

**LEC GALA DINNER**

**7 SEPTEMBER 2024**

**The Honourable Justice Ian Pike\***

It is a great honour, as the current chair of the Law Extension Committee, to speak on this momentous occasion to celebrate the sixtieth anniversary of the Committee.

Can I begin by also acknowledging the Gadigal people, the traditional owners of these lands and waterways and pay my sincere respects to their Elders past and present and extend those respects to all Indigenous Australians.

On an occasion such as this, notwithstanding that this is an after or mid-dinner speech, I hope you will forgive me for descending into a little bit of the history that led to the establishment of the committee.

As most of you would know, this year marks the bicentenary of the Supreme Court of New South Wales, established by the Third Charter of Justice issued on 17 October 1823 and which took effect on 17 May 1824.

In 1810, prior to the Third Charter, the only lawyers in New South Wales were three former convicts, George Crossley, George Charteris and Edward Eagar, all of whom had been lawyers in England or Ireland. They were subsequently supplemented by two English solicitors subsidised by the Colonial Office to practice in the colony.

The arrival of the qualified lawyers called into doubt the ongoing right of the three emancipist lawyers to continue to practice, because their right had been conditional on the absence of qualified lawyers.

On 1 May 1815, when the new Supreme Court established under the Second Charter of Justice met for the first time, Justice Jeffery Bent refused to admit any of the three emancipist lawyers. He approved only the admission of WH Moore, one of the two qualified lawyers from England; the other had not yet arrived.

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\* Justice of the Supreme Court of New South Wales – who thanks his current tipstaff, Camilla McDonald, for her invaluable assistance with the research for this speech.

There was a standoff between Governor Macquarie who supported the admission of the three emancipist lawyers, and Justice Bent who adjourned the Court until 28 May 1815. The Court remained closed for over a year until October 1816 when the two qualified lawyers were available to practice in the Court, their number being increased to five by 1819.

The dispute was resolved by the dismissal, on 11 December 1816, of Justice Bent by the Colonial Secretary, Lord Bathurst.

The 1823 Charter authorised the new Supreme Court to admit and enrol those that were barrister, advocates and solicitors, attorneys and proctors in Great Britain and Ireland with power to remove “upon reasonable cause”. If there were insufficient numbers of practitioners in the colony the Court might admit “other fit and proper persons” according to general rules and qualifications of its own devising (convicts excluded).

The Third Charter provided for a fused profession permitting a practitioner to act either as a barrister or as an attorney without becoming known as a solicitor. This was amended in 1829 with the imposition of a divided profession, the amendment coming into operation in 1834.

Under these changes, a potential attorney was required to serve five years as an articled clerk, in the employment of a qualified practitioner in either New South Wales, Great Britain or Ireland but there was no such provision for barristers. Therefore, anyone wishing to be admitted as a barrister in New South Wales had to have been previously admitted as a barrister or advocate in either Great Britain or Ireland.

Qualifications were prescribed over the years requiring the testing of local solicitor candidates upon completion of their articles. Under the Rules of 1834, the examiners were the Master in Equity, a barrister and two attorneys appointed by the Court.

But no provision was made for legal tuition or instruction.

This regime continued for locally trained solicitors until 1877.

The system for barristers was changed by the *Barristers Admission Act 1848*, which established **the Barristers Admission Board**, the first recorded legislation in Australia regulating the admission of lawyers in New South Wales. It stipulated that the necessary education requirements to qualify a candidate for admission in addition to “being a person of good fame

and character". The candidate was to be examined in the Ancient Classics (Greek and Latin), Mathematics, Law and any other branch of knowledge deemed appropriate by the Board. The Board was to consist of the three Judges of the New South Wales Supreme Court, the Attorney General and two barristers elected annually by the practising barristers of the Supreme Court.

Three years after the establishment of the Barristers Admission Board, the University of Sydney was incorporated in 1850. Its Faculty of Law was established in 1855. The *Sydney University Graduates Act 1857* (NSW) conferred privileges on the graduates of the University by exempting those with the University's Masters and Bachelor of Arts qualifications from examinations for the bar.

