

THE FOUR PILLARS OF AUSTRALIAN LEGAL EDUCATION

DAVID BARKER*

ABSTRACT

Legal education has shared with Australian universities the fact that they have generally evolved in a non-structured way. Not until after the Second World War was a formalised inquiry into Australian universities conducted by the Committee on Australian Universities (the Murray Report), which was published in September 1957. While there was no specific mention of law in the Murray Report, the document is seen as the forerunner of later reports in the field of law which did have a major influence on the development of legal education from that time to the present.

Four major reports since the Murray Report can be regarded as having had a major effect on the development of legal education in the post-war years: three at the federal level (the Martin and Pearce reports, and ALRC's Managing Justice report) and one at state level (the Bowen Report). This paper discusses their influence chronologically, from 1964 to 2000.

An examination of the contents and outcomes of these reports may prompt readers to consider whether their influence has stood the test of time and also what their current relevance might be within the context of legal education and access to justice in Australia.

I INTRODUCTION

Legal education generally evolved in a non-structured way from the establishment of the universities of Melbourne and Sydney in the 1850s. Since that time, legal education and universities have developed in non-structured ways in Australia. Obviously the century and a half or more which has elapsed since then has seen many changes in the way legal education has been delivered. Not until the post-war years (1946 onwards) were there any serious inquiries into such matters as the quality and purpose of legal education. This was in contrast to the United Kingdom, which as early as 1846 had seen the House of Commons conduct a wide-ranging inquiry into the teaching of law, both within Britain and in Ireland.¹

The post-Second World War period saw the first formalised inquiry into Australian universities, by the Committee on Australian Universities established in December 1956 under the chairmanship of Sir Keith Murray (subsequently Lord Murray) who was, at that time, the chairman of the British University Grants Committee. The Committee published a report in September 1957 (the Murray Report) described as presenting: 'a masterly account of the history, present conditions, problems and future prospects of the universities; an account which, with its extended discussion of the place of universities in Australian society of the late 1950s, makes it a sociological document of the first importance.'²

The importance of the Committee lay in its recommendations, the two major points being:

that a University Grants Committee be set up to advise the States and Commonwealth on university finances and developmental policy; and that, during the lead-time for the

* David Barker, AM, Emeritus Professor, University of Technology Sydney, PhD candidate, Macquarie University.

1 Select Committee on Legal Education [No. 686] (London, 1846).

2 Allan Martin, 'Menzies and the Murray Committee', in F B Smith and P C Crichton (eds), *Ideas for Histories of Universities in Australia* (Australian National University, 1990) 112.

establishment of this body, there should be an emergency three-year injection of government funds into the system.³

While there is no specific mention of law in the Murray Report, the publication of the Murray Report itself is seen as the forerunner of later reports in the field of law which did have a major influence on the development of legal education from that time to the present day.

II THE INFLUENTIAL REPORTS ON AUSTRALIAN LEGAL EDUCATION

The Murray Report is regarded as having a major effect on the development of legal education in the post-war years, and was succeeded by four other major reports: three conducted at the federal level and one at state level. This article discusses their influence chronologically:

- The Martin Committee Report published in August 1964.⁴
- The only non-federal report, ‘Legal Education in NSW’ (known as the Bowen Report) published in 1979.⁵
- The Commonwealth Tertiary Education Committee Report titled ‘Australian Law Schools’, known as the Pearce Report, after its convenor, Professor Dennis Pearce, and published in 1987.⁶
- The Australian Law Reform Commission Report, ‘Managing Justice — A Review of the Federal Civil Justice System’ published in 2000.⁷

III THE MARTIN COMMITTEE REPORT

Susan Davies, an academic, stated that ‘the Martin Committee was required to recommend ways in which the demand for university education could be met within financial limits which were, to quote the Prime Minister’s memorandum, ‘very much more modest than under our present university system’⁸ — meaning that the Martin Committee disregarded any concept of Australia developing an alternative to the university system by establishing a junior or community college structure similar to that which operated in the United States. Instead, it opted for a process of upgrading existing tertiary institutions such as technical or teaching colleges into Colleges of Advanced Education (CAEs).

A *Creation of a Binary System*

The Martin Committee effectively created a binary system of tertiary education for Australian higher education, with a permanent separation in the tertiary sector between universities and CAEs. This meant that with regard to ongoing development of legal education within CAEs, there were groups of law academics, often well qualified, developing their teaching expertise among the many vocational courses which became an integral part of the CAE programmes.

Although these groups of law academics tended to become submerged within the accounting and management-dominated business faculties of the CAEs, they were well placed to play a prominent role when the Dawkins Reforms of the late 1980s⁹ dismantled the binary divide, merging universities with CAEs or combining these CAEs to form new universities. This meant that when new university law schools were established there was a pool of talent of accessible

³ Ibid 122–3.

