

Annual Report 2008-09

Standing Committee of Attorneys-General

This report contains significant decisions made by the Standing Committee of Attorneys-General (SCAG) during the 2008–2009 reporting period. Commonwealth, State and Territory Attorneys-General have approved the public release of this report.

Members 2008 - 2009

The following Ministers participated in SCAG meetings during 2008 – 2009.

The Hon Michael Atkinson, MP (South Australia)
The Hon Chris Burns (Northern Territory) - *July and November 2008*
Mr Simon Corbell, MLA (ACT)
The Hon Clayton Cosgrove (New Zealand) – *July 2008*
The Hon Bob Debus MP (Commonwealth)
The Hon Cameron Dick MP (Queensland) – *April 2009*
The Hon Lara Giddings (Tasmania) – *November 2008 and July 2009*
The Hon John Hatzistergos MLC (NSW)
The Hon Rob Hulls MP (Victoria)
The Hon Delia Phoebe Lawrie (Northern Territory) – *April 2009*
The Hon David Llewellyn (Tasmania) – *July 2008*
The Hon Robert McClelland (Commonwealth)
The Hon Jim McGinty MP (Western Australia) – *July 2008*
The Hon Christian Porter MLA (Western Australia) – *November 2008 and April 2009*
The Hon Simon Power (New Zealand) – *April 2009*
The Hon Kerry Shine MP (Queensland) – *July and November 2008*

Meetings

SCAG met three times between 1 July 2008 and 30 June 2009.

Ministers dealt with:

- 30 items at their meeting in July 2008 (Christchurch, New Zealand) (and pre approved 6 other items),
- 27 items at their meeting in November 2008 (Brisbane) (and pre approved 7 other items), and
- 26 items at their meeting in April 2009 (Canberra) (and pre approved 7 other items).

SCAG officers met to develop issues for consideration by Ministers prior to each meeting.

Significant Decisions

The significant decisions of Attorneys General included:

- Review of SCAG agenda and Strategic Plan - Ministers reviewed the SCAG agenda and restructured it according to six themes identified during the Review:
 1. Planning for the future
 2. Addressing disadvantage
 3. Developing court excellence
 4. Harmonisation
 5. Indigenous justice and
 6. Justice system.

The themes focus on improving the operation of the current justice system and courts, take into account vulnerable population groups and are forward looking identifying emerging trends and issues. The Annual Report is presented according to those themes.

- Planning for the future
 - Harmonisation Conference – Ministers are continuing and strengthening the initiative already in place to inform and consult with the community, legal profession and other stakeholders about the work of SCAG by holding an annual conference with legal and business stakeholders that is focused on SCAG's existing work programme.
- Addressing disadvantage
 - Anti-Discrimination Laws Harmonisation – Ministers are developing options for harmonising Commonwealth, State and Territory anti-discrimination laws and complaint handling systems. As a first step Ministers established the internet-based National Anti-Discrimination Law Information Gateway to assist individuals and businesses access information on how to make and respond to discrimination complaints.
 - Surrogacy – Ministers released a discussion paper on the national regulation of surrogacy for public consultation. They are also developing, in consultation with Health and Community Services Ministers, a discussion paper on the national model for the harmonisation of donor registers.
- Developing court excellence
 - Suppression Orders - Ministers are developing draft model provisions to enable harmonised legislation governing suppression/non-publication orders. They also agreed to a legal and administrative framework for a national electronic register of suppression/non-publication orders, as the basis for further development. In addition, Ministers are considering options for

achieving a nationally effective and consistent prohibition against the naming of children.