A Solicitors Admission Board (**SAB**) of two barristers and four solicitors appointed by the Court operated between 1877 and 1957 and it supervised all examinations.

In 1957 the Joint Examinations Board took over – now the Legal Profession Admission Board (**LPAB**). The students borrowed the lecture notes issued by the Sydney Law School including Sir Frederick Jordan's famous publications. It was not until 1964 that any tuition was provided to students at law.

Supreme Court Justice Kenneth Manning had qualified to practice through the SAB. Appointed the Challis Lecturer in Bankruptcy at Sydney University between 1952 and 1955, he urged the Dean, Professor Kenneth Shatwell, to provide tuition to those undertaking the examinations of the Joint Examinations Board. This came to fruition in 1964 when, on this very day 60 years ago the University established a **Law Extension Committee**, by a resolution of its Senate.

It would appear, that one reason for its establishment was the high failure rate amongst students studying for the then Solicitors Board examinations.

There were a number of notable lawyers who qualified before the Committee commenced, including former High Court Justice Michael McHugh and former Federal Court Justice Kevin Lindgren.

At this time, it was only the University of Sydney that offered a degree in law in New South Wales. The intake of undergraduate law students at the University of New South Wales was

not to take place until 1971. A law school was subsequently established at Macquarie University and received its first students in 1975. The Australian National University established a new Faculty of Law and enrolled its first undergraduate students in 1961.

And so the Law Extension Committee was set up in 1964.

It would appear, that at the time it was set up, it was not envisaged that the Law Extension Committee would be the long term venture that it has turned out to be. The Bowen Committee of Inquiry, which I will say a bit more about in a moment, observed in relation to the committee:

*The resolutions of the Senate set no time limit on operations of the Law Extension Committee, although it was thought at the time that the need to maintain the Law Extension Committee might not extend beyond 1974 or 1975.*

According to my researches, the first exams were conducted in 1966. One of the attractions of the course, certainly in its early years, was the ability for students who resided outside the Sydney metropolitan area to undertake the course by correspondence.

The observations set out above from the Bowen Committee Report were perhaps said more in hindsight, rather than reflecting a view at the time of the establishment of the Law Extension Committee. In 1974 – less than ten years after the commencement of the Law Extension Committee - the then Attorney General, the Honourable K M McCaw QC MLA, established a committee to inquire into and report upon legal education in New South Wales in accordance with specified terms of reference.

According to David Barker's book "**A History of Australian Legal Education**", one of the reasons for setting up the Bowen Committee was to give strong consideration to abolishing the Law Extension Committee because it was considered by many members of the New South Wales legal community to have long outlived its usefulness as an alternative qualifying course for admission as a legal practitioner.

The Bowen Committee Report, so named because the inquiry chairman was the Honourable Sir Nigel Bowen KBE who took over from the initial chairman, Mr Justice RM Hope who became involved in Commonwealth Government inquiries, in particular the Royal Commission

on Intelligence and Security. At the time of his appointment Sir Nigel was the Chief Judge in Equity and, at the time the inquiry reported he was the Chief Judge of the Federal Court of Australia.

The report was completed in 1979. The Bowen Committee, it must be said, was not a fan of the Law Extension Committee. The following paragraph of the report captures its mood:

*Many of those who made submissions to the Committee were highly critical of the Admissions Board's system. No one praised it or supported it unreservedly. A number, including the public service of New South Wales submitted that it must be preserved until it could be replaced by some system more efficient. Other submissions said it had performed well in the past but is now outmoded. The favourable comments were usually to the effect that it enabled people otherwise precluded by distance or job problems to obtain legal qualifications. There was no favourable praise of its quality or adequacy. It has been criticised for many years by Judges of the Court, law teachers and the profession, yet its major defects remain.*

In dealing with the future of the Law Extension Committee, the Bowen Committee observed:

*In Chapter 3 of this Report, the Committee set out what it considers is the essential requirements for a system of legal education to produce lawyers with the necessary knowledge, skills and professional techniques to serve the community of today and tomorrow. It is not possible to come to any conclusion about the achievement of the Admission Board's system other than it has failed adequately to assist its students to achieve these goals.*

*The Committee demands that the Admissions Board's system be phased out over a ten year period, with no new enrolments after 1980. The period of ten years was suggested to enable existing students to complete their courses.*

Thankfully those recommendations were not adopted. The Law Extension Committee course has continued to survive and play a valuable role in the training of students to become lawyers.

According to Mr Barker the relatively high standing of the course can mostly be attributed to Frank Astill who took over the directorship of the Committee in 1997. I am delighted that Frank is with us tonight.

According to Mr Barker, Mr Astill acknowledged that when he took up his appointment his main objective was the survival of the course and that, in this respect, he was to ensure that by the year 2000 the course was viable. That he did.

Prior to Mr Astill's appointment there had been seriously declining enrolments which were perhaps a consequence of a proliferation in the establishment of law schools around Australia – sixteen were established between 1989 and 1997.

Mr Astill was responsible for putting in place a written Memorandum of Understanding between the Law Extension Committee and the then Legal Practitioners Admission Board to formalise the relationship and its parameters. Mr Astill remained its director until January 2017 when he was replaced by Mrs Susan Carter.

I am delighted that Susan is also here with us tonight.

Susan continued the good work and was obviously quite prescient, being responsible, among many achievements, for the creation of the digital platform **Canvas** which proved so valuable during the COVID pandemic we would all like to forget.

One objective measure of the success of the course is the successful graduates it has produced. Those who have achieved high office include:

- (a) our State's present first law officer, the Honourable Michael Daley;
- (b) current Supreme Court Justices Peter Hamill and Stephen Campbell;
- (c) former Justices of the Supreme Court Geoffrey Bellew and Carolyn Simpson;
- (d) current District Court Judges Penny Wass SC, Michael McHugh SC and Robert Newlinds SC; and
- (e) former Justice of the Federal Circuit and Family Court of Australia, the Honourable Robert Benjamin AM SC.

Whilst I have mentioned some of the graduates who have achieved high office, to my mind the real success stories are the countless graduates who have been able to complete the

course in circumstances where, for whatever reason, they have not been able to complete a university law degree, and have then gone on to perform extremely valuable roles in the community.

There are too numerous of them to name.

Most students who study the course do so while working full time, often in a number of jobs and raising a family at the same time – no easy feat. This defining characteristic tends to distinguish, in my view, an LEC graduate from your average university graduate.

It is difficult to obtain an accurate count of the number of graduates over the past 60 years – by my reckoning, an estimate of 10,000 is not wide of the mark. This is a remarkable achievement.

Notwithstanding the proliferation of law schools in NSW and around Australia, the course continues to perform a valuable role. I hope, and expect, that this will continue for many more years to come with the course being built on quality teaching, including by practitioners, and offered at an affordable price.

Whilst many in the community often assert that there are too many lawyers, I could not disagree more. In a world in which there is much global uncertainty and insecurity, the rule of law is more important than ever and not simply a phrase of some theoretical import. It is the opposite of the arbitrary abuse of power and the rule of autocratic dictators and populists. There is nothing theoretical about that. Legal practitioners in Australia play an extremely important role in maintaining the rule of law. The LEC plays an important role in training those lawyers.

The success of the committee is obviously due to the hard work of the committee members and the staff of the committee. I take this opportunity to thank all those who have previously served on the committee and the current committee members.

I particularly wish to thank the current lecturers and staff of the committee and in particular, its director Ms Joanna Ernenwein for her tireless and skilful work, particularly in organising this evening.

I also thank the members and staff of the Legal Profession Admission Board for their continued support in relation to the offering of the course.

I hope that you all enjoy your evening.

Thank you again.