⁴ Commonwealth of Australia, Report of the Committee on the Future of Tertiary Education in Australia to the Australian Universities Commission (1964) (the Martin Report).

⁵ New South Wales, *Legal Education in NSW: Report of Committee of Inquiry* (1979) (the Bowen Report).

⁶ Commonwealth of Australia, *Australian Law Schools, A Discipline Assessment for the Commonwealth Tertiary Education Commission* (1987) (the Pearce Report).

⁷ Australian Law Reform Commission, *Managing Justice – A Review of the Federal Justice System*, Report No 89 (2000).

⁸ Susan Davies, *The Martin Committee and the Binary Policy of Higher Education Australia* (Ashwood House, 1989) 35.

⁹ John Dawkins, Commonwealth Minister for Education, Employment and Training, *Higher Education: A Policy Statement* (Canberra: Australian Government Publishing Service, 1988).

law academics already available to undertake the teaching of most law subjects within the newly accredited LLB programmes.

B *Legal Education Influence*

Apart from establishing the binary divide, the Martin Report is significant because of its conclusions and recommendations about legal education. In its deliberations, the Committee was faced with the problems of:

the growing complexity of society ... and demands for more extensive training for lawyers, and with the development of university faculties of law capable of pursuing university educational aims to the highest levels, there has been a tendency for tension to develop between the pursuit of professional training requirements and university educational aims.¹⁰

It also endeavoured to deal with another problem that has caused ongoing difficulties for the teaching of law at tertiary level in Australia: chronic underfunding of legal education.

C *Modernisation of Legal Education*

The comments on the Martin Committee Report indicate that the Martin Committee regarded itself as having a clear mandate to make recommendations for modernising legal education in Australia. In recognising the reality of the challenges faced by the conflicting demands of the legal profession in 'favour of apprenticeship and part-time training for lawyers',¹¹ the Martin Committee stated it 'believes that the likely demands of the future are such that it is very desirable that lawyers seeking admission to independent practice should, wherever possible, have an education founded upon full-time studies at university level.'¹²

D *Articled Clerks System and Practical Legal Training*

The Martin Committee Report also expressed its concern about the current pattern of practical legal training and the system of articles of clerkship.

Despite the fact that it was unable to recommend an alternative process should Articles be abolished, the Martin Committee did recommend different kinds of law courses, one of which would involve a form of practical legal training.

E *Conclusion and Expansion of Legal Education*

One of the most useful outcomes of the Martin Committee Report was its effectiveness as a barometer of the state of legal education in Australia at the time it was reporting, in 1964. A developing problem was a lack of resources and facilities available to deal with the increased demand for university places for law students. The outcome of these requirements was the need for an expansion of law schools in Victoria and New South Wales.

The remainder of the Martin Committee Report was concerned with research and postgraduate work in law. Here it expressed the view that Australia should develop its own resources and cease continuing to use English textbooks. For these objectives to be achieved there was a need for university law schools to be provided with:

- 'Greatly expanded libraries.
- proper accommodation (which most of them lack at present),
- more full-time staff, and
- more scholarships for post-graduate students.'¹³

The other aspect of concern expressed in the Martin Committee Report was that of the predictability of the future need for graduate lawyers by the legal profession and the community generally.

¹⁰ Martin Report, above n 4, 49.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid 66.

IV THE BOWEN COMMITTEE REPORT

The Committee of Inquiry into Legal Education in New South Wales was convened by the then Attorney-General, Sir Kenneth McCaw, at the request of the then Chief Justice of New South Wales, Sir John Kerr, in June 1974. The initial Chairman was Justice R M Hope, but his involvement in other government inquiries forced him to resign in 1976. This resulted in the then Chief Justice, Sir Laurence Street, inviting the then Chief Justice in Equity, Sir Nigel Bowen, to chair the Inquiry.¹⁴

The Bowen Committee's terms of reference stated that it was 'to inquire into and report upon and to make recommendations in respect of, all aspects of the system and the control of legal education and of qualifications for admission as a barrister or a solicitor in New South Wales.'¹⁵

The terms of reference as interpreted by the Bowen Committee also included consideration of:

the extent of the involvement of the Supreme Court and professional associations to take part in the instruction, examination and determination of fitness for admission to practice of prospective Barristers and Solicitors.¹⁶

It also incorporated: 'the manner of the determination of their minimum academic education and practical training to qualify for admission.'¹⁷

However, the terms of reference also provided that the Committee should be excluded from: 'the determination of the curriculum of any University or School of Law, College of Advanced Education or of the College of Law.'¹⁸

A *Proceedings of the Bowen Report*

The proceedings of the Bowen Committee were divided into two stages. The first stage, which took the Committee to 1976, involved the receipt of a substantial number of written submissions from the legal profession and the wider community.¹⁹ The second stage, which covered the period from 1976 until the publication of the final report in 1979, was concerned with further written submissions, oral evidence, additional inquiries and the establishment of subcommittees.

