

Communiqué
Standing Committee of Attorneys-General
7 May 2010

The first meeting of the Standing Committee of Attorneys-General (SCAG) for 2010 was held today in Melbourne. The Commonwealth, State and Territory Attorneys-General were in attendance. The Commonwealth Minister for Home Affairs and the New Zealand Minister of Justice were also in attendance. The Northern Territory was represented by the Chief Executive Officer of the Department of Justice.

The Norfolk Island Attorney General also attended the meeting as an observer.

The Victorian Attorney-General arranged for Ministers to visit the Neighbourhood Justice Centre in Collingwood.

Key issues

Technology and the Law

Ministers discussed the work being done by a number of different bodies throughout Australia to combat the growth of cyber crime. This problem is complex and affects a broad range of public and private sector stakeholders across all jurisdictions. Ministers decided that the creation of a National Cyber Crime Working Group would facilitate a co-ordinated response to this important issue.

Advances in technology that can benefit the law and justice sector were explored by Ministers. In particular, Ministers discussed ways technology can improve access to the law and increase the efficiency of courts and other legal processes.

Advances in technology can also pose challenges for the protection of individual privacy as information exchange becomes easier. Ministers

discussed areas of potential concern for individuals and organisations regarding privacy and technology.

National Legal Profession Reform

Ministers discussed the progress of the COAG National Legal Profession Reform project, including the upcoming public consultation on the draft national law regulating the legal profession and requested the Taskforce to report to SCAG on the outcomes of the consultation.

R18+ Computer Games

On 14 December 2009 the Commonwealth Minister for Home Affairs released a discussion paper on whether an R 18+ classification for computer games should be introduced. Submissions to this consultation formally closed on 28 February 2010. Ministers considered the preliminary outcomes of the public consultation. Ministers also noted that the Commonwealth intends to release a status report on the consultation. A copy will be available at <http://www.ag.gov.au/gamesclassification>.

Ministers agreed to discuss whether to amend the National Classification Scheme to introduce an R 18+ classification for computer games at a future meeting. Ministers have requested further analysis of community and expert views.

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. At this meeting Ministers agreed to implement the model Commercial Arbitration Bill 2010. A copy is available on the SCAG website at http://xac3mdw1/lawlink/scag/ll_scag.nsf/pages/scag_model_laws

Torts – Proportionate Liability

The Torts – Proportionate Liability project aims to develop a nationally consistent system of proportionate liability for damages for economic loss or property damage. Ministers agreed to instruct the Parliamentary Counsel's Committee to draft model proportionate liability provisions and that, when finalised, these will be released for public consultation.

General items

National Partnership Agreement on Legal Assistance Services

Ministers discussed the progress of the new National Partnership Agreement on Legal Assistance Services.

Suppression orders

SCAG has been working on a project to harmonise suppression orders and non-publication orders and to develop a legal and administrative framework for a national register.

Ministers endorsed model provisions and agreed to consider implementing them in their jurisdiction. A copy of the model provisions is available at http://www.scag.gov.au/lawlink/scag/ll_scag.nsf/pages/scag_model_laws.

Ministers also noted that the Commonwealth has developed a 'proof of concept' and will now take steps to implement a publicly accessible website. Finally, Ministers requested the National Justice CEOs Group to investigate improvements to the distribution of suppression orders.

Performance of Public Prosecution Services – Report on government services

In line with the principle that governments should be transparent and accountable, Ministers asked that further work be done on a set of performance indicators that could potentially be included in the Report on Government Services.

Uniform Evidence laws

At the July 2007 SCAG meeting, Ministers endorsed a model Uniform Evidence Bill for Australia. Work has continued on a number of additional

areas including a model sexual assault privilege, mutual recognition of self-incrimination certificates and the unavailability of witnesses. At this meeting Ministers agreed to the inclusion in the model Uniform Evidence Bill of model provisions:

- for mutual recognition of self incrimination certificates issued under section 128 or section 128A
- for 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, and
- implementing amendments to the Professional Confidential Relationships Privilege to address journalist shield issues.

A copy of the provisions is available at http://www.scag.gov.au/lawlink/scag/ll_scag.nsf/pages/scag_model_laws.

Ministers noted that the adoption of the model provisions was a matter for each jurisdiction. Ministers also agreed on seven principles to 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.

