

Annual Report 2010-11

Standing Committee of Attorneys-General

This Report contains significant decisions made by the Standing Committee of Attorneys-General (SCAG) between 1 July 2010 and 30 June 2011. This will be the last annual report of SCAG. During 2011-12, as a result of the new Ministerial Council arrangements agreed to by the Council of Australian Governments, SCAG will become the Standing Council on Law and Justice.

Commonwealth, State and Territory Attorneys-General approved the release of this report.

Members 2010-11

The following Ministers were members of SCAG during 2010-11.

Mr Simon Corbell (Australian Capital Territory)
The Hon Robert McClelland (Commonwealth)
The Hon Brendan O'Connor (Commonwealth)
The Hon John Hatzistergos (New South Wales) (*until March 2011*)
The Hon Greg Smith (New South Wales) (*from April 2011*)
The Hon Simon Power (New Zealand)
The Hon Delia Lawrie (Northern Territory)
The Hon Cameron Dick (Queensland) (*until February 2011*)
The Hon Paul Lucas (Queensland) (*from February 2011*)
The Hon John Rau (South Australia)
The Hon Lara Giddings (Tasmania) (*until January 2011*)
The Hon David Bartlett (Tasmania) (*from January 2011 to May 2011*)
The Hon Brian Wightman (Tasmania) (*from May 2011*)
The Hon Rob Hulls (Victoria) (*until November 2010*)
The Hon Robert Clark (Victoria) (*from December 2010*)
The Hon C Christian Porter (Western Australia)

The Norfolk Island Attorney-General, the Hon Craig Anderson, was as an observer at SCAG during the reporting period.

Meetings

SCAG met twice during the reporting period, in December 2010 and March 2011. A meeting was scheduled for July 2010, but was cancelled due to the Federal election.

Ministers dealt with:

- Eight items out of session in July 2010
- 21 items at the December 2010 meeting (and approved 11 further items out of session)
- 11 items at the March 2011 meeting (and approved 13 further 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

During the reporting period, SCAG focused on the following six themes, which were aimed at improving the operation of the current justice system and courts, taking into account vulnerable population groups and looking forward to identify emerging trends and issues.

1. Planning for the future
2. Addressing justice-related social problems and disadvantage
3. Developing court excellence
4. Harmonising legislation on key justice issues that are critical to communities
5. Improving Indigenous justice outcomes
6. Creating an accountable and responsive justice system.

Additionally, SCAG oversaw the National Classification Scheme – a cooperative arrangement under which the Classification Board classifies films, computer games and certain publications.

Significant Decisions

The significant decisions of Attorneys-General included the following.

Planning for the future

- *Cyber crime*: Ministers noted the progress of the National Cyber Crime Working Group, which was established in May 2010 and includes representatives of justice departments and law enforcement agencies. The Working Group is progressing a range of initiatives aimed at developing a national response to cyber crime. As part of this, Ministers agreed to the Working Group developing a detailed proposal for the establishment of a national online reporting facility for cyber crime.

Addressing disadvantage

- *International Justice Assistance*: Australia's Framework for Law and Justice Engagement with the Pacific provides a commitment from the Australian Government to improve coordination in the delivery of Australian assistance to the Pacific law and justice sector. Ministers agreed that the Commonwealth, States and Territories will work together to improve the coordination of law and justice assistance to Pacific island countries consistent with this framework. The

National Justice CEOs Group will be the contact group to identify opportunities for greater cooperation, coordination and information sharing between jurisdictions.

Developing court excellence

- *Judicial pensions:* In April 2009, Ministers had agreed to consider further the issue of the government-funded pension and superannuation entitlements of current and former judicial officers who are convicted of serious criminal offences. During the reporting period, Ministers noted that existing legislation already provides significant consequences for judicial officers who are convicted of serious offences while in office. Ministers agreed that it is not necessary or desirable to pursue model legislation to allow pension and superannuation entitlements to be removed from former judicial officers who are convicted of serious offences committed after leaving judicial office.
- *Access to court information:* Ministers considered a briefing on access to court information by non-parties. Ministers agreed that each jurisdiction will examine ways to improve their own access to court information, and the *Court Information Act 2010* (NSW) may be used as a model.
- *Recognition of court orders:* Following stakeholder comments at the SCAG Harmonisation Conference in November 2008, officers prepared a briefing for Ministers on the interstate recognition of court orders. Ministers agreed that each jurisdiction would examine ways to improve the recognition of guardianship and financial management orders made in other jurisdictions.
- *Judicial complaints handling:* Ministers agreed to consider establishing mechanisms for judicial complaints handling in their jurisdiction, noting some jurisdictions already have mechanisms in place.

