

THE PEARCE REPORT — DOES IT STILL INFLUENCE AUSTRALIAN LEGAL EDUCATION?

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I INTRODUCTION

Although the Pearce Report¹ was released as long ago as March 1987 it still has a major influence on the ongoing development of Australian legal education. This does not necessarily mean that it is a solely benign influence. In their Preface to the report *Learning Outcomes and Curriculum Development in Law*, published in 2002,² the authors stated: ‘A program of thorough and authoritative assessments of the work of higher education institutions measured against objectives which are acceptable in academic and social terms.’⁵ Additionally, the Background to the Review states: ‘It is intended that each discipline assessment will be undertaken by a small committee of people pre-eminent in their fields, who will act independently of the Commission and furnish advice to the Commission.’⁶

Charles Sampford and Sophie Blencowe put the Report into context by stating that it was issued at a time that coincided with the introduction of the Dawkins Reforms for the higher education sector.⁷ In stating that ‘Australian legal education changed mightily’⁸ in the years that followed both these events they believed that some of the changes were: ‘Due in part to Pearce; many of them were in spite of Pearce; and many were driven by the Labor Government’s reforms and institutional response to them.’⁹

The Report was commissioned in 1985 and submitted in 1987. The members of the Committee who were appointed were: Professor Dennis Pearce, Professor of Law, The Australian National University (Convenor); the late Dame Enid Campbell, then the Sir Isaac Isaacs Professor of Law, Monash University; and Professor Don Harding, Professor of Law at the University of New South Wales.¹⁰

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1 Dennis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A discipline assessment for the Commonwealth Tertiary Education Commission* (AGPS, 1987) (‘Pearce Report’).

2 Richard Johnstone and Sumitra Vignaendra, *Outcomes and Curriculum Development in Law*, A Report Commissioned by the Australian Universities Teaching Committee (2003).

3 Ibid, Preface.

4 Interview with Dennis Pearce (ANU, Canberra, 2 October 2013).

5 Pearce, above n 1, *li*.

6 Ibid.

7 John Goldring, Charles Sampford and Ralph Simmonds, *New Foundations in Legal Education* (Cavendish Publishing, 1998) 5.

8 Ibid.

9 Ibid.

10 Pearce, above n 1.

II CONTENTS OF THE REPORT

The Report is a weighty document consisting of four volumes.¹¹ Volume 1 includes 48 recommendations to the CTEC, and 64 principal suggestions to law schools. This first volume focuses 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.¹²

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.¹³

In Volume 3 the Committee focused 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 forerunner of 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.¹⁴

Volume 4 is wholly devoted to a survey of recent Australian law graduates.¹⁵ This was carried out by a private organisation, MSJ Keys Young Planners Pty Limited, and as the Tertiary Education Commission was unable to finance the study because of budgetary constraints during the 1985–86 financial year, the Committee obtained alternative funding from the Law Foundation of New South Wales and the Victoria Law Foundation.¹⁶

The terms of reference for the Pearce Committee's review are set out in Volume 1.¹⁷ However they are succinctly summarised by Judith Lancaster in her monograph as:

Include[ing] assessment of the quality and economic efficiency of each institution providing legal education; the suitability and feasibility of the aims set and followed; the nature and quality of both undergraduate and postgraduate courses; the standards of teaching and research; staff contributions to law reform, the work of government, the profession, and the community's welfare; the effectiveness of resource utilisation and the extent of unnecessary duplication; current deficiencies; the community requirement for graduates, and selection and admission processes of law schools.¹⁸

There is no doubt that the Pearce Report was a major undertaking for the three members of the Review Committee. It took a major commitment of their professional lives from the time the Report was commissioned in 1985 until its publication in March 1987.

III THE NATURE OF THE REPORT

The questions which could be posed are, first, why there had to be a Pearce Report in the first place, and if so, whether the approach adopted by the members of the Pearce Committee was appropriate in the circumstances. It is difficult to establish whether there was an underlying methodology regarding the approach followed by the Committee during the course of what was an exhausting process during the three years between the commencement of their inquiry in 1985 and the publication of their Report in 1987. Near the end of this paper there is an explanation that the problem of funding forthcoming for the qualitative studies to be completed.

