



## The Francis Forbes Society for Australian Legal History

ABN 55 099 158 620 ACN 099 158 620

# ANNUAL REPORT 2020

## ESTABLISHMENT

As was noted in previous Annual Reports, the Society has its origins in the Centenary Celebrations of the NSW Bar Association in 2002. The Society is named for Francis Forbes (1784-1841), the first Chief Justice of the Supreme Court of NSW, 1824-1837. He was knighted in 1837.

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 Solicitors (Members).

The Honorary Executive Director of the Society is Greg Tolhurst (Executive Director of the NSW Bar Association).

The current members of the Council are:

- Chief Justice James Allsop AO (President)
- Justice Geoff Lindsay (Senior Vice President)
- Professor Mark Lunney (Junior Vice President)
- Simon Chapple (Secretary)
- Carol Webster SC (Treasurer)
- Dr Ben Chen, David Miller, Wendy Robinson QC, and Michael Tidball (Members)

In accordance with the Society's constitution all Councillors retire at this Annual General Meeting and are eligible for re-election.

## **Advisory Board**

In early 2017 the Society established an Advisory Board consisting of academics and other closely involved Forbes members to be involved in the development of projects for the Society.

The current members of the Board are:

- David Ash;
- Tony Cunneen;
- Justice Mark Leeming;
- The Hon. Keith Mason AC QC
- Kathleen Morris; and
- Mandy Tibbey.

## **CONSTITUTION**

The Forbes Society was registered as a public company, limited by guarantee, on 2 January 2002, and is authorised under section 150 of the *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 Society holds an “Authority to Fundraise” under the *Charitable Fund Raising Act 1991* (NSW) from NSW Fair Trading (formerly the Office of Liquor, Gaming and Racing).

## **ANNUAL FORBES LECTURE**

Since its foundation the 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. In recent years, the Forbes Lectures have included the following:

- The 2017 Forbes Lecture, ‘An insight into appellate justice in New South Wales’, was delivered by the Hon Justice Margaret Beazley AO, President of the NSW Court of Appeal, on 28 September 2017. Justice Beazley spoke about the history of the NSW Court of Appeal.
- The 2018 Forbes Lecture was delivered by the Hon Justice Virginia Bell AC, on 30 May 2018 and titled “By the skin of our teeth – the passing of the Women’s Legal Status Act 1918” to mark the Centenary of the Act.
- The 2019 Forbes Lecture was delivered by Professor Anne Twomey of the University of Sydney, on 5 June 2019 and titled “Pitt Cobbett - A Pre-Engineer's Ghost Speaks from the Grave, chaired by Chief Justice Allsop”.
- The 2020 Forbes Lecture was delivered by the Hon Justice Mark Leeming of the Court of Appeal under the title “Lawyers' uses of history, from *Entick v Carrington* to *Smethurst v Commissioner of Police*”. The lecture was chaired by the Hon Justice Stephen Gageler of the High Court of Australia.

Further information about previous Forbes Lectures is available on the Society's website.

### **THE ANNUAL JH PLUNKETT LECTURE**

The lecture honours the memory of one of the State's pivotal Attorneys General. John Hubert Plunkett (1802-1869) arrived in NSW, from Ireland, in 1832. For more than 30 years thereafter he made a major contribution to colonial law and society, serving, inter alia, as Solicitor General and Attorney General. In 1835 he published *The Australian Magistrate*, the first Australian legal practice book. He was the first Australian lawyer to be granted a commission as Queen's Counsel. He led Roger Therry, another Irish-born barrister, in the conduct of the Myall Creek Murder trials. In recent years, the Plunkett Lectures have included the following:

- The Sixth Annual JH Plunkett Lecture, 'John Hubert Plunkett QC and the Myall Creek murder trials' was delivered by Mark Tedeschi AM QC on 9 November 2017, chaired by the NSW Attorney General, the Hon Mark Speakman SC MP.
- The Seventh Annual JH Plunkett Lecture on 'The Royal Prerogative of Mercy' was delivered by the NSW Attorney General, the Hon Mark Speakman SC MP on 29 October 2018, chaired by Tim Game SC, the Senior Vice-President of the NSW Bar Association.
- The Eighth Annual JH Plunkett Lecture on "Attorneys-General in Eighteenth-Century England" was delivered on 13 November 2019 by Professor Wilfrid Prest (Professor Emeritus of History and of Law, University of Adelaide) chaired by the Hon Justice Andrew Bell, President of the Court of Appeal. Professor Prest spoke on the office of attorney-general in the 18<sup>th</sup> century, with particular reference to Sir Dudley Ryder (1691-1756), the second-longest serving holder of that office.
- The Ninth Annual JH Plunkett Lecture, and the first to concentrate solely on John Plunkett himself, was delivered by Dr John McLaughlin AM on 24 November 2020. The lecture was chaired by the NSW Attorney General, the Hon Mark Speakman SC MP.

Further information about previous Plunkett Lectures is available on the Society's website.

### **TUTORIALS IN AUSTRALIAN LEGAL HISTORY**

Throughout 2019 members and friends of the Forbes Society (including judges, tipstaves and research officers of the Supreme Court of NSW) met, in Banco Court and Court 13A in the Law Courts Building in Sydney, for tutorials in Legal History styled "Understanding Australian Law through Legal History". It was not possible to convene in-person tutorials during 2020 by reason of COVID-19 restrictions, but the Society conducted a 'virtual' tutorial from Banco Court with the assistance of the Supreme Court.

In 2019 and 2020, presentations were made by:

- Dr Simon Chapple "Introduction to Australian Legal History" (21 May 2019),
- Professor Mark Lunney, Dr Tanya Josev and Dr Susan Bartie "Legalism in the twentieth century: the chameleon concept" (3 September 2019),

- the Hon J C Campbell QC “The History of Equity” (in two parts: 6 August 2019 and 13 August 2019);
- the Chief Justice, the Hon T F Bathurst AC “History of the legal profession in NSW” (18 September 2019); and
- the Chief Justice, the Hon T F Bathurst AC “The History of Defamation Law” (8 October 2020).

We note that the Hon Keith Mason’s book *Sir Frederick Jordan: Fire under the frost* (published by Federation Press) was launched by the Hon Justice Stephen Gageler AC in the Banco Court on 26 November 2019.

The tutorials have produced a volume of research materials which the Society hopes will, in due course, provide a foundation for the publication of a work, or works, on the doctrinal history of Australia Law.

In addition to this series of tutorials:

- on 15 August 2019, in conjunction with Federation Press, the Society supported a public address by the Hon Michael Kirby AC CMG and Professor Stefan Petrow of the University of Tasmania on the life of Sir Francis Villeneuve Smith, the third Chief Justice of Tasmania, and the issues of colonial and postcolonial racism in Australia. The biography of Sir Francis Villeneuve Smith by Dr John Bennett together with Dr Ronald Solomon in the series *Lives of the Australian Chief Justices* was published in 2019 by The Federation Press. The Society helped fund the research that led to the book.
- on 6 November 2019, the Hon John Bryson QC delivered a lecture co-sponsored by the Forbes Society and the Selden Society, titled “Henry VIII’s Will and the Politics of Succession” in Banco Court, introduced by the Hon Justice Lucy McCallum of the NSW Court of Appeal.

## **ANZLHS ANNUAL PRIZE IN LEGAL HISTORY**

Since 2014 the Society has, through The Francis Forbes Fund, supported the Australian and New Zealand Legal History Society Annual Prize in Legal History, an annual award for the best piece of legal history writing (book or article) by a member of ANZLHS about Australian / New Zealand history. The first award was announced in December 2014, to Janine Pizzetti for a paper titled ‘Judging Protection: “The Unintentional Errors of an Unlearned Magistracy”, British Guiana and Port Phillip, 1830s–40s’ published in *Law & History*, vol 3, 2016.