B *Development of Legal Education in New South Wales*

The historical background contained in Chapter 2 of the Bowen Report is an invaluable source for any legal historian with an interest in the development of legal education in New South Wales. The chapter explains that, in the view of the Committee, an understanding of legal education in the State required a knowledge of its historical development.

C *Policies and Outcomes for Legal Education in New South Wales*

Chapters 3, 4 and 5 of the Bowen Report form a natural grouping of what the Bowen Committee described as 'General Perspectives and Policies'.

The opening chapters of the Bowen Report indicate that the Bowen Committee endeavoured to focus on what it considered to be certain fundamental issues. Apart from the obvious one — that the purpose of legal education should be related to training in preparation for graduates to enter the legal profession — the Bowen Committee asked itself the question: what sort of lawyers does the community need in the future? The Committee stressed that there should

¹⁴ Bowen Report, above n 5, 1.

¹⁵ *Ibid.*, 2.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

be 'three essential components of training prior to admission to practice.'²⁰ In its view, these should incorporate 'a component of theoretical knowledge, a component of skills and practical knowledge and a component relating to professionalization.'²¹

The Bowen Committee was probably one of the first appointed bodies to seriously inquire into the question of how the growth in the number of law schools might lead to an oversupply of law graduates, and how future young lawyers could be absorbed within the legal profession.²² These deliberations were heavily reliant on the study which the Bowen Committee had commissioned into the work of Beed and Campbell and the University of Sydney Sample Survey Centre.²³

The outcome of the earlier part of the Bowen Report culminated in the recommendations where the Bowen Committee expressed the view that there should be reiteration of the legislation²⁴ relating to the power reserved by the Supreme Court of New South Wales for the admission of barristers and solicitors, 'in a more appropriate way.'²⁵

The latter part of the Bowen Report dealt with various details relating to legal education in New South Wales and recommendations for a proposed Council of Legal Education, which did not receive approval.²⁶

The largest component of the Bowen Report related to the New South Wales law schools. The list included the University of Sydney, University of New South Wales, Macquarie University and the Australian National University, whose students, although located in Canberra, enjoyed the right of admission as legal practitioners of the Supreme Court of New South Wales. It also included the then NSW Institute of Technology (now UTS) which was, at the time, proposing to introduce a new part-time law course.²⁷

D *Additional Forms of Legal Education?*

Chapters 7 (The Admission Boards System), 8 (Practical Legal Training) and 9 (Continuing Legal Education) of the Bowen Report covered what would be regarded by many at the time of the Bowen Committee as the neglected areas of legal education in New South Wales, that is all forms of legal education outside the university sector. Since the publication of the Bowen Report these have remained a constant subject of review until the present time.

E *The Admission Boards System*

The Admission Boards System is the traditional form of examination which was originally adopted when the NSW Supreme Court was established by Charter²⁸ in 1823. Despite the view that its existence has been superseded by the creation of university law schools, the system still remains in operation today. Concern was premised on the lack of commitment by the Law Extension Committee of the Legal Profession Admissions Board (LPAB), which had overall responsibility for the conduct of the LPAB's examinations and to make any provision of any in-house lecturing or other tuition for students undertaking LPAB examinations. This was subject to the subsequent initiation of a formal system of lecturing and tuition provided by the University of Sydney Law School in 1962.²⁹ It is obvious from the Bowen Report that the Bowen Committee was concerned at the lack of co-ordination between teaching and examination within the Extension Programme.³⁰

20 Ibid 29.

21 Ibid.

22 Ibid 42.

23 Ibid 45.

24 Ibid 86.

25 Ibid.

26 Ibid 249.

27 Ibid 101-102.

28 Ibid 6.

29 Ibid 155.

30 Ibid 156.

The comments of the Bowen Committee were unsympathetic to all the arguments put forward by the state Attorney General's Department for the retention of the Admission Boards system in the provision of legal education for future magistrates and court officials.

In its view, there was a necessity for such a course to provide a system of legal education which taught 'analytical skills, substantive legal knowledge, basic working skills such as library and research skills, the skill of communication, familiarity with the institutional environment and an awareness of the total non-legal environment.'³¹ In emphasising these requirements, the Bowen Committee considered that 'the Admission Boards system has obviously fallen short in meeting these requirements.'³²

F *Practical Legal Training*

The question of practical legal training does not appear to have generated the same amount of tension between the PLT Providers as that caused by the Bowen Committee and those involved in the provision of the Admission Boards system.

