

Annual Report 2009-2010

Standing Committee of Attorneys-General

This Report contains significant decisions made by the Standing Committee of Attorneys-General (SCAG) during the 2009-2010 reporting period. Commonwealth, State and Territory Attorneys-General have approved the public release of this Report.

Members 2009-2010

The following Ministers participated in SCAG meetings during 2009-2010.

The Hon Michael Atkinson (South Australia) – August and November 2009
Mr Simon Corbell (Australian Capital Territory) – August 2009 and May 2010
The Hon Cameron Dick (Queensland) – August 2009, November 2009 and May 2010
The Hon Lara Giddings (Tasmania) – August 2009 and May 2010
The Hon John Hatzistergos (New South Wales) – August 2009, November 2009 and May 2010
The Hon Rob Hulls (Victoria) – August 2009, November 2009 and May 2010
The Hon Delia Lawrie (Northern Territory) – August and November 2009
The Hon Robert McClelland (Commonwealth) – August 2009, November 2009 and May 2010
The Hon Brendan O'Connor (Commonwealth) – May 2010
The Hon Christian Porter (Western Australia) – August 2009, November 2009 and May 2010
The Hon Simon Power (New Zealand) – August 2009, November 2009 and May 2010
The Hon John Rau (South Australia) – May 2010

The Norfolk Island Crown Counsel attended the August 2009 meeting as an observer. The Norfolk Island Deputy Crown Counsel attended the November 2009 meeting as an observer. The Norfolk Island Attorney-General, the Hon Craig Anderson attended the May 2010 meeting as an observer.

Meetings

SCAG met three times between 1 July 2009 and 30 June 2010.

Ministers dealt with:

- 11 items at their meeting in August 2009 (Alice Springs) (and approved 11 other items out-of-session)
- 11 items at their meeting in November 2009 (Sydney) (and approved 13 other items out-of-session)
- 18 items at their meeting in May 2010 (Melbourne) (and approved 13 other items out-of-session)

The National Justice CEOs Group met to develop issues for consideration by Ministers prior to each meeting.

Themes of items on the SCAG Agenda

The following six 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.

1. Planning for the future
2. Addressing disadvantage
3. Developing court excellence
4. Harmonisation
5. Indigenous justice
6. Justice system

Additionally, SCAG oversees the National Classification Scheme – a cooperative arrangement under which the Classification Board classifies films, computer games and certain publications. Since August 2009, the SCAG Secretariat has been providing administrative support to Ministers responsible for classification and therefore items relating to classification are included in this Annual Report.

Significant Decisions

The significant decisions of Attorneys-General included the following.

Planning for the future

- *Cyber crime* – In order to work cooperatively to combat cyber crime, Ministers established a SCAG National Cyber Crime Working Group to provide advice on whether mechanisms for reporting online offences could be improved, and to consider other issues relevant to cyber crime, such as spam and malware and powers of search and surveillance. Ministers requested this Working Group to conduct research in order to develop a more detailed understanding of the levels or areas of concern for individuals and organisations regarding privacy and technology. Ministers agreed that future approaches to the use of technology to deliver legal services emphasise the importance of linking people to the best services to ensure better and earlier dispute prevention and resolution.
- *Restructure of SCAG support through the National Justice CEOs Group* – Following a review of current SCAG arrangements, Ministers agreed to a number of changes that will result in SCAG projects being progressed more efficiently, thereby assisting SCAG to be more responsive to contemporary justice issues.

Addressing disadvantage

- *Access to justice* – Ministers considered the pivotal issue of access to justice, recognising the need for a strategic approach to improve access to justice in the civil justice system. A strategic approach based on an agreed framework to access to justice will allow resources to be most effectively directed to areas of most need. The Commonwealth proposed a strategic approach to access to justice in the civil justice system, with Ministers agreeing that the elements of a civil justice system need to be better understood, both in terms of the demand for justice and the supply. In response to

the SCAG Access to Justice Working Group's consideration of a number of access to justice related issues, Ministers agreed:

