

I'm Still Standing....

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Before writing this article, active techno that I am, I scrolled through my Ipod to work out what song name best summarises what has been a challenging year for the Society and, one with highs and lows, and one where there has been change in a number of areas.

My Ipod includes a variety of songs (some daggy 1970s numbers as well as more modern tunes, blues and a lot of old jazz). I think the Elton John title, even if not the words of the song, is appropriate.

There has been a new Chief Justice of the Northern Territory, and a new Chief Magistrate as well as a new Federal Magistrate. There have been new Judges and Magistrates appointed which has further impacted on the profession.

Balance has covered the various changes, with the current *Balance* having a headline article on the new Chief Justice, the Hon Trevor Riley.

My article will touch on some major things that happened this year mainly in the "Legal Profession" area

National Legal Profession Reform(NLPR)

As I write this article, the NLPR Task Force is shortly to hand its final package, including a draft Bill, Rules and Regulatory Impact Statement to the Council of Australian

Governments ("COAG"). The Standing Committee of Attorneys-General ("SCAG") will apparently also be considering the package next week. A consultation package was released in May 2010 and a number of comments were made, including an 83 page submission from the Law Council of Australia ("LCA") and a supplementary submission from the Law Society which dealt mainly with Northern Territory matters. The close off date for submissions was August 2010 and since then the Task Force and working group have been busy finalising the Bill etc. An interim report was prepared dealing with eight major issues. These are:

- Composition and appointment of the Board;
- The need for a National Legal Services Ombudsman (now Commissioner);
- The need for SCAG Policy directions;
- The role of SCAG in disallowing National rules;
- The application of certain provisions to commercial or government clients;
- The centralisation of admissions applications;
- The conduct of compliance audits; and
- The funding for the proposed national regulatory bodies.

The report was initially prepared in draft. The National Legal Profession Reform Consultative Group ("CG")

was briefed on and discussed its contents, but the Attorneys raised some issues with it and so it was redrafted. It was also discussed in teleconference at the last meeting of the CG.

LCA Directors discussed the Interim report for several hours at its 27 November 2010 meeting.

Whilst there were disagreements with some of the approaches in the Interim report, it can be said that some of the positions adopted such as retention of a Northern Territory regulatory presence with a capacity for the Law Society to still perform functions under delegation are acceptable, in principle at least.

It must also be said that the Deputy Chief Minister and Attorney-General, the Hon Delia Lawrie, and her advisors have worked hard to maintain the position of the Northern Territory, the Society, practitioners and the public.

However, like other members of the CG, and indeed Constituent Bodies of the law Council, I am concerned that we did not see a copy of the final version of the Bill in particular, and have not seen the final version of the provisions relating to such areas as Practising Certificates, Discipline and Professional Indemnity Insurance, or indeed the provisions relating to the matters in the Interim report.

It is hoped that this is will be remedied over the next period and there is a chance for effective comment on the next version of the package, if only so that any technical problems can



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be sorted out.

Issues such as composition of the Board and admissions require resolution. The proposed funding arrangements have been described as “rubbery” and the issue of interest on trust accounts needs to be properly sorted out.

SCAG’s meeting, where the package will be discussed, is on 10 December 2010. The package will then be scheduled to go to COAG by the due date of mid December 2010, and will apparently be considered by its Regulatory Review Committee. Whilst COAG was supposed to be meeting in February 2011 there is some suggestion that this meeting will take place in April 2011.

It is clear however that more work needs to be done and the Society will be continuing to push for a better consultation process.

It is hard to currently predict what time the new system will actually take effect.

Like many involved in the process I have found it very frustrating.

Australian Solicitors Conduct Rules

The Task Force agreed that conduct Rules prepared by the Australian Bar Association (for barristers)

and Law Council of Australia (for solicitors) would be part of the NLPR package, and copies of the current version, were included for comment in the consultation package released in May 2010.

The Society also conducted a local consultation process on the current version.

It was determined that a Professional Ethics Committee, chaired by Steven Stevens of the Law Institute of Victoria be set up to review comments made and finalise a version for inclusion in the final COAG package.

I was fortunate enough to be the LSNT nominee of this group and we have spent a large amount of time considering many comments and debating the final outcome of each proposed rule, with some of the more difficult rules such as proposed rule 11, dealing with conflict of interest, receiving particular attention. We must have in fact spent over 20 hours discussing this particular proposed rule!

LCA Directors at their 27 November 2010 meeting, approved the draft subject to some minor issues, and at the time of writing the final version for COAG is being settled.

There will be a further Northern Territory consultation process in line with the *Legal Profession Act*

this year, and it is probable the new rules will come into force before the rest of the COAG package.

General

It appears that the new Council is working well, with new Committees being established to deal with some of the complicated issues ahead. The next edition of *Balance* will deal intensively with the Child Protection Report “Working them Strong Together” and the work being taken to implement its findings.

Matthew Storey has dealt extensively with the Society’s Alcohol Policy.

The issue of Constitutional Recognition of Indigenous People is on the LCA Government’s agenda for next year, and the LCA is looking at a wider source of amendments rather than what is simply the preamble reform approach.

I would like to congratulate Duncan McConnel who was re-elected as a member of the LCA Executive. The new President, barrister Alex Ward of South Australia, has strong links with the Territory and we are looking forward to a visit from him and his wife Amanda.

Finally, congratulations to Colin McDonald QC on his award of the LCA Presidents Medal. ●