

STANDING COMMITTEE OF ATTORNEYS-GENERAL  
28 March 2008

COMMUNIQUE

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The Standing Committee of Attorneys-General (SCAG) held its first meeting today since the election of the Rudd Labor Government. Members, comprising the Commonwealth, State and Territory Attorneys-General, the Commonwealth Minister for Home Affairs and the Associate Justice Minister of New Zealand, held discussions on over 30 matters of substantive legal reforms for all jurisdictions. The Norfolk Island Minister with responsibility for police and legal issues also attended the meeting.

A summary of decisions is attached. Significant progress was made in areas including reform of personal property securities law, interstate fine enforcement, a judicial exchange program, indigenous justice, harmonisation of criminal laws, litigation funding, victims of crime and work towards a national register of suppression orders.

*An historic opportunity and a new era of co-operation*

On the eve of Law Week, Members agreed that the presence of Labor Governments in all jurisdictions is a unique opportunity in Australia's history to reinvigorate the legal reform process.

Members affirmed their shared commitment to work cooperatively to secure outcomes in the national interest through harmonised or uniform action, and drive reform in an efficient and effective way.

To facilitate this, Members agreed to undertake a comprehensive review of the SCAG agenda to:

- identify joint priority agenda items where progress can be fast-tracked
- examine agenda items where political impasses have limited progress and work co-operatively to resolve outstanding issues
- identify agenda items where there is potential to draw on existing best practice models rather than reinventing the wheel
- identify items where changed circumstances may have impacted on the need for reform, and
- identify areas where timely reform can be achieved through administrative action, not just legislative action.

Members agreed that these steps would be taken by their next meeting in July 2008 and that a strategic plan would be considered focusing on short, medium and long term outcomes and their timely implementation.

### *Engaging the profession and stakeholders*

Members agreed to engage the legal profession and key stakeholders with genuine and active consultation on reform proposals and to convene a one-day conference during 2008 on legal harmonisation. The Conference will actively engage a wide group of stakeholders including the profession, industry and academics from across Australia and New Zealand to bring fresh ideas and new perspectives on legal reform.

*A permanent Secretariat*

Members agreed to establish a jointly funded permanent Secretariat to support them in achieving these outcomes. A permanent, independent SCAG Secretariat will further assist in increasing the efficiency and effectiveness of SCAG processes.

## SCAG Summary of Decisions - March 2008

### 1. Interstate Enforcement of Fines

Ministers:

- (a) Noted that at the July 2007 Standing Committee of Attorneys-General (SCAG) meeting Ministers agreed that the Commonwealth should amend the *Service and Execution of Process Act 1992* (Cth) (SEPA) to allow the mutual recognition between States and Territories of court-imposed fines, to enable these fines to be registered for enforcement in accordance with the laws of the State or Territory where the defendant resides;
- (b) Approved in-principle a system for the mutual recognition between States and Territories of administrative fines (including enforcement orders in relation to unpaid fines) and to permit those interstate fines and orders to be enforced using local laws and enforcement mechanisms;
- (c) Approved an exception to the mutual recognition of court-imposed and administrative fines, namely that registering a fine for interstate enforcement does not permit the enforcing jurisdiction to impose a sanction of imprisonment for default;
- (d) Approved in principle the framework outlined in the Australian and New Zealand Fine Enforcement Reference Group (ANZFERG) Sub Working Group submission in relation to administrative issues associated with interstate fine enforcement, except that the sanction of imprisonment not be available at any time for fine enforcement.

### 2. Workplace Privacy

Ministers:

- (a) Noted the outcome of consultation on the *Workplace Privacy - Options for Reform* (Consultation Paper).
- (b) Noted the options for developing a model for workplace privacy reform include:
  - Maintaining the status quo
  - Developing a regime of voluntary guidelines for certain workplace practices such as surveillance, monitoring and testing of workers
  - Developing a regime of mandatory codes of practice for such workplace practices
  - Developing a model based on a combination of measures, including mandatory and / or voluntary codes of practice supported by legislation
  - Developing a legislative regime to regulate workplace surveillance by employers of workers, based on the New South Wales *Workplace Surveillance Act 2005* (NSW WSA).
- (c) Noted the working group's preferred option is a minimum model for nationally consistent workplace privacy regulation based on a

combination of measures, including mandatory and / or voluntary codes of practice supported by legislation noting that, if a jurisdiction currently imposes a stricter standard (such as under the NSW WSA), then those standards are not expected to be lowered

- (d) Agreed to the working group developing a minimum model for nationally consistent workplace privacy regulation as set out in (c) above.