- that the National Partnership Agreement in relation to legal aid funding will come into effect on 1 July 2010. To inform this Agreement, National Justice CEOs will consider: opportunities for greater coordination and collaboration of service delivery across the legal assistance sector, empirical information on factors affecting supply and demand of legal assistance services as well as unmet legal need, and alternative sources of revenue to put funding of legal assistance programs on a more sustainable footing, including introduction of cost recovery schemes
- to review the interrelationship of the Commonwealth and State and Territory justice systems. This review may involve examination of issues such as opportunities for legal systems to work more seamlessly, areas of duplication, inefficiency and obstacles to a more unified, accessible system, and ways to overcome them
- that the Commonwealth should request the Productivity Commission to undertake a review of the measures and indicators of efficiency and effectiveness of the courts and tribunals elements of the Australian justice system
- to develop a harmonised approach to options for greater cost recovery of justice services, including consideration of cost recovery options for courts and tribunals
- to develop options for a national approach to ensure that people have seamless access to information and services, and a vehicle to get the most appropriate service. This may include an obligation on all relevant government agencies, service providers, courts and tribunals to direct people to a more appropriate service. It may also include collaboration between service providers to reduce duplication and present joined up solutions to service delivery, and greater emphasis on technology to expand the cost effective provision of services
- that the Commonwealth Minister for Financial Services, Superannuation and Corporate Law will consider the extent to which litigation funders should be regulated by the Australian Securities and Investment Commission (ASIC)

Ministers also endorsed accessibility, appropriateness, equity, efficiency and effectiveness as principles for improving access to justice in the civil justice system.

Developing court excellence

- *Suppression orders* – In working towards the harmonisation of suppression orders and non-publication orders, and in developing a legal and administrative framework for a national register, the SCAG Working Group on Suppression Orders developed model provisions. Ministers endorsed these model provisions and will consider implementing them in their respective jurisdictions.

- *National Judicial Framework* – The SCAG Working Group on a National Judicial Framework facilitated a consultation regarding proposals for a national judicial framework, which could assist and improve the functioning of courts in Australia. After noting the outcome of consultations, Ministers requested the National Justice CEOs Group to conduct work to determine the feasibility of further progressing proposals under the Framework. An intergovernmental agreement on judicial exchange is currently being considered.

Harmonisation

- *Torts – Proportionate Liability* – This project aims to develop a nationally consistent system of proportionate liability for damages for economic loss or property damage. Following the release of Mr Tony Horan’s report ‘Proportionate Liability: Towards National Consistency’ and Professor Jim Davis’s report ‘Proportionate Liability: Proposals to Achieve National Uniformity’, the SCAG Working Group on Proportionate Liability facilitated a targeted consultation on drafting instructions for model uniform proportionate liability legislation, consistent with a preliminary analysis of recommendations made by Mr Horan and Professor Davis. The Working Group presented drafting instructions to Ministers, and Ministers have agreed to instruct the Parliamentary Counsel’s Committee to draft model proportionate liability provisions, which will be released later for public consultation.
- *Uniform Evidence laws* – The SCAG Evidence Working Group, working with the Parliamentary Counsel’s Committee, developed model provisions for inclusion in the Model Evidence Bill, addressing the following:
 - mutual recognition of self incrimination certificates issued under sections 128 or 128A
 - the definition of unavailability of persons in response to recommendation 8-2 of the Australian, New South Wales and Victorian Law Reform Commission’s Uniform Evidence Law – Final Report
 - amendments to the Professional Confidential Relationship Privilege to address journalist shield issues

Ministers agreed to the inclusion of these model provisions in the Model Evidence Bill and also agreed on seven principles that will be applied as the minimum standard for protection of sexual assault counselling communications in Australia, if jurisdictions legislate to restrict the disclosure of sexual assault counselling communications in criminal trials.

- *Surrogacy* – Following public consultation, Ministers agreed to a set of 15 draft principles upon which model provisions for the regulation of surrogacy could be based. Ministers recognised the valuable input from the public consultation, which informed the development of these principles, and referred the draft principles to the joint partners on this project, the Australian Health Ministers’ Conference and the Community Services Ministers’ Conference, to consider. Parliamentary Counsel’s Committee drafted model provisions, based on the 15 draft principles and Ministers referred these draft model provisions to the Health and Community Services Ministers, for their consideration.

- *Electronic Transactions Amendments Bill* – With a view to modernising Australia’s laws on electronic commerce to reflect internationally recognised legal standards and increase certainty for international trade, Ministers agreed to enact the Model Electronic Transactions Amendment Bill 2010 to implement the United Nations Convention on the Use of Electronic Communications in International Contracts 2005.
- *Personal Property Securities (PPS)* – SCAG has achieved significant progress on harmonising laws on secured financing using personal property. The PPS Scheme will be supported by a referral of power from all States so that as far as possible, a single national regime applies consistency across Australia to any transaction that creates a security interest in personal property.

Following Ministers’ agreement to the text of the PPS Bill and model State referral legislation, the NSW Parliament passed legislation referring power to the Commonwealth to enact the PPS Bill. Debate on the Bill is expected to occur in the Spring sitting of Parliament, with COAG deciding the new scheme will commence in 2011. Victoria and South Australia have also referred power.