11 Ibid.

12 Ibid Vol 1.

13 Ibid Vol 2.

14 Ibid Vol 3.

15 Ibid Vol 4.

16 Ibid 1.

17 Ibid Vol 1 i

18 Judith Lancaster, *The Modernisation of Legal Education: A Critique of the Martin, Bowen and Pearce Reports* (Centre for Legal Education, 1993) 51.

These were necessary to support their findings with regard to the need for substantial financing of law schools if the necessary high standard of research and teaching could be developed in order to maintain appropriate standards to compete against their counterparts in legal education internationally, particularly in the United States and the United Kingdom.

It could be argued that the Pearce Report encapsulates a conventional approach by the Committee as it carried out its enquiries, although this is not say that it was either inappropriate or unsuccessful, given the particular circumstances of the 1980s. It would be acceptable to state the belief that the Pearce Report was principally concerned with an extended analysis of what could be described as the ‘lived experience’ of legal academics endeavouring to develop an academic and intellectual culture for legal education within the Australian universities experience.

The author of this paper is well aware that for most law academics the Pearce Report was published at least a decade before they commenced their career as law teachers, so that for the majority of them it is undiscovered history. This means that, like most issues of legal history, it needed to be recounted in narrative form, but more than this it had to incorporate analysis and description. It also needed to involve the essential themes which were developed in the Pearce Report and which involved the culture of law schools and their participants, both staff and students, as well as the essential components of this culture, particularly regarding teaching and research.

Evaluation of the 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) for advice for both the development of a: ‘Plan for future discipline reviews ... and arrangements for follow-up.’¹⁹ This led to the establishment of a working party, which concluded in 1990 with a recommendation: ‘Studies 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.’²⁰ A major outcome of this recommendation was the commissioning in 1992 by the Department of Employment, Education and Training of an impact study to evaluate the effects, efficiency and effectiveness of the 1987 Pearce discipline review. The study was conducted by Simon Marginson and Craig McInnis, assisted by Alison Morris, all from the Centre for Study of Higher Education, University of Melbourne.²¹

Further assistance is afforded by the publication in 1997 of a report, *Australian Legal Education a Decade After the Pearce Report*,²² and a summary of the effect of the Pearce Report by Samford and Blencowe.²³

Most commentators would agree with the statement that the Pearce Report was: ‘the most comprehensive and significant investigation undertaken of Australian legal education.’²⁴ This statement is supported by the well-known legal commentator David Weisbrot: ‘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.’²⁵

One of the most important factors of the Pearce Report, noted by McInnis and Marginson and other commentators, was that it set ‘three standards (or goals) which many law schools did not meet.’²⁶ The most important of these three standards was attention to the ‘Theoretical and crucial dimensions of legal education’, alternatively described as ‘Generation of critical

19 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.

20 Ibid.

21 Ibid v.

22 Eugene Clark, ‘Australian Legal Education a Decade after the Pearce Report’ (1997) 8 *Legal Education Review* 213–35.

23 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.

24 Clark, see above n.22, 214.

25 Ibid.

26 Ibid.

reflection on course content and the role of skills teaching.²⁷ The other two standards related to encouragement of small-group teaching with a student to staff ratio of 15:1, with half of such a ratio for skills teaching and a library collection of 100,000 volumes or volume equivalents.

In a document as far-reaching as the Pearce Report it is important to be selective as to a consideration of those matters which are directly relevant to the development of legal education in Australia. There were aspects of the Report which also caught the attention of educational and legal commentators in the media such as the recommended closure of the Macquarie Law School (discussed in Part IV below) and the expectation that there should be no more law schools established in the immediate future following on from publication of the Report.

