



The Francis Forbes Society for Australian Legal History

ABN 55 099 158 620 ACN 099 158 620

ANNUAL REPORT 2008

ESTABLISHMENT

As was noted in previous Annual Reports, the Society has its origins in the Centenary Celebrations of the NSW Bar Association in 2002.

Its formation was publicized at the Centenary Dinner of the NSW Bar Association (on 31 May 2002) in connection with the publication of its Centenary Essays (Lindsay and Webster (*ed*), *No Mere Mouthpiece: Servants of All, Yet of None*) and Macquarie University's inaugural Macquarie Lecture (on 25 July 2002), and in publications ancillary to those functions.

COUNCILLORS

The inaugural meeting of the Council of the Forbes Society was held on Monday 5 August 2002.

The 'founding' members of the Society were the inaugural members of its Council and its Honorary Executive Director.

The inaugural members of the Council were:

- Professor Bruce Kercher of Macquarie University (President);
- Justice Keith Mason AC of the NSW Court of Appeal (Senior Vice President);
- Wendy Robinson QC of the NSW Bar (Junior Vice President);

- Geoff Lindsay S.C. of the NSW Bar (Secretary);
- Carol Webster of the NSW Bar (Treasurer);
- Michael Sexton, S.C., Solicitor General of NSW; Laurie Glanfield AM, Director General of the NSW Attorney General's Department; Mark Richardson, Chief Executive of the Law Society of NSW and Stephen Toomey of Toomey Pegg Drevikovsky, Solicitors (Members).

The Honorary Executive Director of the Society was, and is, Philip Selth OAM, the Executive Director of the NSW Bar Association.

Michael Sexton SC retired at the Annual General Meeting on 21 September 2005, and was replaced by Michael Pelly. Mark Richardson resigned on 27 March 2006 and was replaced by June McPhie, then President of the Law Society of NSW (appointed on 8 May 2006).

In accordance with the Society's constitution all Councillors retire at this Annual General Meeting and are eligible for re-election. All Councillors other than June McPhie have offered themselves for re-election. We thank June for her support as a member of the Council.

CONSTITUTION

The Forbes Society was registered as a public company, limited by guarantee, on 2 January 2002, and is authorised under *section 150 Corporations Act 2001* (Cth), to dispense with the word "Limited" from its title. The registered office of the Society is care of the Office of the NSW Bar Association, Basement Level, Selborne Chambers, 174 Phillip Street, Sydney.

"The Francis Forbes Fund" was established by Deed of Trust executed on 12 February 2002. Under the Deed the Society is trustee of the Fund. The Society and the Fund are endorsed as "income tax exempt charities", and the Fund is endorsed as a "deductible gift recipient", under the *Income Tax Assessment Act 1997* (Cth).

The NSW Department of Sport and Recreation has issued an “Authority to Fundraise” to the Society under the *Charitable Fund Raising Act 1991* (NSW).

ANNUAL FORBES LECTURE

Since its foundation the Francis Forbes Society has encouraged the study of the history of Australian law through an annual public lecture. The Forbes Lecture has become an important date in the legal calendar.

2008 Forbes Lecture

On 6 November 2008 Professor Rosalind Croucher, a Commissioner of the Australian Law Reform Commission, delivered the 2008 Forbes Lecture (entitled “150 Years of Torrens – Too Much, Too Little, Too Soon”) in the Common Room of the NSW Bar Association. She was introduced by Anna Katzmann S.C., President of the Association. Her paper will be published in the new year.

2007 Forbes Lecture

On 8 November 2007 Andrew Tink, formerly Shadow Attorney General in the NSW Parliament, delivered the 2007 Forbes Lecture on “The Life and Times of William Charles Wentworth” in the Bar Common Room. He was introduced by Anna Katzmann S.C., President of the Bar Association. His biography of Wentworth is in the course of publication.

2006 Forbes Lecture

On 9 November 2006 Rosemary Annable presented the 2006 Forbes Lecture on the topic “A Setting for Justice: Building for the Supreme Court of New South Wales” in the Bar Common Room. It addressed the history of the architecture of the Supreme Court. A guided tour of the Old Supreme Court building conducted by the Court Architect Diane Jones preceded the lecture. In 2007 UNSW Press (in collaboration with the Attorney General’s Department of NSW) published the long awaited book

upon which Rosemary's Lecture was based. It bears the same title, *A Setting for Justice*.