Harmonisation

- *National scheme for domestic and family violence orders:* In line with the *National Plan to Reduce Violence against Women and their Children 2010 – 2022*, SCAG has, since 2009, been working to develop a national scheme for domestic and family violence orders (DVOs). During the reporting period, Ministers agreed to a national DVO recognition scheme involving States and Territories introducing model provisions that provide automatic recognition of court-issued DVOs across jurisdictional borders. They also agreed, subject to Police Ministers' agreement, to the establishment and funding of a national DVO information-sharing capability using CrimTrac's National Police Reference System.
- *Australian and New South Wales Law Reform Commissions' Report on Family Violence:* The Australian Law Reform Commission and New South Wales Law Reform Commission report *Family Violence – a National Legal Response* was released on 11 November 2010. This report aims to improve safety for women and children in the context of family violence through recommendations for reform of legal frameworks. Ministers agreed that officers would examine the Report's recommendations and advise Ministers about the desirability of a national approach.

- *UNIDROIT Wills Convention*: The UNIDROIT Convention Providing a Uniform Law on the Form of an International Will 1973 provides for a Uniform Law that prescribes necessary elements for the form of an 'international will', including for example witnessing, writing and certification requirements. Adopting the Convention's 'international will' will improve access to justice for those who hold assets in foreign countries, have beneficiaries located abroad or are themselves beneficiaries under an international will. Following consideration by a Commonwealth, State and Territory Working Group, Ministers agreed to implement legislation in each State and Territory to allow Australia to accede to the Convention.
- *SCAG Harmonisation Forum*: Ministers agreed to hold a harmonisation forum to identify and pursue initiatives for supporting COAG to achieve its micro-economic reform agenda. This Forum was held in Sydney on 27 May 2011, and provided an opportunity for representatives from business and government to discuss micro-economic reform initiatives.
- *Uniform Evidence Law*: SCAG concluded its consideration of the key recommendations arising from the Australian, New South Wales and Victorian Law Reform Commissions' 2005 report on Uniform Evidence Law. The final issue considered was whether to introduce provisions to protect vulnerable witnesses into the model Uniform Evidence Bill. Ministers noted that significant harmonisation already exists in relation to many vulnerable witness provisions across jurisdictions and that such provisions are inextricably linked to a jurisdiction's court procedures. Accordingly Ministers agreed it is not appropriate to incorporate vulnerable witness provisions into the Uniform Evidence Bill.

Indigenous justice

- *National Indigenous Law and Justice Framework*: The Framework, which Ministers endorsed in November 2009, sets out a national approach to addressing the serious and complex issues that mark the interaction between Aboriginal and Torres Strait Islander peoples and the justice system in Australia. The Framework contains proposals for how it is to be reviewed and evaluated. During the reporting period, Ministers agreed not to undertake an annual review of the Framework in 2010. Ministers agreed that, in 2011, Senior Officers will consider how to review the implementation and monitoring of the Framework effectively in future years. An external review of the Framework will proceed as scheduled in 2012-14.

Justice system

- *DNA evidence*: Ministers considered the increase in the use of DNA evidence in criminal trials and the need to ensure all participants in the criminal justice system fully understand it. Ministers endorsed terms of reference for the DNA Evidence Working Group.

- *Commercial arbitration:* In May 2010, SCAG agreed to implement the Model Commercial Arbitration Bill 2010, which provides a new uniform scheme for domestic arbitration in Australia based on the United Nations Commission on International Trade Law's Model Law on International Commercial Arbitration. In July 2010, following the implementation of the Model Bill in New South Wales, Ministers agreed to conduct further consultation on section 27D, which relates to the power of an arbitrator to act as a mediator, conciliator or other non-arbitral intermediary. Ministers, with the exception of the Queensland Attorney-General, agreed these further consultations should occur independently of the implementation of the model Bill in each jurisdiction and should not delay such implementation. Consultation took place during April 2011 and the results will be considered by Ministers in the next reporting period.
- *Organised crime:* As part of SCAG's ongoing work on a coordinated national response to organised crime, Ministers agreed to a national plan to respond to organised crime threats. Ministers also agreed to measures to enhance cooperation in targeting the proceeds of organised criminal groups. New South Wales asked for consideration to be given to the priority of victims' rights, as New South Wales and some other jurisdictions' legislation provides that certain proceeds of crime are automatically paid into the Victims Compensation Fund.