- Judicial Complaints Handling - Ministers considered potential models for a national judicial complaints handling mechanism. Ministers will formally consult with the Council of Chief Justices on potential options once they are further developed .
- Judicial pensions – Ministers will examine options to address the issue of the government-funded pension and superannuation entitlements of judicial officers who are convicted of serious criminal offences committed while in office or after they have left office.
- National Judicial Framework - Ministers are developing a national judicial framework to improve the integration of the Australian judicial system.
- Judicial Exchange Programme – Ministers drafted a set of principles and model provisions to underpin an exchange programme between judicial officers of interested State and Territory courts and members of interested administrative appeals tribunals.
- Cost of Recovery of Court Resources - Ministers commenced a scoping study on targeted cost recovery of court costs in civil proceedings to address the impact of ‘mega-litigation’ on court time and resources and other litigants’ access to the civil justice system.
- Harmonisation
 - Commercial arbitration – Ministers will instruct the Parliamentary Counsel’s Committee to draft a new model commercial arbitration Bill based on the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration. Officers will conduct targeted consultation with stakeholders on the draft model Bill.
 - Personal Property Securities Law Reform – Ministers agreed to an oversight arrangement for the transition of existing registers to the national PPS system.
 - Substitute Decision Making - Ministers are examining options to improve the effectiveness of mutual recognition of powers of attorney between jurisdictions.
 - Electronic Transactions Amendments – Ministers released a discussion paper on proposed amendments to the Uniform Electronic Transactions Model Law to implement obligations under the United Nations Convention on the Use of Electronic Communications in International Contracts 2005. Following completion of the consultation process, Ministers referred the drafting of a model Bill to the Parliamentary Counsel’s Committee in line with the proposals contained in the discussion paper.

- Tort Law: Proportionate Liability – Ministers are developing drafting instructions for model uniform proportionate liability legislation and will conduct targeted consultation on the instructions.
- Succession – Ministers welcomed the Report of the National Committee for Uniform Succession Laws (the National Committee) on Administration of Estates of Deceased Persons (the Report) marking the completion of the work of the National Committee (with the main 3 previous reports having dealt with wills, family provision and intestacy). Ministers will consider the extent to which jurisdictions should seek to achieve nationally consistent or uniform succession law and the Report's recommendations including automatic recognition of grants of probate and letters of administration.
- Workplace privacy – Ministers will produce a generic set of voluntary guidelines covering common workplace practices such as camera surveillance, use of tracking devices (such as GPS) and email and internet monitoring, that could be issued and distributed by relevant Privacy Commissioners or other appropriate bodies in each jurisdiction.
- Indigenous justice
 - National Indigenous Law and Justice Framework – Ministers released the draft National Indigenous Law and Justice Framework for a Commonwealth for public consultation. The draft framework is available on the SCAG website (www.scag.gov.au).
- Justice system
 - Organised crime – Organised crime is a national issue requiring a nationally coordinated response by all jurisdictions. Commonwealth, State and Territory Ministers will consider introducing legislative measures to combat organised crime where they have not already done so. A SCAG Officers' Group will undertake work on legislative, interoperability and information sharing measures in consultation with officers supporting the Ministerial Council on Police and Emergency Management - Police and report back to SCAG as soon as possible.
 - Bushfire offences - Ministers will continue to implement robust bushfire and arson offences and are considering implementing new model bushfire and arson offences where death or serious harm is caused by bushfire or arson.
 - Evidence: Journalist Shield Laws - Ministers are strengthening protections for journalists by amending the professional confidential relationship privilege in the model Uniform Evidence Bill to expressly require the Court to consider the public interest in confidentiality.

- Evidence – Ministers are developing, via the Evidence Working Group and Parliamentary Counsels' Committee, amendments to the model Bill on model vulnerable witness provisions and model sexual assault communications privilege. Ministers also agreed that certificates under the section 128 and 128A Model Evidence Law privilege against self-incrimination be given mutual recognition across jurisdictions.
- Spent Convictions Model Bill – Ministers released a discussion paper on model spent conviction provisions for public consultation.
- Criminal Procedures - Ministers are considering areas of criminal procedure that might benefit from harmonisation across the Commonwealth, States and Territories.
- Model Criminal Law - with the assistance of the Model Criminal Law Officers Committee, Ministers are reviewing and updating Chapter 2 of the Model Criminal Code which covers the general principles of criminal responsibility. Jurisdictions are identifying their own priorities for future Model Criminal Code implementation.
- Mutual exchange of criminal conviction information between Australia and New Zealand - Ministers are exploring options for the mutual exchange of offenders' criminal conviction histories between Australian and New Zealand justice sector agencies to facilitate law enforcement and border control.

Secretariat

The Secretary of SCAG is Mr Laurie Glanfield, Director General, New South Wales Attorney General's Department. The Secretariat for SCAG is jointly funded by the Commonwealth, the States and Territories and New Zealand. It consists of a full time Executive Officer supported by a Project Officer and part-time administrative assistant. The Secretary can be contacted at:

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