2005 Forbes Lecture

On the 3 November 2005 the Hon Justice B H McPherson CBE, a judge of the Queensland Court of Appeal, presented the 2005 Forbes Lecture on the topic "New quilts from old rags", in the Bar Common Room. It addressed the reception of English law in Australia. In 2007, following his retirement from the Court of Appeal, Bruce published the major work which was in preparation at the time of his Lecture. It is entitled, *The Reception of English Law Abroad*. It was published by the Supreme Court of Queensland Library.

2004 Forbes Lecture

On 14 October 2004 Professor Bruce Kercher of Macquarie University and Tim Castle of the NSW Bar presented the 2004 Forbes Lecture, on the topic of "Bringing the Supreme Court to Order, 1828-1844", in the Bar Common Room. The lecture was chaired by the then Shadow Attorney General for NSW, Andrew Tink MP.

2003 Forbes Lecture

On 15 October 2003, the Hon P.E. Powell A.M. QC presented the 2003 Forbes Lecture (entitled "The Origins and Development of the Protective Jurisdiction of the Supreme Court of NSW") in the Banco Court.

2002 Forbes Lecture

On 28 November 2002 I. M. Barker QC presented the inaugural Forbes Lecture entitled "The History of Trial by Jury in NSW" in the Banco Court, with Chief Justice Spigelman as the guest of honour and Professor Kercher as the Master of Ceremonies.

DEVELOPMENT OF THE SOCIETY'S WEBSITE

In April 2006 the Society received a grant from the Trustees of the Public Purpose Fund dedicated to upgrading the Society's website (www.forbessociety.org.au) and the on-line publication of historical materials.

In 2007, with the benefit of that funding, the Society published on its website Tim Castle's "Capital Punishment Database", with an aspiration to assist Tim in further development of his research. The Database can now be significantly developed with the benefit of further funding recently granted by the Trustees of the Public Purpose Fund for that purpose.

The Society also established in 2007 a section of its website entitled "Research Papers On Line", in which Associate Justice John McLaughlin's seminal paper on the Magistracy in Colonial NSW, and a celebrated speech of the Hon J P Slattery AO, QC, have been published. In 2008 the Society added to the website: Dr Kerry Fraser Mill's thesis, "Of the People, for the People: Law-making in NSW, 1843-1855"; a link to a commemorative booklet published by Counsel's Chambers Ltd to celebrate the 50th anniversary of the opening of Wentworth Chambers in Sydney; and a selection of newspaper articles published on the work of the Society.

In the near future the Society will publish on the website a link to the entire collection of all past NSW Law Almanacs (from 1886), with the exception of 2002 (the only year for which an Almanac was not published). See the report entitled "NSW Law Almanacs On-line" published in (November 2008) 31 *Australian Bar Review* at 243. The project for electronic publication of the Almanacs was carried out by the NSW Bar Association with the assistance of a grant made by the Trustees of the Public Purpose Fund. The collection will be electronically available on a special website (www.lawalmanacs.info) accessible from a variety of locations, including the Society's website.

In 2007 the Society established another section of its website, entitled "Current Research Projects – Comment Corner", in order to facilitate public invitations for research assistance. In that section presently stand Tony Cunneen's working papers on the involvement of the NSW legal profession in World War I.

CURRENT RESEARCH PROJECTS

In late October 2008 the Trustees of the Public Purpose Fund made a substantial grant of funding to the Society to advance four specific projects: first, The Select Cases 1828-1863 Project, to be undertaken by the Society in conjunction with Macquarie University and the University of NSW, under the editorship of Dr Lisa Ford and Brent Salter, under the supervision of Emeritus Professor Bruce Kercher and Professor Andrew Buck of Macquarie University; second, The Australian Capital Punishment Data Base Project, as a development of the work of Tim Castle and other like-minded researchers; third, The Ellis Bent Project, designed to assist publication of the Journal and Letters of Ellis Bent under the editorship of Dr Paula Jane Byrne; and fourth, The NSW Legal Profession and World War I Project, designed to provide assistance to Tony Cunneen in the conduct of his ongoing research. The total amount of the grant was \$89,500.00.

PUBLICATIONS

The Society's first publication, in 2003, was the 2002 Francis Forbes Lecture, given by Ian Barker QC, *Sorely Tried - Democracy and Trial by Jury in New South Wales*, released in October 2003. It is now out-of-print, but published electronically on the Society's website.