### **3. Personal Property Securities Law Reform**

Ministers:

- (1) Endorsed in principle the draft inter-governmental agreement on personal property securities and requested the Secretary to provide the draft to COAG, noting that final endorsement from SCAG will be subject to agreement between the States, Territories and the Commonwealth on the text of the PPS Bill and the referral legislation in each State
- (2) Requested officers to provide Ministers at the next SCAG meeting with:
  - (a) an overview of the consequential amendments to State and Territory legislation that may need to be made as a consequence of the PPS Bill and a draft timeline for each State and Territory to make the necessary amendments, and
  - (b) a report on the development of the PPS register.
- (3) Noted the steps in the development of the PPS Bill:
  - (a) on 22 February 2008 an initial exposure draft of the PPS Bill was circulated to the States and Territories and the PPS Consultative Group for comment
  - (b) following this consultation, subject to the approval of the Prime Minister, the Commonwealth Attorney-General will publicly release an exposure draft of the PPS Bill, and
  - (c) the Parliamentary Counsels' Committee will be requested to prepare draft referral legislation for consideration by the States and the Commonwealth
- (4) Noted the report by Mr Laurie Glanfield AM, Director General, Attorney General's Department of New South Wales and Mr Ian Govey, Deputy Secretary, Commonwealth Attorney-General's Department on operational and legislative issues with the Canadian PPS system and that the issues raised in the report will inform the development of the Australian PPS system
- (5) Noted the provisional timeline for the development of the legislative scheme
- (6) Noted that timing for PPS reform as a whole is being considered by the Business Regulation and Competition Working Group of COAG.

#### **4. Tort Law – Proportionate Liability**

Ministers:

- (a) Noted the overview of Mr Tony Horan's report 'Proportionate Liability: Towards National Consistency' and Professor Jim Davis's report 'Proportionate Liability: Proposals to Achieve National Uniformity'; and
- (b) Requested that the Working Group develop proposals to achieve greater national consistency in proportionate liability legislation for consideration by Ministers at the next meeting.

#### **5. Accession to Hague Convention on Service Abroad**

Ministers:

- (a) Noted that, following identification of relevant Rules of Court and legislation by jurisdictions, the Standing Committee of Attorneys-General (SCAG) Secretary requested the Council of Chief Justices Rules Harmonisation Committee to develop model Rules of Court to implement the Hague Service Convention in Australia
- (b) Noted that once draft model Rules of Court are available, the SCAG Working Group will consider and comment on the Committee's draft to ensure consistency with other aspects of Australia's accession
- (c) Noted that draft guidelines are being developed by the Working Group, in consultation with key stakeholders, for the handling by State and Territory authorities of foreign requests for service which may infringe Australia's sovereignty or security, and
- (d) Tasked the Working Group with preparing advice about further action required for Australia's implementation of the Hague Service Convention.
- (e) Requested the Secretary of SCAG to write to the Council of Chief Justices Harmonisation Committee, thanking them for their contributions to date and indicating that, if possible, SCAG Ministers would like to see this project concluded before the next SCAG meeting.

#### **6. Sterilisation of Intellectually Disabled Minors**

Ministers:

- (i) Noted that the Working Group's further work and research since April 2007 has revealed that:
  - a. The number of reported sterilisations that are now occurring in Australia appears to be significantly less than the numbers suggested in the 1997 Human Rights and Equal Opportunity Commission (HREOC) Report on Sterilisation of Children with an Intellectual Disability that was the trigger for this item being placed on the SCAG agenda.

- b. Doctors and hospitals have a better appreciation and understanding of their legal obligations as a result of steps taken to educate these groups following the 1997 HREOC Report .
  - c. Alternatives to surgical procedures to manage the menstruation and contraceptive needs of women are increasingly available (e.g. Depo Provera and the Mirena IUD) and seem to be successful in most cases.
  - d. There are existing processes in place in each jurisdiction to authorise sterilisation procedures, which appear to be working adequately in light of recent improvements in treatment options and education initiatives. There would be limited benefit in developing model legislation.
- (ii) Supported measures to continue the promotion of ongoing awareness of the non surgical alternatives to manage the menstruation and contraceptive needs of intellectually disabled people and the obligations of doctors and hospitals to seek Court authorisation before performing these procedures; and
  - (iii) Agreed to review current arrangements to ensure that all tribunals or bodies with the power to make orders concerning the sterilisation of minors with an intellectual disability are required to be satisfied that all appropriate alternatives to sterilisation have been fully explored and/or tried before such an order is made.
  - (iv) Agreed to remove this item from the agenda.

