



The Francis Forbes Society for Australian Legal History

ABN 55 099 158 620 ACN 099 158 620

ANNUAL REPORT 2007

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 is Philip Selth, 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 (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.

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.

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 Association Common Room. He was introduced to those present by Anna Katzman S.C. in her first official act as the newly elected President of the Association. Andrew is presently writing a major biography of Wentworth, the manuscript for which is due to be delivered to his publisher early in 2008.

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 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. Additional papers will be published in due course.

In 2007 the Society established another section of the website, entitled “Current Research Projects – Comment Corner”, in order to facilitate public invitations for research assistance. In that section presently stands Tony Cunneen’s working paper on the NSW legal profession at Gallipoli, entitled “Engage to Act on Another Front”. Tony has developed plans to expand his research significantly over the ensuing year.

PUBLICATIONS

The Society's first publication, in 2003, was the 2002 Francis Forbes Lecture, given by Ian Barker, *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, expect to have a manuscript for publication available in mid-2008.

DR C E DOUGLAS: BAR ASSOCIATION HISTORY SCHOLAR

On 19 September 2007 members of the Society joined with representatives of the NSW Bar Association and Macquarie University to congratulate Catherine Douglas (nee Hutchins) on conferral upon her that day of a Ph D by the University. As related in *No Mere Mouthpiece* (at pages 7-8) Catherine was, in 2002, the recipient of a three year scholarship awarded by the Association for the study of Australian legal history. She was joined at the Association’s celebratory function by her husband Mark (a solicitor practising in Adelaide) and her Ph D Supervisor at Macquarie, (Professor) Ros Croucher, now of the Australian Law Reform Commission.

Catherine’s thesis is entitled, *Felons, Mutineers and Other Learned Friends*. Its sub-title is descriptive of its content: *A History of the Development of the Colonial Bar in Australia, and the Contribution of its Advocates to the Evolution of the Colonies 1788-1856*.

In the presence of his Senior Vice President Anna Katzman S.C., the then President of the Association (Michael Slattery QC) praised Catherine’s work and thanked her for her contribution to an understanding of the development of the Australian Bar.

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 INAUGURAL AUSTRALIAN LEGAL HISTORY SCHOOL ESSAY COMPETITION

In March 2007 the Society launched the inaugural Australian Legal History School Essay Competition. It was sponsored by The NSW Bar Association, The Law Society of NSW, The Division of Law at Macquarie University, Abbey’s Bookshop,

The Federation Press, The State Library of NSW, State Records NSW and *The Sydney Morning Herald*.

The competition theme was “Lessons for Today in Development of the Rule of Law in a Frontier Society”. The particular essay topic students were invited to address was: “*Authority, Democracy and the Rule of Law – What does it all mean for us today? Does Australian History provide any insights?* Discuss these questions, referring to one or both of (a) The Rum Rebellion, 1808 (b) The Waterloo Creek Massacre and its Aftermath, 1838.”

The deadline for the submission of essays expired on 12 November 2007. The result of the Competition is due to be announced on Australia Day, 26 January 2008, the 200th Anniversary of the Rum Rebellion and the 170th Anniversary of the Waterloo Creek Massacre.

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 as Honorary Executive Director of the Society, and the support of the Bar Association generally, is vital. In 2007 the Society was honoured to receive the public support of the Association’s serving Presidents, initially Michael Slattery QC and more recently his successor, Anna Katzman S.C.

Date: 20 November 2007

GEOFF LINDSAY S.C.
Secretary

C.A. WEBSTER
Treasurer/Assistant Secretary