would encourage you all to look at the Psychology Society of Ireland's 40(practical) tips for mental health, well-being and prosperity (www.psihq.ie). I also remind members of the availability of the EASA service.

Tour de France

My late nights have been rewarded. I am not parochial but I had my heart set on Cadel Evans taking the yellow jersey in Paris. Cycling inspires me because it is a psychological mind over matter sport. Positive self talk is a key to success. Importantly with cycling you need to couple that with keeping the pedals going around.

Until we meet again
Megan Lawton

Up to speed on NLPR

On 5 February 2009 the Council of Australian Governments (COAG) floating on a sea of microeconomic reform launched the National Legal Profession Reform project.

To the barricades the Commonwealth Attorneys General sent a hand-picked taskforce of five the National Legal Profession Reform Taskforce (the Taskforce) which included the law Council of Australia (LCA) Secretary General, Bill Grant. The dust had barely time to settle when the Taskforce released its final report to COAG in December 2010 including the Draft National Law, subordinate legislation and National Rules.

If some of you are feeling that this battleground sounds familiar you would be correct. A quick archaeological survey reveals:

- 1990s National Competition Policy reforms
- *Mutual Recognition (Northern Territory) Act* 1992
- July 2001 the Standing Committee of Attorneys-General (SCAG) decided they wanted to do more to achieve greater consistency and uniformity in legal profession regulation.
- March 2002 SCAG – National Practice Model Laws Project
- 2004 Model Bill produced for adoption
- August 2006 SCAG released a revised version.
- December 2006 the *Legal Profession Act* (NT) was assented to.
- February 2007 a third revision by SCAG.
- 31 March 2007 the *Legal Profession Act* 2006 (NT) commenced.

So why are we here again?

The *National Legal Profession Reform Project: Consultation Regulation Impact Statement* notes that by 2009 the Model Bill had been adopted and commenced in all States and Territories except South Australia. Unfortunately "significant variation exists between the legal profession laws and regulatory structures of each State and Territory." In other words the objective had not been conquered.

So now the stated goal of the Taskforce is the

> "complete, substantive and enduring uniformity that eliminates unnecessary regulatory burden, compliance costs and other barriers to providing affordable, quality legal services, and which enhances consumer protection."

The Taskforce identifies 20 different problems that national regulation is proposed to address:

1. Different rules governing the legal profession
2. Trust regulation
3. Barriers to national practice
4. Facilitating volunteering
5. Structure of the regulatory bodies
6. Duplication of regulation
7. Duplication of legislation and rule making
8. Disconnected information (the dirt file)
9. Complexity of the rules governing the profession
10. Complexity of cost disclosure rules
11. Multiplicity of entities regulating the profession (approximately 55 nationally)
12. Opportunities for regulatory improvement
13. Consumer dispute resolution v professional discipline model
14. International competitiveness
15. Fidelity Fund determinations
16. Business structures
17. Over regulation (overlapping)
18. Professional Indemnity Insurance (PII)
19. Authorised Deposit Taking Institutions (ADIs)
20. Legal Costs

The Impact Statement acknowledges that there are also some points where regulation is not a perceived problem and particularly the Taskforce emphasised a commitment to the continued involvement of the profession in its own regulation.

The areas where it is also acknowledged that uniformity is not appropriate (currently):

- Fidelity Funds
- Cost Assessment
- Fees

What is the good news?

The Taskforce in its December 2010 recommendations to COAGrecognised that States and Territories will need to generate sufficient funds to maintain their regulatory systems and that this presents unique challenges for smaller jurisdictions like the Northern Territory. The Taskforce also recognised that Fidelity Funds have been in place for many years, likewise the cost assessment are highly evolved systems and are jurisdiction based. But that is not to say that these are entirely off the radar in future.

How did the profession feed into this process?

The LCA Secretary General was one of the five-member Taskforce. The Taskforce also called together a Consultative Group of approximately 19, and Barbara Bradshaw (former CEO of the Society) participated in that group in her personal capacity. The Consultative Group was drawn from Law Societies and Bar Associations and the Courts. There were no other representatives from the Northern Territory.

In addition the Taskforce invited comments from the public and engaged in targeted consultations with the "consultation package" being available on the website from 14 May 2010 to 13 August 2010. In response to the general invitation for submissions 108 submissions were received with a further 162 being received at the date of the final report submissions were from the public, academics and lawyers. Submissions are published on the website www.ag.gov.au/legalprofession.