## **7. Surrogacy**

Ministers:

- (a) Agreed to develop a unified framework for the legal recognition of parentage achieved by surrogacy arrangements, based on the following principles:
  - The rationale for the legislation is to ensure the best interests of the child are the paramount consideration in recognising surrogacy arrangements
  - The model regime should aim to minimise scope for dispute between the surrogate mother and the intended parents.
  - The model should aim for minimal intervention in people's lives.
- (b) Agreed in principle that a unified framework should contain the following key features:
  - commercial surrogacy will remain illegal
  - non-commercial surrogacy arrangements will be lawful but agreements will be unenforceable
  - informed consent of all parties is essential
  - mandatory specialist counselling

- court orders will be available recognising the intended parents as the legal parents where the surrogacy arrangement meets legal requirements and is in the best interests of the child.
- (c) Approved the release of a consultation paper for public consultation.
- (d) Requested officers to seek agreement and approval to the above recommendations from AHMC and CSMC before conducting the consultation, and to report back to each Ministerial Council with final recommendations following consultation.

## **8. Harmonisation**

Ministers:

1. (a) Noted the report by Mr Glanfield and Mr Govey following their attendance at the September 2007 Uniform Law Conference of Canada,
  - (b) Agreed that the Secretary to SCAG convene a one day Conference in 2008 to enhance input into SCAG's harmonisation work by engaging a wider group of academics, private practitioners and government lawyers, with details to be settled amongst officers, and
  - (c) Requested officers to continue to monitor the work of the Uniform Law Conference of Canada, the National Conference of Commissioners on Uniform State Laws and the Mexican Conference of Commissioners on Uniform State Laws.
2. Noted that the Commonwealth House of Representatives Standing Committee on Legal and Constitutional Affairs' report *Older people and the law* was tabled on 20 September 2007, and that the Australian Government is considering its response to the report including those recommendations relating to raising matters at SCAG.

## **9. National Electronic Conveyancing System**

Ministers:

- (a) Noted that COAG has agreed to the development of a national electronic conveyancing system (see Business Regulation and Competition Working Group implementation plan);
- (b) Noted the need for a national system to eliminate the costs and complexities of dealing with eight different systems;
- (c) Requested the Secretary of SCAG to write to Minister Tanner and Minister Emerson as co-chairs of the COAG working group responsible for this reform, advising of SCAG's willingness to assist with the national electronic conveyancing system project including the development of any necessary model legislation for the settlement system and any national corporate entity that may be necessary for the project;

## **10. Judges Exchange Program**

Ministers:

- (a) Approved in-principle the development of an exchange between judicial officers of interested State and Territory courts and members of interested administrative appeals tribunals, subject to the development of a proper legislative, administrative and financial framework;
- (b) Noted that they would leave the door open to participation by New Zealand, if New Zealand courts are interested; and
- (c) Agreed to examine the legislative framework in their jurisdictions in order to facilitate the exchange program and report back out of session on any legislative changes that may be required.

## **11. Trustee Companies**

Ministers:

- (a) Noted that COAG has agreed that the Commonwealth assume responsibility for regulating trustee companies (see Business Regulation and Competition Working Group implementation plan)
- (b) Requested the SCAG Secretary write to Minister Tanner and Minister Emerson as co-chairs of the working group responsible for this reform offering SCAG's assistance in the legal and technical aspects including any proposed referral of powers.

## **12. SCAG Secretariat – Review and Funding**

Ministers:

- (a) Noted a report that reviews the operation of the SCAG Secretariat
- (b) Agreed to endorse the establishment of a jointly funded independent permanent SCAG Secretariat (consisting of a SCAG Executive Officer, Project Officer and Administrative Support located within the jurisdiction of the SCAG Secretary and operating on behalf of all jurisdictions) as outlined in the review paper and unanimously endorsed by the National Justice CEOs.

## **13. Jury Selection – NSW LRC Report**

Ministers noted that:

- (a) the New South Wales Law Reform Commission has released its Report 117: *Jury selection*,
- (b) the NSW Attorney General's Department is currently undertaking consultation on the report, and

- (c) the NSW Attorney General has written to the Commonwealth Minister for Home Affairs about the interaction of Commonwealth and State laws in relation to jury service.

