Preface

Tom Hughes, a scion of a notable Sydney family, was one of Australia’s top barristers for more than three decades, and has been a wartime pilot, politician, federal minister, a grazier and a racehorse owner. Throughout his life, he crossed paths with the great and the good, and with some who were neither. To mention his name to Australians who were aged around 20 in 1970, invariably evokes memories of the day when the Commonwealth Attorney-General, armed with a cricket bat, confronted anti-conscription and anti-Vietnam protesters outside his Sydney home. Anyone who saw him in the family gathering at Government House on 15 September 2015 would have learned or been reminded that he is the father-in-law of Australia’s 29th Prime Minister, Malcolm Turnbull. Australians of a literary or artistic bent would be aware that he is the oldest brother of the late Robert Hughes, the internationally famous author and art critic. Those who have read articles and profiles about the law in magazines, colour supplements and media reports would have learned much about Tom Hughes QC. He was the expensive barrister who appeared in many significant cases and represented a multitude of high-profile individual clients and corporations. He had a dominating presence in court; a theatrical and intimidating style backed by a captivating use of language; and was so preoccupied and uptight that some lawyers and clients found him uncommunicative, even ‘frosty’.

Many books and chapters have been written about Australian judges who were once barristers, but very few about barristers who never became judges. Although barristers influence decisions, they do not deliver the judgments that become the subject of analysis, criticism or approbation. The legal fraternity, however, frequently identifies them with great victories, and Tom Hughes has had several of those. After six decades at the Bar, Tom Hughes secured a better than the 60 per cent success rate he modestly claims and, more importantly, was considered a role model for a particular kind of advocacy and attained a legendary status as being perhaps the last of his kind. The case for a biography is substantial on these grounds alone, and reinforced because ‘Tom Hughes’ story comprises many other narratives.

There were three striking features about his various careers. First, family connections, friends of the family and friends he made along the way protected or promoted him or opened up opportunities that were not available to many others. Secondly, where Tom Hughes had a head start, he built on it with intelligence and concentrated hard work. He was not unlike
the servant who, in the parable told in St Matthew’s Gospel, was given five talents, invested them and earned five more. He learned the skills of advocacy by listening to mentors and watching other barristers at work, and by eagerly taking cases wherever he could find them. He spent long hours thoroughly preparing each case in all its dimensions, and demanded of those in his legal team that they exercise due diligence and punctuality. He was the complete professional, giving everything of himself for the client’s sake and – win, lose or draw – moving swiftly to the next case. Because he was in such demand, there were normally at least two or more briefs awaiting immediate attention. Yet for a seemingly secure man he had an abiding insecurity, common to many barristers but surely misplaced in his case, namely, that he might not get work.

Thirdly, Tom Hughes kept his personal and professional life separate. He had to deal with many moments of sadness and times of difficulty. His beloved parents died at a relatively young age; he took a long time to find a relationship to replicate the happy marriage enjoyed by his parents; family relationships were sometimes fraught; Tom’s long life has meant that he has attended the funerals of too many friends. Personal setbacks or troubles, however, never interfered with his work. He coped well with adversity. Sometimes it was hard, personally, to take a defeat in court. In common with all barristers, Tom did not like losing cases, especially when he felt that judges or juries had made a mistake, or where he felt a client deserved better or where his opponent happened to be disagreeable. But Tom never dwelt on what might have been or should have been. He simply immersed himself in the next brief.

There were bound to be many changes over a long life. He inherited an Irish and an English ancestry. Perhaps surprisingly, the former was barely influential. He has always been a Liberal, but not always the same kind of Liberal. Tom entered politics as a fervent anti-communist and supporter of national service and of the Vietnam War. By the 1970s he had become less of a ‘conservative’ and more of a ‘liberal’ within the Party’s broad church, a change influenced by his non-partisan role as Attorney-General, an acceptance of changed circumstances, ‘a cab on the rank’ approach to taking briefs from all sides of politics and an intellectual gravitation to the centre. He never shifted from one core belief – a commitment to the free market – and never doubted his right to charge fees the market was prepared to pay (an approach tempered by lower charges sought from non-corporate clients, friends and deserving strugglers). Yet, even as Tom became a republican and took a more liberal stance on social and moral issues, he remained a stickler for the traditions of legal practice and remained the traditional advocate for whom the increasing reliance on out-of-court settlement and mediation had no attraction.
In researching this biography, I encountered an abundance of material, including Tom’s official war papers, parliamentary debates, Cabinet Notebooks and other official records of his time in government, as well as law reports, case notes, academic articles, press reports and profiles and published biographies of politicians, judges and other barristers. The Hughes Family Papers and Thomas McKay’s Papers held in the Mitchell Library, Sydney, proved invaluable for researching Tom’s family history and his war years. The Hughes Papers in the National Library cover his time as Attorney-General.