Until the establishment of the Bowen Committee, Articles had been the dominant form of practical legal training for solicitors in New South Wales. Its abolition (essentially) and replacement by formal training at the College of Law or the ANU Legal Workshop with subsequent restricted practice after admission to satisfy the requirement for in-service training appears to have been reasonably uncontentious. This part of the Bowen Report exhibits an understanding of the various problems involved in the introduction of practical legal training, the recent developments regarding clinical legal education, and how they might be evaluated within the context of this form of education.³³ The Bowen Committee adopted a similarly rigorous approach to the practical training of barristers noting that the Barristers Admission Rules at that time did not prescribe any form of practical training.³⁴

G *Continuing Legal Education*

At the time of the Bowen Report, the concept of Continuing Legal Education (CLE) was in the early days of its development. There were two additional factors mentioned in Chapter 9 of the Bowen Report which were prophetic to the development of the future of CLE. One was the recognition of the influence of the College of Law and the Regional Law Societies of the New South Wales Law Society on the conduct of such programmes,³⁵ and the other was regarding the possibility of making CLEs a compulsory requirement of the annual certification of solicitors in New South Wales.³⁶ The latter is now a compulsory requirement in most Australian jurisdictions.³⁷

H *Legal Paraprofessionals*

The concept of the managing clerk or its successor, the 'paralegal', does not appear to have gained any status within the New South Wales legal jurisdiction, despite the view adopted by the Bowen Committee that there could be a role for paralegal professionals within New South Wales.³⁸ However, it does appear to have received some recognition within Victoria, South Australia and Western Australia.

31 Ibid.

32 Ibid.

33 Ibid 188-189.

34 Ibid 196

35 Ibid 213.

36 Ibid 214.

37 Ainslie Lamb and John Littrich, *Lawyers in Australia* (Federation press, 2007) 252.

38 Bowen Report, above n 5, 217.

I *Council of Legal Education*

Throughout the Bowen Report, the Bowen Committee had been preoccupied with the establishment of a Council of Legal Education in New South Wales. Part of its concern was based on its belief that the teaching and examining functions of legal education should be the responsibility of an institution independent of the Supreme Court. The Bowen Committee reiterated its view by recommending that ‘a new body be established to be called the Council of Legal Education to take over the functions of determining educational qualifications for admission to practice now performed by the Admission Boards and the Joint Examinations Board.’³⁹

J *Conclusions and Recommendations of the Bowen Committee*

The final and concluding Chapter 12 of the Bowen Report still maintained as its major premise a recommendation regarding the establishment of a Council of Legal Education.⁴⁰ The fact that this recommendation was never adopted by the New South Wales Government might be regarded as a major failure of the Bowen Committee. The other recommendation which was ignored related to the phasing out of the Admission Boards system of examinations.

There is much to commend in the Bowen Report, particularly in its approach to the general concepts of legal training. This emphasised the recognition of ‘three essential components of training prior to admission to practice - a component of theoretical knowledge, a component of skills and practical knowledge and a component of professionalisation’,⁴¹ with an acknowledgement that ‘there is no fundamental reason why these components should be dealt with exclusively by one institution in the legal education process’.⁴² This reflects an enlightened approach to the development of these important aspects of legal training.

The Bowen Report also put into context the importance of admission to the legal profession being conditional on completion of an appropriate law degree.

The development and maintenance of a high standard for practical training was also a focus for the Bowen Report to ensure that a graduate would be able to develop the skills required of a practising barrister or solicitor so they would be ‘equipped with the skill necessary to serve the community properly’.⁴³

Mention has already been made of the willingness of the Bowen Committee to discuss the challenge of supply and demand of lawyers, a factor which the earlier Martin Committee had chosen to ignore. With respect to the issue of legal employment, the Bowen Committee was concerned that some form of planning should take account of the future demands for, and supply of, lawyers.⁴⁴ It also rejected any attempt to impose quotas at later stages of a student’s progress through legal training, and took the view that if there was to be any restriction on the numbers of lawyers then this should be done prior to potential students enrolling in law school.⁴⁵

39 Ibid 228.

40 Ibid 241.

41 Ibid 242.

42 Ibid.

43 Ibid.

44 Ibid 247.

45 Ibid.

V THE PEARCE REPORT

Although the Pearce Report⁴⁶ was released as long ago as March 1987, it still retains a major influence on the ongoing development of Australian legal education today. The Pearce Report was commissioned in 1985 and submitted in 1987. The members of the Pearce Committee were⁴⁷ Professor Dennis Pearce (Convenor),⁴⁸ Professor Enid Campbell,⁴⁹ and Professor Don Harding.⁵⁰