Most matters of primary relevance to Australian legal education in 1987 are contained in Volume 1 of the Report. Obviously its contents had a profound effect on all those involved with teaching law in the tertiary sector, apart from being of major interest to the general legal community. A measure of its influence may be judged from reading a paper presented at the LawAsia Downunder Conference in 2005 by high-profile law academic and commentator Sally Kift.²⁸ In this paper Professor Kift caught the mood of the approach by Pearce. She canvassed the changes in legal education which had taken place from Pearce in 1987 until the Conference in 2005 – and, in particular, the way legal education had responded to the various sectional pressures that had impacted upon it since Pearce. Sally Kift’s description of her own experiences as a law student a decade after Pearce is illustrative of how she was: ‘[c]ompletely disengaged from and uncritical about (what I now know to be) the traditional model of legal education delivery.’²⁹ She went on to explain that her experience was much as it had been captured by the Pearce Report. This included ‘[l]ong, two hour lectures ... on dry discrete, doctrinal subject areas’, ‘[o]ne hour tutorials where, if you kept your head down and avoided eye-contact, you also avoided any attempt (if there was one) at interactivity or engagement between yourself and the tutor.’³⁰ and ‘[v]ery little guidance about course and/or subject structure was provided – you got what you got (and were grateful for it) and most of it, possibly together with something that had never been mentioned) would be on the end of year 100% closed book exam.’³¹

The question of teaching practices covered in Volume 1 is relevant to the legal educator, past and present. Kift saw her role as a student at that time as a ‘[s]tudent–receptor’³² able to ‘absorb and to report back accurately’³³ in the exam so that the: ‘Traditional legal education model has been preoccupied with the study of narrow legal rules.’³⁴ As she recognises, ‘Many of my teaching colleagues had similar undergraduate experiences and it is problematic that most uncritically replicate the learning experiences that they had when students.’³⁵

In Volume 1 the Pearce Report was willing to explore the challenges which have been highlighted by Sally Kift and other commentators. In the words of the Report:

It sometimes seems to be suggested that there are only 2 methods of teaching adopted in Australian law schools and that they 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.³⁶

The Report goes on to describe these forms of teaching both objectively and in some detail, although the Pearce Committee preference was clearly against the expository method and in favour of casebook, discussion, or Socratic teaching, or its later development into the problem method. However, it has never been recognised in any of the subsequent reports or papers that

27 See McInnis, above n 19, 242.

28 Sally Kift, ‘for Better or For Worse?: 21st Century Legal Education’ (Paper presented at the Educating New Entrants to the Legal Profession (Session 16.4), LawAsia Downunder 2005 Conference, Gold Coast, Queensland, 24 March 2005).

29 Ibid 6.

30 Ibid.

31 Ibid.

32 Ibid.

33 Ibid.

34 Ibid.

35 Ibid 7.

36 Pearce above n 1, 155.

the Pearce Report was remarkably open-minded as to the teaching style adopted in Australian law schools. Although it might not be the conventional approach to current teaching methods, the statement in the Report that '[t]eachers have tended to use the method with which they feel most comfortable and which they think is best suited to the subject matter with which they are dealing'³⁷ recognises the realities of the teaching situation evident in Australian law schools at that time. This view is supported by the subsequent recognition that '[n]ot all teachers are able to use the same techniques effectively; not all material is best dealt with in the same way; but above all we think there is considerable advantage in students being exposed to a variety of teaching methods.'³⁸ It is important to acknowledge that these statements were made subject to the caveat as to what the Report might 'have to say later about review of individual teacher's performance and resources available.'³⁹

Another aspect of teaching law considered in Volume 1 of the Pearce Report and noted by McInnis and Marginson in their Report is the identification of the following trends in legal education curriculum and teaching: 'The 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.'⁴⁰ There was concern as to the quality of such research within this context, although an outstanding exception to this criticism, Professor Julius Stone, is quoted: 'Phenomena such as these were most unusual. The bulk of legal scholarship was firmly located in Austinian positivism, stressing above all the identification and analysis of *black-letter rules*.'⁴¹

Volume 2 is principally concerned with research and publications, and McInnis and Marginson emphasised the difficulties it faced with regard to the distinction particular to legal research 'as between *legal research* carried out by lawyers in assisting clients, and academic research in law.'⁴² This required '[d]istinguishing between *doctrinal research* or legal scholarship which started from law as a given field of knowledge (law as the subject) [and] *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)'.⁴³ Within the Pearce Report both Chesterman and Weisbrot draw attention to the fact that 'Both the recent Report on Australian Law Schools and the submission of the law school deans to the writers of that Report refer to the predominance of *doctrinal, black-letter* research in Australian law schools, and the submission contains a plea for more *theoretical* and *reform-oriented* research.'⁴⁴

IV 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 crisis in governance of the Macquarie Law School and a statement concerning the need for any future law schools within Australia.

