



The Francis Forbes Society for Australian Legal History

ABN 55 099 158 620 ACN 099 158 620

ANNUAL REPORT 2023

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 late Philp Selth OAM. 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 Andreas Heger (Executive Director of the NSW Bar Association).

The current members of the Council are:

- the Hon James Allsop AC (President)
- Justice Geoff Lindsay AM (Senior Vice President)
- Professor Mark Lunney (Junior Vice President)
- Carol Webster SC (Treasurer)
- Simon Chapple SC (Secretary)
- Dr Ben Chen, David Miller and Wendy Robinson KC (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 Advisory Board are:

- David Ash;
- Tony Cunneen;
- Justice Mark Leeming;
- The Hon. Keith Mason AC KC
- 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 s 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).

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 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 James Allsop AO.
- 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.
- The 2021 Forbes Lecture was delivered by Gideon Haigh on 9 June 2021 titled ‘She was looking for her child’ Evatt J's dissent in *Chester v the Council of Waverley Municipality*. The lecture was chaired by Professor Mark Lunney, Junior Vice-President of the Society.
- The 2022 Forbes Lecture was delivered by Dr Susan Bartie (University of Tasmania) on 31 August 2022 titled “Legal Life Histories and the Creation of Legal Fields” chaired by Carol Webster SC, Treasurer of the Society.
- The 2023 Forbes Lecture was delivered by Her Excellency Honourable Margaret Beazley AC KC, Governor of NSW, on 23 August 2023 “The Decade That Shaped

Us: Before and After the Third Charter of Justice 1823 – 1833” chaired by the Hon James Allsop AC, President of the Society.

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 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 18th century, with particular reference to Sir Dudley Ryder (1691-1756), the second-longest serving holder of that office.
- The Ninth Annual JH Plunkett Lecture “John Hubert Plunkett: An Irish Lawyer in Australia,” 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.
- The Tenth Annual JH Plunkett Lecture “Dignity in the time of John Hubert Plunkett” delivered by Hon Justice Jacqueline Gleeson (High Court of Australia) on 19 August 2021, again chaired by the NSW Attorney General, the Hon Mark Speakman SC MP – delivered remotely during the Sydney lockdown.
- The Eleventh Annual JH Plunkett lecture delivered by Dr Patrick Graham (School of Law, University of New England) on 27 October 2022 titled “The Unlikely Reformer: Sir John Latham and the Australian Constitution” chaired by Dr Simon Chapple, Secretary of the Society. Dr Graham’s project “Sir John Latham and constitutional autochthony” was the subject of a Forbes Fund grant in 2021.

The Hon Andrew Bell, Chief Justice of NSW will deliver the Twelfth Annual JH Plunkett Lecture in February 2024.

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

TUTORIALS IN AUSTRALIAN LEGAL HISTORY

Throughout 2022 and 2023 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 aimed at increasing the understanding of Australian law through legal history.

During 2022 and 2023, presentations were made by:

- Dr Coel Kirkby (University of Sydney Law School) “History of Jurisprudence” combined with the formal presentation of certificates and prizes to the 2021 Essay prize winners and a presentation by the President of the Forbes Society, Chief Justice James

Allsop AO, to the Hon T F Bathurst AC, Chief Justice of NSW for his support of the Forbes Society (23 February 2022)

- Dr Nicole Graham (Associate Professor, University of Sydney Law School) “Antipodean Property Law” chaired by Carol Webster SC, Treasurer of the Society (15 June 2022)
- An occasional lecture by Professor Mark Lunney, Junior Vice President of the Forbes Society, “‘Racing Morals’ and the Law of Defamation: An Australia Story” (28 June 2022)
- Professor Barbara McDonald, Dr Ben Chen, and Dr Jeffrey Gordon (University of Sydney Law School) “The Mason Court” chaired by Carol Webster SC (9 August 2022). The presenters were the editors of the book, *Dynamic and Principled: The Influence of Sir Anthony Mason* published in 2022, the subject of Forbes Fund grants in 2020 and 2021
- Dr Henry Kha (Senior Lecturer, Macquarie Law School) ‘Unification of Australian Divorce Law under the Matrimonial Causes Act 1959’ chaired by Dr Simon Chapple, Secretary the Society (27 September 2022)
- Declan Noble (Associate to Kirk JA) ‘A Partial History of the Public Law Injunction in Australia’ chaired by Carol Webster SC (22 Nov 2022)
- Professor Emerita Anne Twomey ‘The Curious History of the Nationhood Power’ chaired by Dr Simon Chapple (6 March 2023)
- Occasional lecture by The Hon Andrew Bell, Chief Justice of NSW ‘On classic ground: Martin’s monument and civilizational yearnings in colonial New South Wales,’ combined with a formal presentation to 2022 Essayists, chaired by Carol Webster SC (28 February 2023)
- Professor Peter Gerangelos ‘An Historical Constitutional Approach and the general (non-statutory) executive power of the Commonwealth – History as Method: ‘Ancient’ solutions to Current Problems’ chaired by Dr Ben Chen (11 April 2023)
- Dr Peter Edwell and the Hon Keith Mason AC KC ‘Art and the Law: The Archibald prize case of the 1944 and beyond’ chaired by Dr Ben Chen (18 April 2023)
- Michael Adams (Counsel in the Office of General Counsel at AGS) ‘The effect of the American Civil War on the law of contract’ chaired by Dr Simon Chapple (24 May 2023)
- Dane Luo (Associate to Hammerschlag CJ in Eq) ‘The Path to Independence: Australia’s Constitution and her British ties’ chaired by Dr Simon Chapple (24 July 2023)
- Dr Skye Krichauff (University of Adelaide) ‘The South Australian Frontier and its Legacies: a truth telling project’ chaired by Dr Ben Chen (15 August 2023)
- Megan Cameron, PhD candidate at Sydney Law School, ‘The work of magistrates in early colonial New South Wales’ chaired by Dr Ben Chen (24 October 2023)
- Dr Jessica Lake (ACU Melbourne), ‘The Slander of Women: Australia and the gendered reform of defamation in the 19th century common law world’ chaired by Daniel Yazdani (1 November 2023)

The tutorials have produced a volume of research materials which the Society hopes could provide a foundation for the publication of a work, or works, on the doctrinal history of Australian law.

