



## **The Francis Forbes Society for Australian Legal History**

ABN 55 099 158 620 ACN 099 158 620

# **ANNUAL REPORT 2016**

### **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 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 was, and is, Philip Selth OAM, the Executive Director of the NSW Bar Association (until his retirement on 21 October 2015).

The Council is currently composed of the following members:

- Chief Justice James Allsop AO (President)
- The Hon Keith Mason QC AC (Senior Vice President)
- Wendy Robinson QC (Junior Vice President)
- Simon Chapple (Secretary)
- Carol Webster SC (Treasurer)
- Justice Geoff Lindsay, Stephen Toomey, Michael Tidball, and Andrew Cappie-Wood (Members)

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 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 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 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.

The 2016 Forbes Lecture was delivered by Professor Jane Stapleton on 15 July 2016 and chaired by Society member the Hon Justice Virginia Bell AC of the High Court of Australia. Professor Stapleton spoke about Lady Margaret Beaufort, who was the mother of King Henry VII and, among many other things, established Christ’s College, Cambridge in the 1500s. Professor Stapleton explored the life of this remarkable woman and her relationship with the law.

The 2015 Forbes Lecture was delivered on 11 November 2015 by Emeritus Professor David Barker AM. Professor Barker spoke about the history of Australian legal education and discussed, in particular, the history and structural development of legal education in Australia by tracing the establishment of university law schools and other forms of legal education throughout the Australian states and territories from the time of European settlement in 1788 until the present day. The Lecture was chaired by Society member the Hon Justice Leeming of the NSW Court of Appeal.

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

## **THE ANNUAL JH PLUNKETT LECTURE**

The Fifth Annual JH Plunkett Lecture was delivered by Professor Mark Finnane on 27 September 2016 and chaired by Society member Arthur Moses SC, Senior Vice President of the NSW Bar Association. Professor Finnane’s lecture was titled, ‘Does the criminal trial have an Australian history? Lessons from the Prosecution Project’. Professor Finnane discussed the changing patterns of prosecution process and outcomes, and also the many actors within the criminal justice process - from judges and defence lawyers to prosecutors and police, from defendants to victims, from witnesses to juries.

Dr Kelvin Widdows delivered the Fourth Annual JH Plunkett Lecture on 19 October 2015. The Lecture was titled “Sir John Latham: Judicial Reasoning in Defence of the Commonwealth”. The Lecture was chaired by Jane Needham SC, President of the NSW Bar Association.

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

The Forbes and Plunkett Lectures were held in the Common Room of the NSW Bar Association.

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

Throughout 2015 and 2016 members and friends of the Forbes Society (including judges, tipstaves and research officers of the Supreme Court of NSW) have met, in Banco Court in the Law Courts Building in Sydney, for tutorials in Legal History styled "Understanding Australian Law through Legal History".

In 2015 and 2016, presentations were made by:

- The Hon Keith Mason AC QC (5 May 2015); Justice Arthur Emmett (21 May 2015); the Hon John Bryson QC (2 June 2015); Justice Richard Button and Nick Cowdery QC (16 June 2015); Acting Justice Peter Young (26 August 2015); Judge Nick Manousaridis (9 September 2015); Justice Ashley Black (7 October 2015); Chief Justice Tom Bathurst (27 October 2015); and Chief Justice James Allsop (4 November 2015).
- The Hon Keith Mason AC QC (27 July 2016); Justice Arthur Emmett (30 August 2016); Justice Ashley Black (26 October 2016); and Chief Justice Tom Bathurst (9 November 2016). A further tutorial is scheduled for 30 November 2016, in which Justice Arthur Emmett will present Part II of his tutorial on Roman law from earlier in the year.

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.