A *Contents of the Pearce Report*

The Pearce Report consists of four volumes.⁵¹ Volume 1 includes 48 recommendations to the Commonwealth Tertiary Education Committee (CTEC) and 64 principal suggestions to law schools. This volume focusses on the principal matters with which law schools are involved such as the aims and issues of law schools and legal education, teaching and its evaluation, graduate studies, teaching law to non-law students and continuing legal education.⁵²

Volume 2 is concerned with some of the more variable aspects of law schools such as research and publications, services to the community, enrolments in law courses and access to law studies. It also deals with resources including law academics and the quality of legal education together with law school accommodation and equipment.⁵³

In Volume 3, the Pearce Committee focussed on the practical matters with which law schools were concerned such as administration, law libraries, practical legal training and relationships between various legal education institutions such as the then Australasian Universities Law Schools Association (AULSA), now the Australasian Law Teachers Association (ALTA), meetings of Law School Heads (the predecessor to the Council of Australian Law Deans (CALD)), Australasian Law Students Association (ALSA) and the Australian Professional Legal Education Conference (APLEC) (the organisation representing practical legal training providers).⁵⁴

Volume 4 is wholly devoted to a survey of recent Australian law graduates.⁵⁵ This was carried out by a private organisation, MSJ Keys Young Planners Pty Limited (funded by the Law Foundation of New South Wales and the Victoria Law Foundation).⁵⁶

The terms of reference for the Pearce Committee's review are set out in Volume 1.⁵⁷

Although they were particularly wide, they basically involved a consideration of the quality and economic efficiency of selected law schools incorporating their courses and systems together with a review of the suitability and feasibility of the aims of each law school in its provision for the discipline of law.

B *The Nature of the Pearce Report*

Any evaluation of the Pearce Report is aided by the fact that in 1988, John Dawkins, the then Commonwealth Minister for Education, Employment and Training, sought advice from the National Board of Employment, Education and Training (NBEET) on the development of a 'plan for future discipline reviews ... and arrangements for follow-up.'⁵⁸ This led to the establishment of a working party which concluded in 1990 with a recommendation that 'studies

46 Pearce Report, above n 6.

47 Ibid Liv.

48 Professor of Law, Australian National University.

49 Sir Isaac Isaacs Professor of Law, Monash University.

50 Professor of Law, University of New South Wales.

51 Pearce Report, above n 6, iv.

52 Ibid vol 1, 1–305.

53 Ibid vol 2, 306–712.

54 Ibid vol 3, 713–1010.

55 Ibid vol 4, 1–204.

56 Ibid 1.

57 Ibid vol 1, lii.

58 Craig McInnis, Simon Marginson and Alison Morris, *Australian Law Schools after the 1987 Pearce Report* (Centre for Study of Higher Education, University of Melbourne, 1994) vii.

to report on the implementation of recommendations arising from discipline reviews be carried out under the Evaluations and Investigations Program about three to five years after the completion of each review.⁵⁹ A major outcome of this recommendation was the commissioning by the Department of Employment, Education and Training in 1992 of an impact study to evaluate the effects, efficiency and effectiveness of the 1987 Pearce discipline review.⁶⁰ Further assistance is afforded by the publication of a report, 'Australian legal education a decade after the Pearce Report' in 1997⁶¹ and a summary of the effect of the Pearce Report by Samford and Blencowe, published in 1998.⁶²

Most commentators would agree with the statement that the Pearce Report was 'the most comprehensive and significant investigation undertaken of Australian legal education.'⁶³ Most matters of primary relevance to Australian legal education in 1987 are contained in Volume 1 of the Pearce Report, which explained the challenges of teaching law as comprising 'only 2 methods of teaching adopted in Australian law schools which are mutually exclusive and mutually opposed to one another. They are labelled the expository or straight lecture method and the case, discussion or Socratic method.'⁶⁴

The Pearce Report goes on to describe these forms of teaching, both objectively and in some detail, although the Pearce Committee's preference was clearly against the expository method and in favour of casebook, discussion or Socratic teaching (and its development into the problem method).

Another aspect of teaching law considered in Volume 1 of the Pearce Report is the identification of the following trends in legal education curriculum and teaching:

[t]he growth of the combined degree; the introduction of elective subjects; the use of small group teaching; attempts to introduce skills training; the provision of coursework higher degrees; and specialised focus in teaching and research.⁶⁵

Volume 2 is principally concerned with research and publications. McInnis and Marginson emphasised the difficulties which the Pearce Committee faced with regard to the distinction 'between "legal research" carried out by lawyers in assisting clients, and academic research in law.'⁶⁶ This required '[d]istinguishing between "doctrinal research" or legal scholarship which started from law as a given field of knowledge (law as the subject), from "non-doctrinal research" which had its starting point outside law and looked at the social, economic, political or cultural implications of legal practices (law as the object).'⁶⁷

C *The Macquarie Law School Issue*

Of greatest interest to those who have taken notice of the influence of the Pearce Report on the future of Australian legal education are the two principal recommendations which appear in Volume 3. These relate to the problems which had given rise to a crisis in governance of the Macquarie Law School and a statement concerning the need for future law schools in Australia.