Consultation with a range of stakeholders revealed a preference for the PPS Scheme to apply to security interests in fixtures, though this proposal gives rise to potential complexities that could arise from the interaction of a federal PPS law and State and Territory land laws. Ministers requested the Commonwealth Government to refer this matter to the Australian Law Reform Commission for review and report by June 2011.

- *Succession law* – The National Committee on Uniform Succession Law, established by SCAG, developed a suite of model provisions as the basis for reform of succession law. These model provisions were developed after the National Committee on Uniform Succession Laws produced recommendations and model provisions for the national reform of law on wills, family provision, intestacy and the administration of deceased estates. Ministers agreed to adopt these model provisions as a basis for reform, with the objective of minimising substantive differences between jurisdictions in all future succession legislation. Future succession law in all jurisdictions will be monitored by a SCAG succession law implementation committee, as part of Ministers’ commitment to working towards consistency in succession law across Australia.
- *Change of name* – To ensure criminals cannot abuse the change of name system, Ministers requested the National Justice CEOs to develop a best practice approach to the change of name process.

Indigenous justice

- *Indigenous Community Safety Roundtable* – Following the 2009 Indigenous Community Safety Roundtable, hosted by the Commonwealth, a number of proposals that were developed to improve the safety of Indigenous communities, were endorsed by Ministers. These proposals related to prioritising Indigenous safety at the national level, policing, alcohol management, information sharing and integrated service delivery and victim support.

Annual forums for senior officers from Commonwealth, State and Territory justice agencies will be initiated, to consider Indigenous community safety issues. These forums

will provide an opportunity for officers to share best practice initiatives and will encourage improvements in Indigenous policy development and program delivery.

- *Indigenous justice* – As part of a national approach to addressing the serious and complex issues that mark the interaction between Indigenous communities and the justice systems in Australia, the SCAG Working Group on Indigenous Justice prepared the Principles of the National Indigenous Law and Justice Framework 2009-2015 as a national policy approach, which has been endorsed by Ministers and can be found at: http://www.scag.gov.au/lawlink/SCAG/ll_scag.nsf/pages/scag_reports.

Additionally, Ministers will be developing justice targets addressing disadvantage in Indigenous communities, and will identify and evaluate existing programs, so that Governments can make targeted funding decisions.

Justice system

- *Commercial arbitration* – Current uniform Commercial Arbitration Acts operating across jurisdictions were developed under the auspices of SCAG. After noting that the United Nations Commission on International Trade Law's Model Law on International Commercial Arbitration could form the basis of the new uniform commercial arbitration legislation for domestic arbitration in Australia, a SCAG Working Group developed a model Commercial Arbitration Bill 2010. Ministers have agreed to implement this Bill.
- *Spent Convictions Model Bill* – Following the release of the Spent Convictions Bill and consultation paper for consultation by jurisdictions, the SCAG Working Group on Spent Convictions developed a Model Spent Convictions Bill. In finalising this project, Ministers noted this Bill and agreed to its public release.
- *Victims of Crime* – NSW is currently reviewing its Charter of Victims Rights, which is aimed at improving access to these rights, developing strategies to better assist agencies to comply with the Charter's objectives and ensuring that quality services are provided to meet the needs of victims of crime. Following discussions about the NSW review, Ministers agreed to develop a national approach to victims' rights.
- *National Response to Organised Crime* – To ensure a coordinated effort to effectively prevent, investigate and prosecute organised crime activities and target the proceeds of organised criminal groups, Ministers agreed to arrangements to support the comprehensive national response to organised crime.

Classification

- *R 18+ Classification for computer games* – The Commonwealth Attorney-General's Department has held a public consultation on introducing an R 18+ classification for computer games. The Commonwealth released a status report on the consultation. Ministers noted the preliminary outcomes of this consultation and requested further analysis of community and expert views and agreed to discuss whether to amend the National Classification Scheme to introduce an R 18+ classification for computer games at a future meeting.

- *Compliance and Enforcement* – Ministers were provided with an update on the work of the SCAG Compliance and Enforcement Working Party and related initiatives to improve compliance with, and enforcement of, classification laws.

SCAG Secretariat

The Secretary of SCAG is Mr Laurie Glanfield, Director General of the Department of Justice and Attorney General, New South Wales.

The SCAG Secretariat is jointly funded by the Commonwealth, States and Territories and New Zealand. It consists of an Executive Officer, two Project Officers and one Administrative Assistant. The Secretary of SCAG can be contacted at:

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