

Communiqué
Standing Committee of Attorneys-General
5 & 6 November 2009

The final meeting of the Standing Committee of Attorneys-General (SCAG) for 2009 finished today in Sydney. The Commonwealth, State and Territory Attorneys-General and the New Zealand Minister of Justice were in attendance. Tasmania was represented by the Secretary of the Department of Justice. The Australian Capital Territory was represented by the Chief Executive of the Department of Justice and Community Safety.

The Norfolk Island Deputy Crown Counsel also attended the meeting as an observer.

Key issues

Access to justice

Ministers focused on the pivotal issue of access to justice at this SCAG meeting. The mechanisms that allow people to prevent and resolve disputes are fundamental to the rule of law. It is also a key means of promoting social inclusion. Many of the issues commonly faced by people, such as family breakdown, credit and housing issues, discrimination, and exclusion from services, have a legal dimension that if not resolved can contribute to social exclusion.

In the discussions all Ministers emphasised the importance of legal assistance services in achieving access to justice. Ministers recognised there is a 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.

Ministers discussed access to justice in the context of the civil justice system that involves both access to effective formal dispute resolution processes, as well as a broader system that enhances the capacity of individuals to resolve

disputes informally. Access to justice includes access to legal services, greater use of non-adversarial dispute resolution processes, the correction of inequalities in the justice system, and improving the justice quality of daily life.

The Commonwealth proposed a strategic approach to access to justice in the civil justice system. Ministers agreed that the elements of a civil justice system need to be better understood, both in terms of the demand for justice and the supply.

The key outcome of the discussions were that Ministers agreed:

- To endorse the principles of accessibility, appropriateness, equity, efficiency and effectiveness
- The National Partnership Agreement in relation to legal aid funding will come into effect on 1 July 2010
- To a review of the interrelationship of the Commonwealth and State and Territory justice systems
- That the Commonwealth should request the Productivity Commission to undertake a review of the measures and indicators of efficiency and effectiveness for the civil justice system in Australia
- To develop a harmonised approach for options for greater cost recovery of justice services
- 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
- That the Commonwealth Minister for Financial Services, Superannuation and Corporate Law will build upon the work already done by SCAG on the regulation of litigation funding by considering the extent to which litigation funders should be regulated by the Australian Securities and Investment Commission (ASIC).

Surrogacy

The Standing Committee of Attorneys-General in conjunction with the Australian Health Ministers' Conference and the Community Services Ministers' Conference has been working towards developing model provisions that will form the basis of surrogacy laws in Australia.

Ministers agreed to a set of 15 draft principles upon which the model provisions could be based. These draft principles will now be referred to the Australian Health Ministers' Conference and the Community Services Ministers' Conference to consider. Ministers recognised that valuable input from the public consultation informed the development of the 15 principles.

National Legal Profession Reform Taskforce

The Chair of the National Legal Profession Taskforce and Secretary of the Commonwealth Attorney-General's Department, Roger Wilkins AO, provided Ministers with an update on National Legal Profession Reform. Ministers also agreed to ask the National Legal Profession Reform Taskforce to address legal advertising, including the option of uniform standards for the content and manner of advertising of personal injury legal services, as part of its report to COAG in April 2010.

Commercial arbitration

The current uniform Commercial Arbitration Acts operating across jurisdictions were developed under the auspices of SCAG. At the April 2009 meeting, Ministers noted that the UNCITRAL Model Law on International Commercial Arbitration could form the basis of the new uniform commercial arbitration legislation for domestic arbitration in Australia. Ministers also noted the progress on the development of the draft model commercial arbitration Bill.

Spent convictions

The spent convictions project was finalised today with the public release of the Model Spent Convictions Bill on the SCAG website (www.scag.gov.au).

Update on reform of the New Zealand criminal justice system

New Zealand provided an update on reform of the New Zealand criminal justice system. The update covered a range of reforms, including: criminal procedure simplification, offender levy to assist victims of serious crime, police-issued safety orders to protect victims of domestic violence, and liquor reforms.

Victims of crime

Ministers discussed the NSW review of its Charter of Victims Rights that is aimed at improving access to these rights, developing strategies to better assist agencies comply with the Charter's objectives and ensuring that quality services are provided to meet the needs of victims of crime. Ministers agreed to develop a national approach to victims rights.

Serious sex offenders

The NSW Attorney General provided an update on a review of the *Crimes (Serious Sex Offenders) Act 2006* (NSW). The Act was introduced three years ago in order to ensure the community's safety and protection and to deal with serious sex offenders by continuing detention orders and extended supervision orders.

The issue of serious sex offenders will be examined in greater detail at a future SCAG meeting following the completion of the NSW review.