The gold mine proved to be the trunks, boxes, files, press cuttings and loose papers of unsorted material kept at Tom’s ‘Bannister Station’ near Goulburn. They contain school reports and letters written home during the War, Tom’s RAAF Log Book and a war diary, voluminous personal correspondence files covering the post-war years to the present, intermittent, frank and intimate personal diaries, various short autobiographical writings and a number of briefing documents. Eventually, archivists or librarians will catalogue this material. In the meantime, all I can do is name the folders or areas where I found the evidence cited in support of my factual narrative, themes and analysis.

Tom’s fee books, covering the period from 1949 to 2007, have been a priceless source. They provide a more accurate picture of his earnings than the myth-making profiles could ever do. They also offer solid evidence of a huge and varied workload, while recording Hughes’ progress up to the time he took silk in New South Wales in 1962, the lull when he was in politics, the sharp revival of his career in the 1970s, its flowering in the 1980s and 1990s and the changing pattern of his practice in his final years at the Bar. The fee books also brought home the problem of selecting which cases among thousands to examine in trying to understand more about Tom’s legal and life story. I began by asking him to choose those he thought were important to him and to his career, and then looked for others where transcripts were readily available, and were reported in the press and discussed in private correspondence and in Tom’s diaries. I am very conscious of the fact that so many interesting and significant cases do not appear in this book, and of the probability that a lawyer or another historian would make different selections.

In addition to 21 separate taped interviews as well as many telephone conversations with Tom, I interviewed or communicated with Richard Ackland, Stephen Archer, Jenny Blackman, Mark Boileau, Don Cameron, Nicholas Carson, Carmen Champion, Deeta Colvin, the late Constance Crisp, Paul Daley, Sir William Deane, Robert Ellicott, Murray Gleeson, Ainsley Gotto, Dyson Heydon, John Howard, Chrissie Hughes, Geoffrey Hughes, Joanna Hughes, Michael Hughes, Tom Hughes Jnr, Michael Kirby, Lynette
MacDonald, Sir Anthony Mason, Michael McHugh, Jim Merralls, Maurice Neil, Philip Selth, Anne Sloan, Lucy and Malcolm Turnbull, Aleco Vrisakis and John Whittle. The Oral History section of the National Library has recorded interviews with many lawyers and politicians, including a lengthy one with Tom Hughes.

I am, as always, grateful to the staff of the National Archives of Australia, the Mitchell Library, and the National Library for their assistance.

Frank Bongiorno, Andrew Clark, Frank Crisp, Christine Feron, Sebastian Hancock, Clare Hanley, Jenny Higgins, Stephen Holt, Rob and Sandie Little, John Nethercote, Wilfrid Prest, Phillip Price, Richard Reid and Sophie Torney advised me on particular subjects or provided editorial or technical assistance. Another historian, Philip Selth of the NSW Bar Association, helped me in countless ways. I particularly want to thank Douglas Craig, Ainsley Gotto, John Nethercote, Joan Ritchie, Paul Santamaria, Philip Selth and Susan Sharpe who read and commented on the whole manuscript.

Kathy Fitzhenry, Rebecca Fung, Jason Monaghan, Josephine Romeo and Trisha Valliappan of The Federation Press guided me through publication with patience, skills and professionalism; it was a great pleasure to work with them.

My special debts are to four people. Ainsley Gotto suggested the subject and, as always, pushed me to finish a book. The late Chris Holt of The Federation Press, one of the great encouragers, reacted immediately to my tentative email with an offer to publish and an assurance that a non-lawyer could write a book about a barrister. Chrissie Hughes always made me feel very welcome at Bannister, and offered many insights into her husband while indirectly helping me to understand why he has been so content the second time round.

My greatest debt is to Tom Hughes. He gave me full access to his records, opened up to all my questions, accepted intrusions into the deeply personal, looked at my drafts and gently corrected factual errors, grammatical blemishes and my misuse of legal discourse. He accepted my insistence on some interpretations; at times, we agreed to disagree. I also experienced a side of Tom Hughes I had observed in his relationships with his family, friends and acquaintances: a deep-seated concern for the health and happiness of others. He did wonder, occasionally, whether there was a story worth telling. I hope I have extinguished his doubts.

The errors, the focus and the interpretations are my responsibility.

Ian Hancock
April 2016