#### **14. Indigenous Justice**

##### **a. National Indigenous Law and Justice Framework**

Ministers:

- (a) Agreed that the Indigenous Justice agenda item be focused on providing leadership on priority Indigenous justice issues, and
- (b) Agreed to progress the Indigenous Justice agenda item by advancing a national Indigenous law and justice framework, including agreed targeted projects, through a working group.

##### **b. Customary Law In Bail And Sentencing & Bail Provisions And Enforcement**

Ministers requested officers organise an information session on customary law for a future SCAG meeting.

##### **c. Indigenous Justice Clearinghouse – Review**

Ministers:

- (a) Noted the Review of the Indigenous Justice Clearinghouse website and that the National Justice CEOs have agreed to further develop the Clearinghouse and share the cost of the Clearinghouse (\$113,620 per year) for the next two years.
- (b) Noted that the National Justice CEOs have agreed to review the Clearinghouse after a further two years of development
- (c) Agreed to promote the Indigenous Justice Clearinghouse and encourage contributions to the website

##### **d. Indigenous Justice Forum Report**

Ministers noted the report on the National Indigenous Justice Forum on *Cultural Healing in Criminal Justice Service Delivery* held in Brisbane in November 2007.

#### **15. Model Criminal Code**

##### **a. Identity Crime Model Offences**

Ministers approved for public release the report on identity crime produced by the Model Criminal Law Officers' Committee (MCLOC).

##### **b. MCLOC Implementation Report**

Ministers:

- (a) Noted the Model Criminal Code implementation report
- (b) Noted the priorities identified by COAG on 5 April 2002, and

- (c) Agreed that a review paper would be prepared examining the implementation priorities of MCLOC.

**16. Uniform Spent Convictions**

Ministers:

- (1) Noted that work is continuing on the draft model Spent Convictions Bill;
- (2) Will approve, out of session, the publication of an agreed draft Bill, for consultation purposes,
- (3) Asked officers to report back to the July meeting on the results of consultation.

**17. Litigation Funding**

Ministers:

1. Noted that the working group is developing a draft regulation impact statement outlining strategies for the regulation of litigation funding:
2. Noted that the draft regulation impact statement will not recommend a preferred option or bind Ministers to take any action,
3. Agreed that officers use the draft regulation impact statement, when in a form agreed by the working group, and approved by the Commonwealth Office of Best Practice Regulation (OBPR) and Ministers, to consult with industry stakeholders and interested parties, and
4. Requested that officers, on the basis of their consultations, finalise the regulation impact statement and develop a recommendation on the preferred mechanisms for the regulation of litigation funders for consideration by Ministers.

**18. General Business**

**a. Victims of Crime**

Ministers agreed that an officers working group should report back to Ministers on a comparison of victims rights schemes in jurisdictions, considering best practice approaches including a national approach to victims compensation.

**b. Harmonisation of anti-discrimination laws**

Ministers agreed that interested jurisdictions will examine options for harmonising Commonwealth, State and Territory anti-discrimination laws, and that a working group be established to develop options for Ministers' consideration.

**c. National Directory of Alcohol and Drug Treatment Services**

Ministers agreed that the SCAG Secretary write to the Commonwealth Minister for Health and Ageing, the Hon Nicola Roxon MP, requesting that SCAG be provided with advice on the National Directory of Alcohol and Drug

Treatment Services project once completed by the Department of Health and Ageing.

**d. Legal aid funding**

Ministers agreed that the Commonwealth will bring forward a paper on legal aid to the next meeting.

**e. Suppression orders**

Ministers asked their officers to look at the current use of suppression orders, including exploring the possibility of harmonisation and/or developing a national system for recording active suppression orders.

**f. Trans-Tasman court proceedings and regulatory enforcement**

State and Territory Ministers agreed to actively participate in consultation on the draft treaty on trans-Tasman legal cooperation.

**g. Disabilities Convention**

Ministers noted that the Commonwealth is undertaking consultations with States and Territories on Australia's ratification of the UN Convention on the Rights of Persons with Disabilities.

**h. National Legal Profession Model Laws**

Ministers noted the implementation status of the National Legal Profession Model Laws.

**i. Forensic Pathologists**

Ministers agreed that the Forensic Pathologists agenda item be returned to the Main Agenda for discussion at the next SCAG meeting.

**j. Missing Persons**

Ministers noted the recent release of the *Missing Persons in Australia Report*, and that the report identified that legislation relating to the management of the financial and property affairs of a missing person benefits the families of missing persons.