Of these two, it would be problems involving the Macquarie Law School which would be remembered in respect of the Report. As was reported in Volume 3: 'The disputes that have racked Macquarie law school for some years now are of public notoriety. They have been pursued not only within the law school but also in the University and in the media.'⁴⁵ McInnis and Marginson were more forthright in their view of the approach adopted by Pearce, stating that in their opinion: 'The Pearce Report appeared careless of the interests of Macquarie University, of its law school and, most importantly, of the law school's students and graduates.

37 Ibid 156.

38 Ibid 157.

39 Ibid.

40 McInnis above n 19.

41 Michael Chesterman and David Weisbrot, 'Legal Scholarship in Australia' (1987) 50 *Modern Law Review* 714.

42 McInnis above n 19, 181.

43 Ibid.

44 Chesterman above n 41, 723.

45 Pearce above n 2, 944.

It played the game tough. The impression was left that the Pearce Committee was out to *get* Macquarie.⁴⁶

Judith Lancaster agreed: ‘By far the most controversial of the Committee’s finding was its recommendation to phase-out or reconstitute Macquarie University Law School.’⁴⁷ She went on to claim that: ‘Because the recommendation is at odds with the Committee’s *expert* evidence, it provides a good example of the limitations of the corporatist mode.’⁴⁸

Although it could be argued that the divisions within the Macquarie Law School were based upon ideological divisions focused on those at the Law School who were proponents of the Critical Studies Movement as compared with those who supported a more traditional approach towards law teaching, Pearce reported that such divisions were more deep-rooted. As the Report stated: ‘This division is, unfortunately, not only ideologically based 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.’⁴⁹ It went on to state: ‘These are not differences of opinion [that] can lead to a stimulating, dynamic atmosphere in a university environment.’⁵⁰ The Report noted that in contrast to such an intellectual approach, ‘We are told, obscene remarks are made to proponents of difference views at school meeting; when staff members are visited after school meetings and an explanation demanded as to why they voted a certain way, and, as we understand, at least one complaint of a threat of assault has been made, intellectual debate has gone and factionalism has replaced it.’⁵¹

Naturally, a different perspective is given in the official history of the Macquarie Law School, which reports: ‘Pearce’s Committee believed that the School should be closed, phased out or divided due to the *irreconcilable differences*. There was a fire burning and the Pearce Report threw a huge bucket of petrol on it and made it much worse.’⁵²

Professor Kercher, now Professor Emeritus at the Law School, recalled:

There was a lot of exaggeration in the press too. Eventually it broke into two factions and in the middle sat the majority of staff who watched the bombs fly overhead. Most of us ducked and tried to avoid the flak and got on with teaching and research.⁵³

The authors of the Macquarie Law School history take an equally sanguine view and state that: ‘The irreconcilable differences were reconciled, or at least a truce was in place by the late eighties. The school survived the battering of the press and weathered the storm.’⁵⁴

The problems encountered by the Law School are also fully covered in the official history of Macquarie University 1964–1989 under the heading ‘The Law School and its Troubles’.⁵⁵ Again the description contains such extremities of language as ‘[a] small and determined group of staff, alienated by what they perceived to be their lack of power over decision-making in the university [who] were threatening to destabilise its structures’.⁵⁶

Similarly, an incident regarding a breach of confidentiality in quoting from referee reports at a School of Law Meeting is described thus:

Such incidents are traceable not to the pathological activities of a rump (or even a majority group) in the Law School, but are the direct and inevitable – and clearly justifiable – result of a comprehensive set of paternalistic and authoritarian attitudes and practices of governance in this university.⁵⁷

46 McInnis above n 19, 103.

47 Lancaster above n 18, 52.

48 Ibid.

49 Pearce above n 1, 945.

50 Ibid.

51 Ibid.

52 Rosalind Croucher and Jennifer Sheeden, *Retro – 30 years of Macquarie Law 1975–2005* (Division of Law, Macquarie University, 2005) 76.

53 Ibid.

54 Ibid.

55 Bruce Mansfield and Mark Hutchinson, *Liberality of Opportunity, A History of Macquarie University 1964–1989* (Macquarie University in association with Hale & Iremonger 1992) 276.

