New South Wales. She has published the authoritative text on *The Constitution of New South Wales* (Federation Press, 2004) and written about the State's constitutional history.

WHILE YOU'RE AT PARLIAMENT,
EXPLORE A SPECIAL EXHIBITION COMMEMORATING

**25 YEARS OF THE 'RECONCILIATION WALL'
WITH THE BOOMALLI ABORIGINAL ARTISTS CO-OPERATIVE**



The Reconciliation Wall at Parliament House is a space dedicated to showcasing the diversity and talent of Aboriginal artists from across NSW, and part of the Parliament's commitment to reconciliation with Aboriginal and Torres Strait Islander people.

Through January 2024, the Reconciliation Wall - and in fact our entire Fountain Court exhibition space - is hosting captivating exhibition *Restoration of Truth* by the Boomalli Aboriginal Artists Co-operative. Boomalli artists were the very first exhibitors on the Reconciliation Wall in 1998, and the Parliament is honoured to partner with the co-operative for this very special 25th anniversary.

Be sure to join our tour of Parliament and the exhibition after Tuesday's conference sessions, and scan the QR code to learn more about the exhibition - with information about upcoming Boomalli artist talks coming soon.





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