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

In 2014 and 2015 the Society agreed, through The Francis Forbes Fund, to support the Australian and New Zealand Legal History Society Annual Prize in Legal History, an annual award for the best piece (book or article) of legal history writing by a member of ANZLHS about Australian / New Zealand history. The first award was announced in December 2014. In December 2015 the second award was announced, to James Kirby for the best postgraduate paper presented at the ANZ Law and History Conference 2015. His paper was titled, "Conditional on a Bill of Rights": The constitutional and political foundations of Botswana's Non-Racial Democracy'. It is due to be published in *Law & History*, volume 4 in 2017

### **A STUDY OF JUDICIAL ARCHIVES**

Inspired by a parallel process taking place in New Zealand (*via* a committee constituted by Justice Stephen Kos of the High Court of New Zealand; Sir Ivor Richardson, formerly President of the Court of Appeal; and Professor Jeremy Finn of Canterbury University), the Council has established a committee to review and report upon archival arrangements relating to the papers of judges of the Federal Court of Australia and the Supreme Court of NSW.

The Committee's convenor is Dr John Hamilton QC, formerly a judge of the Supreme Court of NSW. Other members of the Committee are Professor Shaunnagh Dorsett;

Lyn Nasir (Records and Archives Project Manager of the Federal Court of Australia); Larissa Reid (of the Law Courts Library); and Philip Selth OAM (Hon Executive Director of the Forbes Society and Executive Director of the NSW Bar Association).

## **CURRENT RESEARCH PROJECTS**

### **Biography of Sir Francis Villeneuve Smith, the third Chief Justice of Tasmania**

Dr J M Bennett AM and Dr Ron Solomon are currently working on a biography of Sir Francis Villeneuve Smith. Sir Francis was Premier of Tasmania from 1857 – 1860, a judge of the Supreme Court from 1860 – 1870, and Chief Justice from 1870 – 1885. The Society approved a grant of \$6,000 to support the writing and publication of the monograph.

### **The Select Cases Project**

The Society has yet to procure further funding for the Select Cases 1828-1863 Project. The Society still hopes to be able to move towards publication of two volumes following upon Kercher and Salter (eds), *The Kercher Reports: Decisions of the New South Wales Superior Courts, 1788 to 1827* (Forbes Society, 2009/2010).

## **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.

## **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 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:	<a href="http://www.federationpress.com.au">www.federationpress.com.au</a>
Email:	<a href="mailto:info@federationpress.com.au">info@federationpress.com.au</a>
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. 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. Our thanks are due to David.

## 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 deadline for submission of essays in this year's competition is 5.00pm on 5 December 2016.

Essayists have been invited to address a theme, topic or question of their own choice on "Australian Legal History" or to address one of four set questions on the administration of justice.

The "set questions" are as follows (they are not compulsory):

**Set Question No. 1: The Trial of Ned Kelly:** Did Ned Kelly receive a fair trial before they hung him in 1880? Should he have been tried in the district of Glenrowan, where he was captured after a famous last stand? Why did he appear in his own defence, without a lawyer, at his trial for murder? Why did he not give evidence at his trial?

**Set Question No. 2: Tuckiar:** Did the Australian legal system deal fairly with the Aboriginal warrior, Tuckiar, tried for murder, released by the High Court of Australia and lost in the night (1932-1934)?

**Set Question No. 3: Lindy and Michael Chamberlain:** How can a person be tried fairly, in a glare of publicity, on circumstantial evidence, without a high risk of a miscarriage of justice, as in the case of the Chamberlains (17 August 1980-12 June 2012)?

**Set Question No. 4: Trial by Jury as a Democratic Right:** Is trial by jury a democratic right in the context of Australian experience?

## THE OSGOODS SOCIETY


Membership of the Osgoods 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 Osgoods 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 Osgoods 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  
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## 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*), Chris Winslow (as Honorary Publicity Officer), Fiona Williams (Personal Assistant to Carol Webster SC), Shari Williams (Associate to Justice Lindsay) and Mary-Ann de Mestre and Esther Khoo (Tipstaves to Justice 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. Particular thanks go to Chris D'Aeth and Bali Kaur for their assistance with the Society's programme of Lectures and to Alastair McConnachie Deputy Executive Director of the NSW Bar Association for his support with promotion of the Society's activities. Special thanks are due to Tony Cunneen for taking on the role of maintenance and upgrade of the website.

Finally, the Forbes Society acknowledges the support it receives from Abbey's Bookshop as a sponsor of the Australian Legal History Essay Competition and in the promotion of legal history texts generally.

**SIMON CHAPPLE**

**Secretary**

**CAROL WEBSTER SC**

**Treasurer**

**22 November 2016**