56 Ibid 279.

57 Ibid 283.

However, there was a suggestion that the internal problems within the Law School highlighted by Pearce might have had a more serious effect on the future of Macquarie University, which at the height of the Dawkins Reforms was endeavouring to extend its influence by amalgamating with Colleges of Advanced Education in New South Wales. With respect to these proposed mergers the University was concerned about the attitude of the New South Wales Minister of Education, Terry Metherell – who, rumour had it, would not approve any mergers for Macquarie. With respect to this approach the history states that: ‘A very long and frank talk with Ron Parry, Director of the Higher Education Office, confirmed the impression. How far, it was asked, was the minister’s mind affected by the problems of the Law School?’⁵⁸

Despite this unpromising report from the Pearce Committee that the Law School should be phased out, it did survive; but it has to be noted that the Pearce Report stated: ‘Macquarie graduates were the only group who indicated in any number (23 per cent of respondents) that they thought the law school that they attended disadvantaged them in finding work.’⁵⁹

To sustain a balanced view of the reaction of Macquarie law students within the graduate survey incorporated into Volume 4 of the Report, it should be noted that Judith Lancaster maintains:

The Committee’s emphasis on the finding that 41% of Macquarie graduates believed that the course they were offered lacked legal substance, rather than on the overall result which placed Macquarie among the top three law schools in Australia is attributable to the Committee’s view of Macquarie Law School as having an overall stamp or character representing an express rejection of professional training as a sole objective of legal education.⁶⁰

Among the alternative remedies canvassed within the Pearce Report was the division of the 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 courses as set out in para 22.69.’ 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.

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.’⁶¹

This quite innocuous remark is another one with which the Pearce Report is most often associated. However what transpired very soon after the publication of the Report was that contrary to this statement there took place (in this author’s words) ‘An Avalanche of Law Schools’.⁶² In defence of the statement in Pearce, the article in question draws attention to the fact that a number of circumstances arose which could never have been anticipated by the members of the Pearce Committee. The principal circumstance 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. He replaced it with the merger and amalgamation of the 19 universities and 69 Colleges of Education in Australia to create a new single system of 36 universities by 1994. It is arguable that these Dawkins Reforms created an expansion of universities and university law schools which realised the expectation of more students wishing to study law.

Contrary opinions were stated in the Australian Law Reform Commission Report No. 89, such as one view that the expansion of legal education in Australia ‘could be attributed to the dynamic changes which had come about in the legal profession, such as national admission and

58 Ibid 296.

59 Pearce above n 1, 946.

60 Lancaster above n 18, 58.

61 Pearce above n 1, 998.

62 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).

practice, globalisation, the application of competition policy, emergence of multi-disciplinary partnerships and the influence of new information and communication technologies.’⁶³

This could be contrasted with an opposing view, also stated in the same Report, that:

Law faculties were attractive propositions for universities bringing prestige, professional links and excellent students at a modest cost as compared to the professional programs such as medicine, dentistry and engineering.⁶⁴

Where does this leave the Pearce Report, when considering its place 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 as incorporating a 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 at this time.

What is often overlooked is that the Report made 48 Recommendations to the Commonwealth Tertiary Education Committee (CTEC) and a further 64 Principal Suggestions to the law schools.⁶⁵ Most of the recommendations concern the provision of additional resources to individual law schools, including administrative support, adequate library facilities, and the allocation of more funding. The suggestions relate to matters of interest to all law schools, and to legal education in general, such as curriculum, teaching and learning and research.⁶⁶ An examination of these recommendations and suggestions reveals that many were far-sighted and subsequently adopted by the law schools concerned or the wider legal education community.