SCAG Website

The SCAG website - www.scag.gov.au - has been revamped including the addition of information about current SCAG projects, past SCAG achievements and useful links to related sites. It is now easier to navigate around the site and access the information and documents you need.

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Summary of Decisions

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Addressing disadvantage

Access to justice

Ministers:

- (a) agreed that jurisdictions endorse the following principles for improving access to justice in the civil justice system: accessibility, appropriateness, equity, efficiency and effectiveness
- (b) agree that to inform the National Partnership Agreement which comes into effect 1 July 2010, CEOs consider:
 - a. opportunities for greater coordination and collaboration of service delivery across the legal assistance sector
 - b. empirical information on factors affecting supply and demand of legal assistance services as well as unmet legal need
 - c. alternative sources of revenue to put funding of legal assistance programs on a more sustainable footing, including introduction of cost recovery schemes.
- (c) agreed that there should be a review of the interrelationship of the Commonwealth and State and Territory justice systems. This review could be conducted by a small panel comprising representatives from jurisdictions. The panel could examine issues such as:
 - a. opportunities for legal systems to work more seamlessly
 - b. areas of duplication
 - c. inefficiency, and

- d. obstacles to a more unified, accessible system, and ways to overcome them.
- (d) agreed 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 tribunal elements of the justice system in Australia. Before making such a request the Commonwealth would consult with States and Territories as to timing and to develop Terms of Reference
- (e) agreed to develop a harmonised approach to options for greater cost recovery of justice services, including consideration of cost recovery options for courts and tribunals
- (f) agreed that jurisdictions should 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:
- a. an obligation on all relevant government agencies and service providers as well as courts and tribunals to direct people to a more appropriate service
 - b. collaboration between service providers to reduce duplication and present joined up solutions to service delivery, and
 - c. greater emphasis on technology to expand the cost effective provision of services.
- (g) agreed that the Commonwealth Minister for Financial Services, Superannuation and Corporate Law will give consideration to the extent that litigation funders should be regulated by the Australian Securities and Investment Commission.

Justice System

Penalty regimes for disruptions at critical energy infrastructure sites

Ministers received a report on the existing offences and penalties applying to unlawful protest-related disruption of critical energy infrastructure and agreed to provide this to the Ministerial Council of Energy.

The Commonwealth will assess whether any new offences specifically targeting the disruption of essential services provided by critical infrastructure should be developed.

Spent convictions

Ministers noted the Model Spent Convictions Bill and agreed to its release on the SCAG website (www.scag.gov.au).

Update on International Co-operation Issues

The Commonwealth provided an update on the Attorney-General's International Pro Bono Advisory Group and the 2011 Commonwealth Law Ministers Meeting, which will be hosted by Australia.

Update on reform of the New Zealand criminal justice system

Ministers noted the update on reform of the New Zealand criminal justice system.

Victims of crime

Ministers:

- (a) noted that NSW and South Australia will take responsibility for the Victims of Crime project originally agreed by Ministers in March 2008
- (b) noted that NSW is currently reviewing its Charter of Victims Rights to better enable victims to access these rights, to develop strategies to better assist agencies comply with the Charter's objectives and to ensure that quality services are provided to meet the needs of victims of crime
- (c) noted that NSW will report back to SCAG on the results of the review of its Charter of Victims' Rights
- (d) agreed that Ministers work to develop a national approach to victims' rights.

Serious sex offenders

NSW provided an update on the current work it is undertaking in reviewing the legislative scheme set up by the *Crimes (Serious Sex Offences) Act 2006* (NSW) which it introduced three years ago in order to ensure the community's safety and protection and to deal with serious sex offenders by continuing detention orders and extended supervision orders.

Ministers agreed the issue of serious sex offenders will be examined in greater detail at a future SCAG meeting following the completion of the NSW review.

Harmonisation

Surrogacy

The Standing Committee of Attorneys-General agreed to 15 draft principles as a basis for surrogacy laws in Australia. As joint partners on this project the Australian Health Ministers' Conference and the Community Services Ministers' Conference will be asked to approve these principles.

The Standing Committee of Attorneys-General would like to acknowledge the valuable contribution the submissions received in the consultation made to developing the draft principles. These submissions informed Ministers of the divergence of views in the general community, religious organisations, support networks, legal profession and amongst health professionals.

National Legal Profession Taskforce

Ministers will ask the National Legal Profession Reform Taskforce to address legal advertising, including the option of uniform standards for the content and manner of advertising of personal injury legal services, as part of its report to COAG in April 2010.

Commercial arbitration

Ministers noted the progress on the development of a draft model commercial arbitration Bill based on the UNCITRAL Model Law.

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