

Legal Affairs

Edited by: mickless@afr.com.au

Law officers hoping to make peace

Matthew Drummond

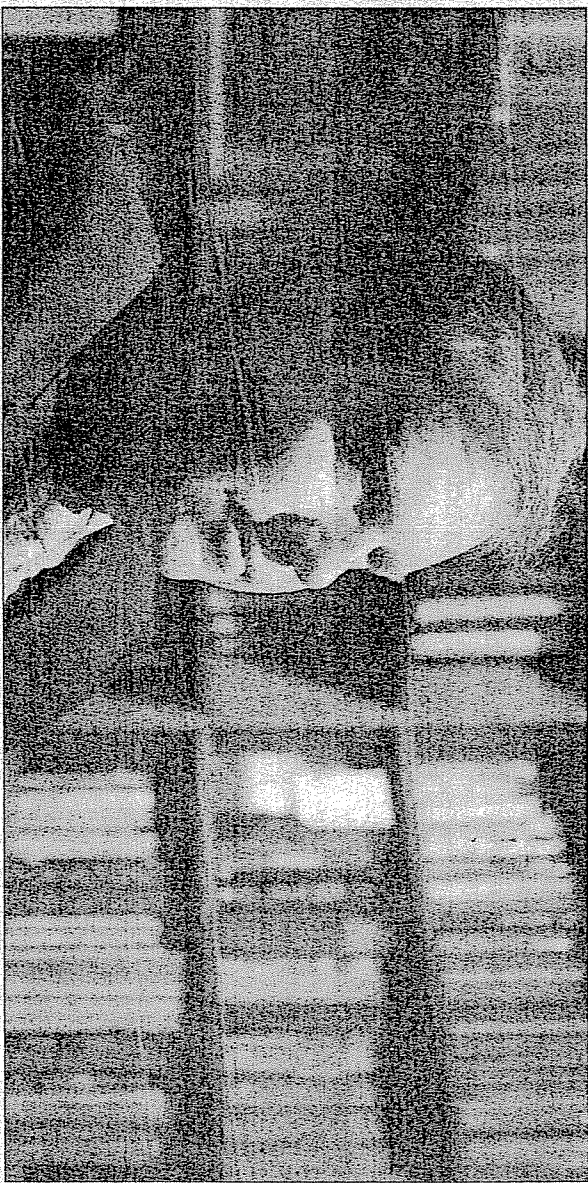
Australia's attorneys-general are preparing to give their tri-annual meetings an overhaul to reduce political infighting, boost outcomes and unleash a wave of harmonising legal reforms.

When Federal Attorney-General Robert McClelland meets his state and territory counterparts in Adelaide in March for the first Standing Committee of Attorneys-General of 2008, the first agenda item is expected to be how to make the process more efficient. Many projects have been held up by infighting between the commonwealth and states.

Mr McClelland is looking to make SCAG a key forum for driving national co-ordination.

"From a selfish political point of view, you would like to see federal and state Labor governments in power for a very long period of time. But the reality, I think from the nature of Australian politics, is that it's a window of opportunity and a unique opportunity in Australia's history. It would be irresponsible for us to neglect that opportunity," he said.

Top of the list of reforms for 2008 will be regulating litigation funders. At the March meeting, attorneys will discuss recommendations to limit the amount of control a funder can wield over an action, placing caps on fees and requiring funders to be subject to prudential supervision. Those recommendations will then be released for public consultation.



Robert McClelland . . . wants to end infighting between the commonwealth and states.

Photo: ANDREW TAYLOR

Reforms that have languished before SCAG, which Mr McClelland cited as top priorities, include the long-awaited harmonisation of legal profession rules and a nationally consistent evidence act.

Uniform evidence laws look increasingly within grasp after Victoria, Tasmania and Western Australia recently indicated they were willing to follow the lead of NSW, the ACT and the commonwealth, all of which have enacted model laws.

"If we reform our federal framework in a range of commercial areas, we have the opportunity to make Australia the commercial hub of the region," Mr McClelland said. "We can't take our place in the region, let alone the world, if we retain a fractured and a fragmented system based on the reasoning of the divided-gauge mentality of 100 years ago."

In political jostling between the states and former attorney-general Philip Ruddock, uniform defamation laws were almost derailed in 2006. Last year some states refused to consider uniform surrogacy laws until the commonwealth moved on

same-sex law reform. Then there are implementation issues. Laws to regulate the legal profession have been approved by SCAG but are still to be implemented by some jurisdictions and uniform succession laws have yet to be fully introduced despite 15 years of talks.

In 2006, Mr Ruddock proposed that SCAG meet less regularly. Last year, when negotiating on harmonisation issues, he said he emphasised with Sisyphus in the myth, who was condemned by the gods to a lifetime of fruitless toil, rolling a boulder up a

KEY POINTS

- Greater efficiency is expected from the Standing Committee of Attorneys-General.
- There's a unique opportunity for reforms, says Federal AG Robert McClelland.

hill and watching it roll down again. Victorian Attorney-General Rob Hulls said he expected SCAG to have less conflict in 2008.

"It was very frustrating. It got to a stage where if you wanted to bury something, you took it to SCAG cemetery," he said. "The first thing I'd like to see is SCAG become more of a workhorse rather than an opportunity for cheap political shots."

But despite the aims of "co-operative federalism", potential divisions have already begun creeping in. Mr Hulls said his main priority was fixing the funding of legal aid. State legal aid commissions have called for an end to the current funding model in which commonwealth funds are directed only towards commonwealth areas of law, such as family law, leaving state coffers to fund expensive criminal cases.

Mr McClelland said he was sympathetic to breaking down that rigid dichotomy. "But at the same time [we] want assurance that federal funds won't be sucked into state criminal work."