Apart from these reforms recommended by the Pearce Report, there were less-significant changes which emanated from the Report but were just as effective in the long term. These have been considered by Charles Samford and Sophie Blencowe. Some of their further comments on Pearce are also echoed in the publication on the long-standing outcomes of Pearce by McInnis and Marginson. The focus of these comments is on what has been described as ‘traditional’ legal education, such as the pre-occupation of many law teachers at that time with rule-orientation, legal reasoning and curriculum coverage, which were signalled by Pearce. In this regard Samford and Blencowe were of the view that the Pearce Report:

Raised the standing of second-wave law schools, giving them greater self-confidence and encouraging third-wave schools to follow their example in approaches to teaching and the profession.⁶⁷

In doing this they believed it:

Provided an example of how a well thought-out combination of ideas and resources might allow a new law school to lead its peers.⁶⁸

Samford and Blencowe also considered that the Pearce Report:

Stimulated improvement in the first-wave law schools. Pearce forced most of these law schools to take co-ordinated action to improve the quality of their teaching and to seek more university resources. This provided much needed support for those within first-wave law schools who had been advocating for change.⁶⁹

(First-wave law schools were the original law schools, established before the Second World War; one was located in each state capital city. Second-wave law schools were those established from 1960 to 1987, while third-wave law schools were established after 1988.)

63 Australian Law Reform Commission, *Managing Justice – A review of the federal civil justice system*, Report No 89 (2000) 117 [2.13]

64 *Ibid* 118 [2.15].

65 Pearce above n.1, *lxvii*.

66 *Ibid*.

67 Samford above n.23, 6.

68 *Ibid*.

69 *Ibid*.

In addition to these specific comments on particular law schools, Samford and Blencowe also considered that the Pearce Report:

Led to what McInnis and Marginson call the creation of a data base – in providing masses of previously unavailable information and created the conditions for further information gathering and scholarly debate on legal education in Australia.⁷⁰

They also believed that:

Pearce encouraged a ‘culture of continuous self-improvement’ in which law schools examined their aims, their performance and looked to how they might improve themselves. This prepared law schools for the post Dawkins environment and left them ‘in charge of the process of change’. While doubting whether any faculty (or anyone) could be said to be in charge of the process of change at any time over the last decade, characterised by massive funding cuts to the tertiary education sector, Australian law schools clearly coped better because of the Pearce Report’s standards and recommendations.⁷¹

These commentators emphasise some of the more intangible benefits which flowed from the Pearce Report to legal education generally, in that 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.⁷²

It is clear, however that Committee was hampered by a lack of resources in carrying out its terms of reference – the lack of a formal secretariat, only sufficient funds for the employment of one research assistant, and insufficient funding to cover the cost incurred by the respective law schools in providing secretarial support for the three members of the Committee.⁷³

However, what was of major concern was, as stated by the Committee, the considerable difficulties caused by: ‘The slowness, and in some cases the reluctance, of some institutions to supply information to the Committee.’ However, this was compounded by the Vice-Chancellors originally not only objecting to the Deans of and Heads of Law Schools providing information sought in a questionnaire by the Committee but also to an additional one addressed to the Vice-Chancellors themselves. In fact, the Vice-Chancellors had originally issued an embargo on provision of this information, and it was only lifted in respect of the Deans and Heads of Law after negotiations between the Australian Vice-Chancellors Committee and the Committee. However, it was significant, as was stated in the Report, that:

The Information sought from the Vice-Chancellors themselves which related to the comparative financial position of the law schools within the universities was not supplied. In the result, significant comparisons between the allocation of funds to law schools and to other part of the universities have not been able to be made.⁷⁴

One can only conjecture as to what might have happened if this information had been forthcoming at the time. It might have resulted in an earlier resolution of the chronic underfunding of legal education which persisted in Australia until comparatively recently, when full-fee paying postgraduate professional qualifying programmes such as the JD have resulted in a far more realistic funding of law degree programmes and law schools generally.

70 Ibid.

71 Ibid.

72 Ibid.

73 Pearce above n 1 *lix*.

74 Ibid.

V CONCLUSION: THE LEGACY

If there had to be a concluding statement as the ongoing effectiveness of the Pearce Report approximately two and half decades after it was published, then this could be left to the Report itself, which stated:

It considers that institutions that are supported by public moneys are accountable to the public for that expenditure. However, this does not mean that there should be uniformity between institutions. The Committee has been most anxious in the Report to avoid any suggestion that there is one form of legal education with which all law schools must comply ... there is no agreement among commentators on the form of legal education and it has in fact changed markedly over the years. Nonetheless the Committee thinks that there are some minimum levels that have to be met if the degree awarded is to be recognised as a professional law degree and it has indicated where it thinks law schools fall short of this standard.⁷⁵

⁷⁵ *Ibid* *lxi*.