Although it could be argued that the crisis within the Macquarie Law School was based upon ideological divisions between proponents of the Critical Studies Movement and those who supported a more traditional approach towards law teaching, the Pearce Report reported that such divisions were more deep-rooted: 'This division is, unfortunately, not only ideologically based

59 Ibid 3.

60 Ibid vii.

61 Eugene Clark, 'Australian Legal Education A Decade after the Pearce Report' (1997) 8 *Legal Education Review* 213, 235.

62 Charles Samford and Sophie Blencowe, 'Context and Challenges of Australian Legal Education' in John Goldring, Charles Sampford and Ralph Simmonds (eds), *New Foundations in Legal Education* (Cavendish Publishing, 1998) 5-6.

63 Clark, above n.61, 214.

64 Pearce, above n 6, 155.

65 McInnis, above n 58, 170.

66 Ibid 181.

67 Ibid.

nor is it founded only on differences of view as to the appropriate basis for legal education ... There are fundamental incompatibilities of personality in the law school.⁶⁸

Despite this unpromising account from the Pearce Committee and its view that the Macquarie Law School should be phased out, the law school did survive. However, it has to be noted that among the alternative remedies canvassed by the Pearce Report was a division of the Macquarie Law School on the basis that 'those who are not ideologically prepared to pull together on the provision of such courses should be transferred to another school which can offer [similar]courses.'⁶⁹ This referred to BA and BEc programmes which incorporated a wide range of law courses beyond the normal business law subjects. Although this recommendation had been rejected by a Macquarie University Review Committee appointed in 1978 to resolve the difficulties within the law school, it was eventually accepted as a remedy and introduced in 2000 by the University.⁷⁰

D *A Restriction on Further New Law Schools*

The other recommendation for which Pearce is still remembered is the statement that 'we do not think that there will be the need for a new law school, except perhaps in Queensland.'⁷¹ What transpired very soon after the publication of the Pearce Report was contrary to this statement as, 'an Avalanche of Law Schools'⁷² took place. In defence of the statement in the Pearce Report, a number of circumstances arose which could never have been anticipated by the members of the Pearce Committee. The principal reason was that contemporaneously with the publication of the Pearce Report, John Dawkins, the Federal Minister for Employment, Education and Training, introduced legislation that abolished the binary system which had been established by the Martin Report (as discussed above at III (A)). He replaced it with the merger and amalgamation of the then 19 universities and 69 CAEs in Australia to create a new single system of 36 universities by 1994. It is arguable that these reforms ('the Dawkins Reforms') created an expansion of universities and law schools which realised the expectation of more students wishing to study law.

E *Conclusion: The Legacy*

Where does this leave the Pearce Report in the history of Australian legal education? There can be no contradiction that, at its time, it was regarded as a major influence throughout Australian legal education, not only because of its comprehensive survey of legal education in 1987 but also because of its wide-ranging review of Australian law schools and its analysis of the many aspects of teaching and learning practised by them. Several commentators such as Clarke, McInnis and Marginson have emphasised some of the more intangible benefits which flowed from the Pearce Report to legal education generally. It encouraged greater co-operation between the law schools, especially through the then Committee (now Council) of Australian Law Deans, leading to the development of law as an academic discipline.⁷³

VI THE AUSTRALIAN LAW REFORM COMMISSION REPORT, 'MANAGING JUSTICE'

The launch of the Australian Law Reform Commission Report No 89, *Managing Justice: A Review of the Federal Justice System* (the *Managing Justice Report*) by the Honourable Daryl Williams, the then Federal Attorney-General, on 17 February 2000, marked a significant achievement by the Australian Law Reform Commission. As the Commission stated, the

68 Pearce, above n 6, 945.

69 Pearce, above n 6, 949.

70 John Touchie and Scott Veitch 'The Decline of Academic Reason' (1999) 24(1) *Alternative Law Journal* 26.

71 Pearce, above n.6, 998.

72 David Barker, 'An Avalanche of Law Schools: 1989 to 2013' (Paper presented at the Legal History Interest Group, Australasian Law Teachers Association Conference, Australian National University, 1 October, 2013).