The 2019 prize was awarded to Timothy Calabria for his paper, “The bungalow and the transformation of the ‘half-caste’ category in central Australia: Race and law at the limits of a settler colony” published in *Law & History*, vol 7, 2020.

## **CURRENT RESEARCH PROJECTS – THE FORBES FUND**

One of the Society’s objects is to encourage and promote research into Australian legal history and it maintains for that purpose the Francis Forbes Fund, to which donations may be made.

### **Pitt Cobbett’s grand opus ‘The Government of Australia’**

In 2017 and 2018 the Society made grants from the Fund to the University of Sydney for Professor Anne Twomey to support the publication of Pitt Cobbett’s ‘The Government of Australia’. William Pitt Cobbett was appointed to the Challis chair of law

at Sydney University in 1890 and became the first Dean of the Law School in 1891, retiring in 1909. He completed a handwritten manuscript (of about 275,000 words) of 'The Government of Australia' before he died in October 1919. The manuscript was given to the University of Sydney by the trustees of his will.

The book *The Constitution and Government of Australia, 1788 to 1919* by William Pitt Cobbett and edited by Anne Twomey was published by Federation Press in October 2019.

In 2019 the Society supported the following projects:

- A grant of \$5,000 to support the digitisation of the notebooks of Sir Keith Officer and Sir Robin Sharwood in response to a proposal from Professor Lunney, Dr Tanya Josev (Melbourne Law School) and Ms Carole Hinchcliff (senior law librarian at Melbourne); and
- A grant of \$2,800 to Peter Moore through the University of Adelaide to support the Biographical Dictionary of Barristers and Solicitors in Early NSW, 1824-1861.

In 2020, the Society supported the following projects:

- A grant of \$3,400 to Macquarie University in respect of two projects:
  - Dr Kate Gleeson with Sinead Ring and Kim Stevenson, titled "Legal Responses to Historical Child Sexual Abuse: Critical and Comparative Perspectives"; and
  - Dr Henry Kha, titled "The Unification of Australian Divorce Law under the Matrimonial Causes Act 1959";
- A grant of \$3,400 to Sydney University in respect of the project of Professor Barbara McDonald, Dr Ben Chen and Dr Jeffrey Gordon, titled "Dynamic and Principled: The Influence of Sir Anthony Mason"; and
- A grant of \$1,500 to Sydney Living Museum, in the interests of future cooperation between SLM / the State Archives & Records Authority and the Society, noting the approach of the Bicentenary of the Supreme Court and the Legislative Council in 2023.

## **THE SOCIETY'S WEBSITE**

The Society's website ([www.forbessociety.org.au](http://www.forbessociety.org.au)) can be used as a means of publicising research projects, inviting comments on draft papers and publishing papers. Members and friends of the Society are invited to use it accordingly. We are indebted to Tony Cunneen for his work on the website.

Notable additions include Early Equity Cases in New South Wales – the first 14 of 37 of the first Supreme Court Equity Cases in the Colony of New South Wales collected by Hon Dr John Hamilton QC: "Supreme Court of Civil Jurisdiction Equity Cases 1817-1824" The cases give a fascinating insight into the legal and social landscape of the time.

## **THE AUSTRALIAN LEGAL HISTORY 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.

Since that time, the Society has conducted an essay competition each year. A list of the previous winners of the competition, along with the essay questions for each year, will be published on the Society's website ([www.forbessociety.org.au](http://www.forbessociety.org.au)).