Indigenous Community Safety Roundtable

In November 2009 the Commonwealth hosted the Indigenous Community Safety Roundtable. Ministers endorsed a range of proposals to improve the safety of Indigenous communities that were developed pursuant to the Roundtable. The proposals relate to prioritising Indigenous safety at the national level, policing, alcohol management, information sharing and integrated service delivery and victim support.

Ministers agreed to initiate annual forums for senior officers from Commonwealth, State and Territory justice agencies to consider Indigenous community safety issues. The forums will provide an opportunity for officers

to share best practice initiatives and will encourage improvements in Indigenous policy development and program delivery.

Ministers agreed that SCAG will write to Police Ministers requesting that they further consider transparency in policing numbers in remote and very remote communities and report back to SCAG.

Ministers also agreed that SCAG will write to the Ministerial Council on Drug Strategy requesting that they consider a more proactive approach to alcohol supply restrictions where there are high levels of alcohol consumption leading to Indigenous family and community violence, and report back to SCAG before the end of July 2010.

Classification: 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.

Surrogacy

Ministers today considered a set of draft model provisions based on the 15 principles for surrogacy laws endorsed in their November 2009 meeting. Ministers agreed to refer the draft model provisions to Health and Community Services Ministers for their consideration.

Electronic Transactions Amendments Bill

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. Implementing the Convention will modernise Australia's laws on electronic commerce to reflect internationally recognised legal standards and increase certainty for international trade.

A copy of the Bill is available at http://www.scag.gov.au/lawlink/scag/ll_scag.nsf/pages/scag_model_laws.

Other business

The New Zealand Minister for Justice provided SCAG with an update on New Zealand Legal Aid and Electoral Reforms.

The South Australian Attorney-General suggested that SCAG consider a national approach to the administration of anti-discrimination law at a future meeting.

Ministers discussed the release of the Vincent Report into the Farah Jama case and agreed in principle to the establishment of a working group to examine national standards for the collection and interpretation of DNA evidence.

Ministers discussed the activities being conducted across Australia for National Law Week 2010. The theme of Law Week is 'Law and Justice in your Community'.

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Summary of Decisions

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Technology and the Law

Ministers:

- (a) agreed that all jurisdictions work cooperatively to combat cyber crime, including through the establishment of a SCAG National Cyber Crime Working Group to:
 - i. provide advice on whether mechanisms for reporting online offences could be improved
 - ii. consider other issues relevant to cyber crime, such as spam and malware and powers of search and surveillance
- (b) requested the Model Criminal Law Officers Committee to consider whether:
 - i. the current model computer offences (dealing with unauthorised access, modification or impairment of data) are appropriate or require revision in light of technological advances
 - ii. it is desirable to develop nationally consistent laws dealing with use of the internet to threaten, menace, harass or cause offence, such as in serious cases of cyber-bullying
- (c) requested that the Ministerial Council for Police and Emergency Management - Police consider how Commonwealth, State and Territory law enforcement agencies can better coordinate their activities to address cyber crime, including clarifying lines of responsibility relating to the investigation and prevention of technology-enabled crimes
- (d) noted that the Commonwealth Government, in its response to the Australian Law Reform Commission's privacy report *For Your Information: Australian Privacy Law and Practice*, encourages the Office of the Privacy Commissioner to develop and publish appropriate guidance on privacy-enhancing technologies and on technologies that

impact on privacy, noting that the decision to provide guidance is a matter for the Privacy Commissioner

- (e) requested that the SCAG Privacy Working Group conduct further research in order to develop a more detailed understanding of the levels or areas of concern for individuals and organisations regarding privacy and technology
- (f) 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

Update on National Legal Profession Reform Project

Ministers noted the COAG decision to release a draft national law regulating the legal profession for public consultation. Ministers noted that the public consultation period would be for three months from 14 May 2010, and that the National Legal Profession Reform Taskforce would be consulting with Attorneys-General, Justice/Attorney-General's Departments, professional and legal stakeholder groups, and consumer groups during the consultation period. Ministers requested the Taskforce to report to SCAG on the outcomes of the consultation prior to reporting to COAG for its consideration later this year.

R18+ Computer Games

Ministers noted the preliminary outcomes of the public consultation on whether an R 18+ classification for computer games should be introduced and that the Commonwealth will publicly release a status report about the consultation process. Ministers agreed to discuss whether to amend the National Classification Scheme to introduce an R 18+ classification for computer games at a future meeting. Ministers have requested further analysis of community and expert views.