73 McInnis above n 58, 247.

Managing Justice Report represented ‘[t]he culmination of a major four year inquiry which commenced with terms of reference directing the Commission to consider “the need for a simpler, cheaper and more accessible legal system.”’⁷⁴ The Managing Justice Report closed with the affirmation that its ‘138 recommendations for reform cover such other matters as legal and judicial education, judicial accountability, lawyers’ practice standards and legal aid.’⁷⁵

The Managing Justice Report had been preceded by a Discussion Paper in August 1999.⁷⁶ At that stage, it was obvious that legal education was only contemplated as comprising a minor part of the review under a heading in DP 62: ‘Education, training and accountability’.⁷⁷ The subsequent Managing Justice Report was widened to incorporate many more of the aspects of the federal judiciary system, the supply of legal services and the influence of all aspects of legal education.

A *Education, Training and Accountability*

The relevant part of the Managing Justice Report devoted to legal education is that of ‘Education for the Legal Profession’. While noting that it had stated in DP 62 that the ‘requirements of higher educational qualifications is classically on the defining features of a profession’,⁷⁸ the Commission now set a more challenging goal for the Managing Justice Report by stating that ‘theory and practice in relation to the nature, shape, siting, funding and regulation of professional education is contingent and dynamic, and thus open to contest and controversy.’⁷⁹

The Managing Justice Report proceeded to examine the changing patterns of legal education with a description of the manner in which current legal education was conducted, namely, ‘[d]ivided into three relatively discrete stages, involving (1) academic training at a university; (2) subsequent practical training with both institution and in-service components; and (3) continuing education’,⁸⁰ noting that these arrangements had originally been recommended in the Martin Report (discussed above).⁸¹

B *Education for the Legal Profession*

Most of that part of Chapter 2 which is entitled ‘Education for the Legal Profession’ is chiefly concerned with all aspects of academic training at a university, although the Managing Justice Report does acknowledge the ongoing presence of the LPAB Extension Course and the fact that at this time articulated clerkships had not been completely replaced by Practical Legal Training (PLT) in some jurisdictions.⁸²

While the Commission endeavoured to envisage an ‘emerging trend in Australia toward the teaching of generic “professional skills,”’ which it defined as ‘skills which will be needed in any subsequent legal practice,’ it acknowledged the current reaction within Australian legal education which had previously been identified in DP 62.⁸³ The Commission had made a comparison with a major review of legal education in the United States in 1992 (the MacCrate Report),⁸⁴ whereby ‘MacCrate would orient legal education around *what lawyers need to be able to do*, while the Australian position is still anchored around outmoded notions of *what lawyers need to know*.’⁸⁵

74 Australian Law Reform Commission, *Managing Justice: A review of the federal civil justice system* (Media Release: 10 February 2000) 7.

75 Ibid 8.

76 Australian Law Reform Commission, *Review of the federal civil justice system*, Discussion Paper No 62 (1999) (DP 62).

77 Ibid 40.

78 ALRC No 89, above n 8, 114.

79 Ibid.

80 Ibid 115.

81 Ibid.

82 Ibid 117.

83 Ibid 118.

84 Ibid 119.

85 ALRC No 89, above n 8, 120.

C *National Standards and/or Accreditation*

Much of this part of the Managing Justice Report is taken up with a deliberation on whether there was '[a] need for national standards and/or accreditation?'⁸⁶, and whether in support of this proposition there was a need for a body to oversee its activities, which the Managing Justice Report described as the Australian Council on Legal Education (ACOLE).

A further recommendation, that all university law schools be subject to an ongoing quality assurance auditing process, was overtaken by the federal government's introduction of successive forms of national auditing for quality of all university educational programs. Originally this responsibility fell to the Australian Universities Quality Agency (AUQA), but later became '[a]n area of responsibility of the higher education regulatory authority established in 2011, the Tertiary Education Quality and Standards Agency (TEQSA).'⁸⁷

The only recommendation which was not expressly adopted either by state, federal or university authorities was the re-introduction of another national discipline review of legal education in Australia similar to that of the Pearce Review.

D *An Australian Academy of Law*

Of all the recommendations contained within Chapter 2 the one which could be regarded as reflecting a major achievement of the influence of the Managing Justice Report must be the one which sought the establishment of an Australian Academy of Law ('the Academy'), stating that it could 'serve as a means of involving all members of the legal profession — students, practitioners, academics and judges — in promoting high standards of learning and conduct and appropriate collegiality across the profession.'⁸⁸

Whilst President of the Commission, Professor David Weisbrot, convened a small group of leading law academics and led the discussion and negotiation whereby the Academy was able to come into existence in 2008, and for a short period, he acted as its temporary inaugural President. The fact that the Academy is recognised as a vibrant institution with approximately 250 selected members owes much to the earlier foresight of the Commission and Professor David Weisbrot in particular.