The winners of the 2019 competition were:

- **Junior Secondary category:** Annette Kim, Tara Anglican School for Girls, for an essay considering Australia's prison system.
- **Senior Secondary category:** Rohan Hodges, Camberwell Grammar School, for an essay titled, "The Tasmanian Dams Case: To what extent has it influenced Australia's environmental management? Was the dramatic response to the High Court's decision justified?"
- **Tertiary category:** Joseph Chigwidden, University of New South Wales, for an essay titled, "How did the benefit of clergy operate to mitigate the rigours of the criminal law? What was the status of the doctrine in colonial New South Wales prior to its formal abolition?"

The deadline for submission of essays in this year's competition is 5.00pm on Friday 18 December 2020.

## 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 five further books:

- 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.
- *The Kercher Reports: Decisions of the New South Wales Superior Courts, 1788 to 1827*, edited by Bruce Kercher and Brent Salter.

In 2011/2012 the Forbes Society assisted with the publication of two books:

- Professor John McLaren's *Dewigged, Bothered and Bewildered: British Colonial Judges on Trial, 1800-1900* (co-published with the Osgoode Society for Canadian Legal History); and
- Dr Paula J Byrne's *Judge Advocate Ellis Bent: Letters and Diaries, 1810-1821*.

## AVAILABILITY OF FORBES SOCIETY PUBLICATIONS

By an arrangement with The Federation Press, these publications can generally be

obtained from that publisher.

Website: [www.federationpress.com.au](http://www.federationpress.com.au)  
Email: [info@federationpress.com.au](mailto:info@federationpress.com.au)  
Telephone: (02) 9552 2200  
Fax: (02) 9552 1681

Several *Forbes Lectures* and entries in the Society's *Australian Legal History Essay Competition* have been published in the *Australian Bar Review* and the *Australian Law Journal*.

### **THE FORBES FLYER**

The Society's newsletter for members, the *Forbes Flyer*, is published quarterly via email and on the Society's web site.

David Ash retired as Editor of the *Forbes Flyer* after the Winter 2020 Edition. He developed an entertaining, regular publication reaching out beyond the legal profession, to academia and the general public. We are most grateful to David for all his work over many years to bring out the *Flyer*.

### **THE OSGOODE SOCIETY**

Membership of the Osgoode Society is open to all comers, as is membership of the Forbes Society. As is apparent from its website ([www.osgoodesociety.ca](http://www.osgoodesociety.ca)), the publications and programme of the Osgoode Society are worthy of both emulation and engagement.

### **THE SELDEN SOCIETY**

The Forbes Society continues to have a close, collaborative connection with the Selden Society. Like the Osgoode Society, it was an inspiration for establishment of the Forbes Society. Membership of the Selden Society too is encouraged.

The Australian Secretary of the Selden Society is the Librarian of the Supreme Court of Queensland Library. Contact details are:

Supreme Court Librarian	
Supreme Court of Queensland Library	
PO Box 15019	T: +61 7 3247 4373
CITY EAST QLD 4002	F: +61 7 3247 9233
AUSTRALIA	

### **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 and Tony Cunneen (Website Manager), David Ash (as Editor of the *Flyer*), Fiona Williams (Personal Assistant to Carol Webster SC) and Shari Williams (Associate to Justice Lindsay). We have again been assisted in organising lectures and tutorials by Kathleen Morris.

The Council awarded David Ash life membership of the Society in recognition of his many valuable contributions to the life and work of the Society over many years, in particular his very substantial contribution as Editor of the *Forbes Flyer* over the last 15 years.

The continuing support of Greg Tolhurst as Honorary Executive Director of the Society, and the support of the Bar Association generally, is vital. Particular thanks go to Bali Kaur and Tiffany McDonald of the NSW Bar Association Professional Development Department and to Alastair McConnachie Deputy Executive Director of the NSW Bar Association for their assistance and support in the promotion of the Society's with the Society's programme of Lectures and Tutorials.

Special thanks are due to Tony Cunneen for all his work in maintaining the website.

**CAROL WEBSTER SC**

**SIMON CHAPPLE**

**Treasurer**

**Secretary**

**20 November 2020**