The Society has published four further books (copies of which remain in stock):

- The 2003 Francis Forbes Lecture, given by Philip Powell AM QC, *The Origins and Development of the Protective Jurisdiction of the Supreme Court of New South Wales*.
- *Dowling's Select Cases 1828 to 1844*, edited by T D Castle and Bruce Kercher - the notebooks of Sir James Dowling, the second Chief Justice of NSW.
- The 2004 Francis Forbes Lecture, given by T D Castle and Bruce Kercher, *The Dowling Legacy - Foundations of an Australian legal culture 1828 - 1844*.
- *Callaghan's Diary*, edited by J M Bennett AM, formally launched by Judge Greg Woods QC on 31 May 2006.

Dowling's Select Cases 1828 to 1844 was published with the assistance of the Council for Law Reporting of New South Wales. The Council generously agreed to fund the

costs of publication in the first instance, on the basis that the Society will reimburse the Council from profits from sales of the book. The book was formally launched by Chief Justice Spigelman on 19 May 2005.

In April 2006 the Society received a grant from the Trustees of the Public Purpose Fund dedicated to publication of “The Kercher Reports” in conjunction with Macquarie University. Bruce, and his assistant Brent Salter, have prepared a manuscript for publication. Arrangements are currently being made by the Society for publication of the work in conjunction with the Council of Law Reporting for NSW and The Federation Press. The ongoing work of publishing colonial law reports has been supported by the Public Purpose Fund’s recent grant of additional funding to the Society enabling it to work collaboratively with Macquarie University and the University of NSW.

THE FORBES FLYER

The Society’s newsletter for members, the *Forbes Flyer*, is published quarterly via email and on the Society's web site. The Editor, David Ash, has developed what has become an entertaining, regular publication reaching out beyond the legal profession, to academia and the general public.

THE AUSTRALIAN LEGAL HISTORY SCHOOL ESSAY COMPETITION

In March 2007 the Society launched the inaugural Australian Legal History School Essay Competition. The Society awarded a prize to James Triggs, a Year 9 student at Doncaster College in Victoria. His essay (entitled “Authority, Democracy and the Rule of Law”) was subsequently published in the *Australian Bar Review* at (2008) 30 *Aust Bar Rev* 221) and on the Society’s website.

The second annual Essay Competition was launched in February 2008. It was sponsored by The NSW Bar Association, The Law Society of NSW, The Division of Law at Macquarie University, Abbey’s Book Shop, The Federation Press, State Records NSW and The State Library of NSW. It was also actively supported by *The Australian* newspaper.

Special thanks are due to the Editor of the Legal Affairs Section of *The Australian*, Mr Chris Merritt, and his team of journalists, including Michael Pelly. Their support

for the Competition significantly aided the Society's efforts to bring both the Competition and the work of the Society to the notice of a national audience.

The 2008 Competition Theme was: "The Importance to the Effective Working of the Legal System of Individual Honesty, a Well-Informed Conscience and Trust". More specifically, the Essay Topic was: "Honesty, Legal Ethics and the Limits of a Guilty Secret". The Essay Question was: "*How can a lawyer defend somebody he or she 'knows' is 'guilty'?...What is it to 'know' that somebody is 'guilty'...Okay, to be more precise: What are, or should be, the ethical obligations of a lawyer acting for a client who, after being charged with a crime, makes a confidential confession of guilt'. Discuss this question from the perspective of a member of the community (who is not a lawyer) using examples drawn from the Dean Controversy (1895-1896) and/or Tuckiar's Case (1932-1934)". Potential Entrants in the Competition were assisted by a publication on the Society's website of Background Information Paper entitled, "A Question of Conscience, a Question of Trust".*

The deadline for the entry of Essays in the Competition was yesterday, 17 November 2008. The results of the Competition will be formally announced on Australia Day, 2009.

ACKNOWLEDGEMENTS

The Society acknowledges the assistance it has received through the voluntary efforts of many people. Particular thanks are due to members of the Council, David Ash (as Editor of the *Flyer*), David Jay (as Memberships Officer), Chris Winslow (as Honorary Publicity Officer), Fiona Williams (Personal Assistant to Carol Webster) and Margaret Lewis (Secretary to Geoff Lindsay). The continuing support of Philip Selth OAM as Honorary Executive Director of the Society, and the support of the Bar Association generally, is vital. In 2008 the Society was honoured to receive the public support of the Association's President, Anna Katzmann S.C.

Date: 18 November 2008

**GEOFF LINDSAY S.C.
 Secretary**

**C.A. WEBSTER
 Treasurer/Assistant Secretary**

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Treasurer/Assistant Secretary