E *Conclusion*

The final recommendation, under the heading 'Education for the Legal Profession', emphasised the importance of '[a]ll legal practitioners completing a program of professional development over a given three year period'⁸⁹ as a condition of maintaining their current practising certificates. This reflects the current requirements of the Law Society of New South Wales (and has basically been adopted in various forms by other Australian jurisdictions).

VII REVIEW

Consideration of various reports on the development of legal education is a matter which reflects their effect over a long period. Except in such extreme cases as the introduction of the binary divide (the Martin Report) and its dissolution (the Dawkins Reforms), it is extremely difficult to measure exactly how many changes in legal education were influenced by the outcomes of the reports considered in detail in this paper. Nonetheless, these reports have had an impact. They mark an increasing involvement of government participation in legal education primarily at federal level, but also at state level, in the case of the Bowen Committee.

This article's consideration of these reports illustrates not only their effect on the formulation of government policy but also the approach adopted by the stakeholders, who could be regarded

⁸⁶ Ibid 121.

⁸⁷ Julie Wells and Lin Martin, 'Regulation' in Gwilym Croucher, Simon Marginson, Andrew Norton and Julie Wells (eds), *The Dawkins Revolution 25 Years On* (Melbourne University Press, 2013) 200.

⁸⁸ ALRC No 89, above n 8, 154.

⁸⁹ Ibid 159.

as those with a direct link to legal education and the legal community generally. This approach can mean that, for example, stakeholders in the form of the Council of Australian Law Deans will take notice of the possibility of government intervention and setting standards for law schools — as anticipated in the Pearce and Managing Justice Reports — and forestall this by the introducing of their own scheme of self-regulation.

It should be recognised that Chapter 11 of the Martin Report (Legal Education) incorporated a review of the whole spectrum of legal education which existed at the time of the Martin Report, such as the roles of university schools of law, admission to practice, practical legal training, university law syllabuses and teaching, research and postgraduate work, the optimal size of law schools and a comparison with American legal education.⁹⁰

The Bowen Report reflected a continuation of the change taking place as an outcome of the Martin Report. This was especially so with regard to the statements of the Bowen Committee relating to the consideration as to the types of lawyers which might be needed by the community in the future. The fact that the Bowen Committee recognised that legal education does not stop with admission to practice would resonate with today's forward-looking educators. However, it would be acknowledged that there is a need for potential lawyers not only to develop a balanced view of community needs and work expectation but also to receive both a general education and inter-disciplinary training.

In assessing the achievements of the Pearce Report, it was Professor David Weisbrot who concluded that 'it is nevertheless true that the Pearce Report is the first important review, and comprehensive compilation of data on, Australian legal education, and will be the point of departure for all debate on legal education for some time.'⁹¹

Professor Weisbrot, in his subsequent role as President of the Commission, was responsible for the Managing Justice Report, which covered aspects of legal education. Under the heading of 'Education, training and accountability' this included not only education for the legal profession, but the 'education and professional development for judges, judicial officers and tribunal members.'⁹² It endeavoured to expand the statement in DP 62 that 'the requirements of higher educational qualifications is classically a defining feature of a profession'⁹³ to a more challenging goal for the Managing Justice Report by stating that '[t]heory and practice in relation to the nature, shape, siting, funding and regulation of professional education is contingent and dynamic, and thus open to contest and controversy.'⁹⁴

It is of course easier to acknowledge situations whereby the recommendations in a particular report were not acted upon. Such obvious examples would be the recommendation in the Pearce Report for the abolition of the Macquarie Law School or the Pearce Committee's view that there should be no further law schools established in Australia other than the possibility of a further one in Queensland.

It could also be argued that the Pearce Report was intended to be part of a programme of national reviews incorporating a system of discipline assessment which McInnis and Marginson cite that the Australian Vice-Chancellors Committee considered 'lacked clarity of purpose',⁹⁵ and if they 'could not influence discipline change at the institutional level then it was unlikely that institutions would continue to cooperate.'⁹⁶

Similarly, the rejection of the recommendation of the Managing Justice Report that a further national discipline review of legal education should be commissioned on the basis of the earlier Pearce Report, or the Bowen Committee's recommendation that the LPAB Extension Course be abolished, are further examples of recommendations being ignored.

Nevertheless, close examination of the outcomes of these Reports would suggest that there the issues of legal education are timeless, and continue to manifest themselves in an ongoing way.

⁹⁰ The Martin Report, above n 4, 49–50.

⁹¹ David Weisbrot, *Australian Lawyers* (Longman Cheshire, 1990) 129.

⁹² ALRC N0 89, above n 8, 114.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ McInnis, above n 59, 3.

⁹⁶ *Ibid.*