Commercial Arbitration

Ministers agreed to implement the model Commercial Arbitration Bill 2010 based on the United Nations Commission on International Trade Law Model Law.

Torts – Proportionate Liability

Ministers agreed to instruct the Parliamentary Counsel's Committee to draft model proportionate liability provisions and that these will be released for public consultation.

National Partnership Agreement on Legal Assistance Services

Ministers discussed the progress of the new National Partnership Agreement on Legal Assistance Services.

Suppression Orders

Ministers:

- (a) endorsed model provisions on suppression and non-publication orders and agreed to consider implementing the provisions in their jurisdiction
- (b) agreed to make the model provisions available on the SCAG website
- (c) noted that the Commonwealth has developed a 'proof of concept', and will now take steps to implement a publicly accessible website that can be used by courts and tribunals to indicate that a suppression or non-publication order has been made in relation to a particular case
- (d) requested the National Justice CEOs Group to investigate improvements to the distribution of suppression orders and, in particular, the risks, costs and resources of establishing a secure, closed access register of suppression orders as well as any alternative approaches.

Performance of Public Prosecution Services – Report on Government Services

As a means of promoting accountability, transparency and inter-jurisdictional learning, Ministers asked National Justice CEOs to work with DPPs to develop a possible set of performance indicators that could potentially be included in the Australian Productivity Commission's *Report on Government Services*.

Uniform Evidence Laws

The Standing Committee of Attorneys-General agreed to the inclusion in the model Uniform Evidence Bill of model provisions:

- (a) for mutual recognition of self incrimination certificates issued under section 128 or section 128A
- (b) for the definition of unavailability of persons in response to recommendation 8-2 of the Australian, New South Wales and Victorian Law Reform Commissions' Uniform Evidence Law – Final Report, and
- (c) implementing amendments to the Professional Confidential Relationships Privilege to address journalist shield issues.

Ministers noted that the adoption of the model provisions was a matter for each jurisdiction.

Ministers also agreed on seven principles to 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. The seven principles are:

1. Legislative protections restricting the disclosure of sexual assault counselling communications should reflect the public interest in encouraging victims of sexual assault to undertake counselling without fear that what they say in confidence can be later used in legal proceedings without strong justification.
2. Legislative protections should create a presumption against disclosure and/or statutory recognition of the harm caused by disclosure of sexual assault counselling communications.
3. Legislative protections should allow for a broad definition of 'counselling', that is to say, not limited to counselling provided by psychiatrists and registered psychologists.
4. Jurisdictions should consider adapting court processes, with the aim of limiting inadvertent disclosure of sexual assault counselling communications.
5. Legislative restrictions on the disclosure of sexual assault counselling communications should include that, if the Court has a discretion to allow

disclosure, it must, in determining whether to exercise that discretion, apply a balancing test that considers the competing public interests in maintaining the confidentiality or permitting disclosure of sexual assault counselling communications.

6. If the legislative protections are based on a privilege model and allow for waiver of restrictions on the disclosure of sexual assault counselling communications, this should be permitted only with the consent of the counselled person or, in the case of incapacity, a lawful representative.
7. If the legislative protections restrict the disclosure of sexual assault counselling communications in family law proceedings, the best interests of the child should be the paramount consideration.

Where jurisdictions choose to do so, these principles may also apply in civil proceedings.

Indigenous Community Safety Roundtable

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Ministers agreed to initiate annual forums for senior officers from Commonwealth, State and Territory justice agencies to consider Indigenous community safety issues. The forums will provide an opportunity for officers to share best practice initiatives and will encourage improvements in Indigenous policy development and program delivery.

Ministers agreed that SCAG will write to Police Ministers requesting that they further consider transparency in policing numbers in remote and very remote communities and report back to SCAG.

Ministers also agreed that SCAG will write to the Ministerial Council on Drug Strategy requesting that they consider a more proactive approach to alcohol supply restrictions where there are high levels of alcohol consumption leading to Indigenous family and community violence, and report back to SCAG before the end of July 2010.

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Electronic Transactions Amendments Bill

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Coverage of Commonwealth and State and Territory Criminal Offences

Ministers discussed the coverage of Commonwealth and State and Territory Criminal Offences.

Anti-discrimination law

Ministers noted that the South Australian Attorney-General suggested that SCAG consider a national approach to the administration of anti-discrimination law at a future meeting.

DNA evidence

Ministers agreed in principle to the establishment of a working group to examine national standards for the collection and interpretation of DNA evidence.

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