The Department of Justice (NT) Submission

In addition to the submissions of Barbara Bradshaw (noting that submissions from the Consultative Group are published separately to the general submissions), the Department of Justice (NT) submission makes a case for the unique state of the Territory. The submission notesthe different regulatory framework in the Northern Territory; particularly the absence of the statutory deposit scheme. "The proposed system would appear to have more onerous reporting obligations, for both small practices and for the local representatives", noting that this is at odds with the objectives of the Taskforce. The submission also notes:

- The Northern Territory Government was not represented on the Taskforce nor the Consultative Group
- The potential threat to the Northern Territory's PII scheme.
- Imprisonment being available as a penalty for breaches of the Act (imprisonment not currently available in four out of seven jurisdictions).

www.ag.gov.au/legalprofession

The Department of Justice submission also emphasises the important role of the Society "it performs in various subtle ways roles and functions that hold together members of the profession and also executive and judicial governments (at least in relation to the legal profession)."

At its conclusion, the submission highlights the inconsistency with giving the jurisdictions a voice at the national level with diluting their role at the local level.

What issues for the Society?

Unlike many other Law Societies the Society (NT) performs the regulatory functions in this jurisdiction. In fact this is the basis for the funding from the Fidelity Fund. As a very small jurisdiction – with a huge geographical area there is a concern about over-centralisation, particularly of the disciplinary functions, and the impact on PII. There is a need for the legal community and for the broader community to have "locals" on the job. Thus a priority focus has been on ensuring sustainable funding for the Society despite the ambitious "savings" to be reaped from centralised regulatory functions.

Where are we now?

The Taskforce released its final report to COAG in December 2010, identifying eight issues that had arisen from the consultation:

1. The constitutionof the National Legal Services Board
2. The need for a National Legal Services Ombudsman
3. The need for policy directions from the Standing Committee
4. The role of the Standing Committee in disallowing National Rules
5. The application of certain provisions to 'commercial or government' clients
6. The centralisation of admission applications
7. The conduct of compliance audits
8. The funding proposed for the national regulatory bodies

The views of the Taskforce to these issues were reflected in amendments to the Draft Bill. It appears from this that the need for a sustainable funding for smaller jurisdictions has been addressed. Other issues have not. The report puts it aptly "[in the final report and Draft Bill] a satisfactory balance of views has been achieved, and [..] further amendments may upset this balance and risk disenfranchising one or more key stakeholders"

What will the National Law look like?

The proposal is for the new National Law to be implemented as an 'applied law scheme.' In this way it will be similar to the *Health Practitioner Regulation National Law Act* 2009 (Qld).

Since the release of the December 2010 report to COAG Law Societies and Bar Associations, not to mention the LCA have had theirscouts scanning the horizon waiting for the next sortie. The LCA is already rallying the troops to deal with the inevitable avalanche of regulatory reform. As time has dragged on the clamour of legal profession reform has faded to a distant but persistent drumbeat. Whilst some hold out hope that the August 2011 COAG meeting will bring about the next big surge others are less ambitious. The more optimistic persist that a start date of 1 January 2013 remains viable.

Other jurisdictions

Some jurisdictions have already indicated that they would not participate in the NLPR as currently proposed. That being said the drive for uniformity is strong at the COAG level, most probably due to the failure of the 2007 round of reforms. There is some possibility that COAG negotiations, in order to get the majority of jurisdictions on board may result in a significant re-shaping of the regulatory model, to make it more palatable to the objectors. Such negotiations are likely to be to the advantage of the Northern Territory, with less and less centralised options being considered. It is important to keep abreast of these developments.

Given that the next move rests with the legislators, the Society has invested significantly in ensuring that our Attorney General, the Judges and the Department of Justice are across the issues unique to our profession and our community.

So when I sit back and survey the battle field I see the Society is well positioned. This will be important to ensure that the local profession has the best assistance available to adjust to the new regime. And provided the regime is truly national then the Society will not be alone in providing that assistance, national resources will be harnessed to the cause.

I am reminded of my view of national regulation of the health professions. It was such a mammoth task that I did not ever believe it could be done. Whilst away on maternity leave, a deal was struck allowing New South Wales to keep its health complaints commissioner in lieu of the National Law's procedures for investigating professional conduct. I felt that there had been a cop out, that the most significant area crying out for uniformity had been placed in the too hard basket. But whilst I was bemoaning the opportunity lost, I was failing to acknowledge that the deed had been done and national regulation of 10 health professions commenced on 1 July 2010. I am only hoping that we can learn some of the lessons from that blistering reform agenda.