JOINT PRESENTATIONS WITH THE NGARA YURA COMMITTEE

In addition to the Forbes and Plunkett Lectures, the Society has a joint program of presentations with the Ngara Yura Committee of the Judicial Commission of NSW:

- on 5 November 2020, “Making the Past Visible: The Colonial Frontier Massacre Map Project and the Legacies of Frontier massacres” delivered by Professor Lyndall Ryan AM FAHA, The University of Newcastle, chaired by the Hon James Allsop AO, Chief Justice, Federal Court of Australia and the Hon Justice Lucy McCallum, NSW Court of Appeal and Chair of the Ngara Yura Committee.
- on 4 November 2021, “Making the Past Visible: The Legacies of the Protectionist Legislation” presented by Mr Richard Weston, inaugural Deputy Children’s Guardian for Aboriginal Children and Young People in NSW together with members of Kinchela Boys Home Aboriginal Corporation; chaired by Chief Justice James Allsop AO.
- on 10 November 2022 – by the Hon Lucy McCallum, Chief Justice of the ACT Supreme Court, chaired by the Hon Justice Rachel Pepper (Land and Environment Court, Ngara Yura Committee member), titled “The fallacy of protectionism”.

ANZLHS ANNUAL PRIZE IN LEGAL HISTORY

Since 2014 the Society has, through The Francis Forbes Fund, supported a prize for the best paper presented at the Australian and New Zealand Legal History Society annual conference, judged by a panel appointed by the Editor of *law & 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 2021 winner was Elizabeth Bowyer for her paper ‘Taking the Stand: Women as Witnesses in New Zealand’s Colonial Courts c.1840-1900. The previous prize-winner was Georgina Rychner for her paper ‘Defences to intimate partner homicide: Historicising the relationship between provocation and temporary insanity in Victoria, Australia.’

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.

In 2023 the Society supported the following projects by grants from the Fund:

- to the University of Technology Sydney in respect of the project of Dr Alecia Simmonds ‘Race, Legal Status and Subjecthood in Defamation Actions Across the Nineteenth and Twentieth Centuries’
- to ANU in respect of the project of Dr Susan Bartie ‘Contribution of Solicitors-General to the field of Australian law and environmental politics’
- to Macquarie University in respect of the project of Dr Henry Kha ‘Wife sales and legal responses in Colonial Australia’
- to Deakin University in respect of the project of Associate Professor Gabrielle Wolf ‘European Medical Émigrés in Tasmania and the Law, 1933-1946’

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 to support the publication of Pitt Cobbett’s ‘The Government of Australia,’ edited by Professor Anne Twomey. 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.

THE SOCIETY'S WEBSITE

The Society's website (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.

The winners of the 2022 competition were:

- **Senior Secondary Category:** Ruby Byrne for her essay, "An assessment of the legislative legacy of Prime Minister Whitlam Or Everything I learnt in Legal Studies I owe to Gough"
- **Junior Secondary Category:** Junyoung Hong for his essay, "Why did Captain James Cook claim Australia for Britain in 1770 via the doctrine of Terra Nullius?"

with Special Commendations to

- Jonathan Tang of Normanhurst Boys with an essay on "Growth of the Federal Spirit': The First Post-Federation Rail Link between NSW and Victoria"
- Rachael Choe with an essay, "What factors led to women getting 'the vote' in Australia?"

The schools of each of the students were (in alphabetical order) Abbotsleigh, Chatswood High School, Katoomba High and Normanhurst Boys High School.

Enquiries regarding submission of essays for this year's competition should be directed to the Secretary, Simon Chapple SC, e-mail: secretary@forbessociety.org.au.

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
Email:	info@federationpress.com.au
Telephone:	(02) 9552 2200
Fax:	(02) 9552 1681
Email:	info@federationpress.com.au

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*, was 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. The Council awarded David Ash life membership of the Society in 2020 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 *Flyer* over some 15 years.

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), 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:

- Vanessa Middleton (Personal Assistant to Carol Webster SC);
- Daniel Yazdani (at the bar, formerly Tipstaff and sometime A/Associate to Justice Lindsay) especially regarding the arrangements for lectures and tutorials; and
- Lachlan Menzies (current Tipstaff to Justice Lindsay) also assisted with the livestreaming of lectures and tutorials.

The Society is very grateful to the Chief Justice of New South Wales, the Hon Andrew Bell for his support for the Society's activities, generously making Court facilities available for in person and streamed lectures and tutorials, and for the assistance throughout the year from Edwina Chapman, Associate to the Chief Justice, regarding arrangements for Forbes Society events.

The Society values the continued support it receives from Federation Press, including the generous provision of book prizes for the Australian Legal History School Essay Competition.

The continuing support of the NSW Bar Association through its Executive Director, Andreas Heger, Honorary Executive Director of the Society is vital to the Society's operations. We thank particularly Rebecca Seraglio, Publications & Wellbeing Coordinator, for her assistance and support in the promotion of the Society's programme of lectures and tutorials.

We record finally, our continued thanks to Tony Cunneen for all his work in maintaining the website.

CAROL WEBSTER SC

Treasurer

16 November 2023

SIMON CHAPPLE SC

Secretary