National Classification Scheme

- *R 18+ computer games:* Ministers considered work done to analyse community and expert views on the introduction of an R 18+ classification for computer games, including a national telephone poll, literature review, panel discussion and advice from the Classification Board. Ministers noted that they did not support dilution of the Refused Classification category. Ministers also considered draft new Guidelines for the classification of Computer Games and proposed amendments to the National Classification Code. Ministers agreed to make a decision regarding the introduction of an R 18+ classification at the July 2011 meeting.
- *Review of the National Classification Scheme:* Ministers agreed on the need to reform the National Classification Scheme to accommodate and better anticipate technological and other developments. Ministers agreed to the Commonwealth referring the matter to the Australian Law Reform Commission. Ministers also agreed that this broad review of the National Classification Scheme will include consideration of the classification categories, including the Refused Classification category for films, computer games and books. Additionally, Ministers agreed that options to improve compliance with, and enforcement of, Australia's classification laws would be assessed as part of this review.

The Commonwealth Attorney-General referred this matter to the Australian Law Reform Commission on 24 March 2011, with a report requested by 30 January 2012.

- *Classification of mobile and online games:* Ministers considered the difficulties raised by industry and the Classification Board relating to the classification of online computer games including mobile phone applications that are games. It is anticipated that the broad review of the National Classification Scheme will

consider long-term solutions to these difficulties. However, Ministers agreed on the need for an interim solution and considered a number of options, taking account of the extent of required legislative change, the timeframe for implementation and the overall effectiveness of each option.

In light of this, Ministers considered the best approach would be to obtain agreement that mobile and online games be treated similarly to other online content, rather than stand alone computer games. This interim solution would be subject to a sunset clause of up to two years. There would be no change to the treatment of online and mobile games that would be refused classification.

- *Use of restricted material in research:* Following consultation with key stakeholders, an officers' working group developed model provisions that allow access to restricted material (including material classified Refused Classification) for legitimate academic research and educational purposes in specified and limited circumstances. Ministers endorsed the model provisions on the basis that it is a matter for each jurisdiction to decide whether to introduce them.
- *Art and the National Classification Scheme:* Censorship Ministers had been considering ways to improve the application of the National Classification Scheme to artworks, including proposals to develop educational materials for stakeholders. During the reporting period, Ministers noted the initiative that arts stakeholders have taken in relation to their classification obligations, and agreed that it is no longer necessary to publish educational materials on the application of classification laws to artworks. New South Wales, Queensland, South Australia and the Australian Capital Territory will consider the removal of offences for selling, delivering or publishing an 'Unrestricted' publication without its determined markings where no consumer advice has been issued by the Classification Board.
- Ministers also noted the Annual Report of the Australian Recording Industry Association and Australian Music Retailers Association Recorded Music Labelling Code of Practice Ombudsman.

Tasks undertaken for COAG

In the reporting period, SCAG progressed a number of projects at the request of COAG.

- SCAG provided information to the Transition Working Group progressing the reform of Ministerial Councils, including input into the terms of reference and a work plan for the new Standing Council on Law and Justice.
- The SCAG Secretary provides regular reports to COAG on SCAG's work in developing a nationally coordinated response to organised crime, as requested at the COAG meeting on 30 April 2009. The SCAG Secretary provided one report during the reporting period, on 20 December 2010.
- SCAG is responsible for the establishment of a national personal property securities system under the National Partnership Agreement to Deliver a Seamless National Economy. The new Commonwealth legislation, the *Personal Property Securities Act 2009*, is in place and the single national register (the

Personal Property Securities Register) is being developed for the new personal property securities system, which will commence in October 2011.

- SCAG has been kept apprised of progress of the National Legal Profession Reform project throughout 2010-11. This project was initiated by COAG as part of its microeconomic reform agenda to create uniform national legal profession regulation. COAG established a National Legal Profession Reform Taskforce, comprising senior representatives of New South Wales, Victorian and Commonwealth justice departments and the Law Council of Australia, to develop the regulatory reforms. COAG's Business Regulation and Competition Working Group is overseeing the progress of the project.

The National Legal Profession Reform Taskforce provided the draft Legal Profession National Law Bill, Legal Profession National Rules, final Regulation Impact Statement and intergovernmental agreement to SCAG Ministers for consideration in December 2010.

SCAG Ministers from the jurisdictions participating in the reforms will be responsible for implementing and maintaining the national regulatory scheme, in accordance with an intergovernmental agreement.

- SCAG submitted its 2009-10 Annual Report of decisions to COAG as required under the Broad Protocols for the Operation of Ministerial Councils in the last financial year.
- SCAG provides a report twice a year to the Office of Best Practice Regulation on its compliance with COAG best practice regulation requirements, which is ultimately provided to COAG.
- In accordance with Clause 2.6 of the Broad Protocols for the Operation of Ministerial Councils, SCAG provides copies of the minutes from SCAG meetings after each meeting to the COAG Secretariat.

SCAG Secretariat

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

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 Officer. The Secretary of SCAG can be contacted at:

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