

**SUMMARY OF DECISIONS
STANDING COMMITTEE OF ATTORNEYS GENERAL
26-27 July 2007, HOBART**

1. Personal Property Securities Law Reform (Cth)

Ministers requested officers to provide Ministers with a proposed IGA for consideration and forwarding to COAG by the end of 2007.

Ministers noted:

- (a) that the Council of Australian Governments (COAG) has endorsed the progress made by the Standing Committee of Attorneys-General (SCAG) in developing options for implementing an efficient and effective national registration system for personal property securities transactions and has agreed that a national system should be pursued as a matter of priority
- (b) that COAG has agreed in principle to establish a national system for the registration of personal property securities (PPS) to be implemented by Commonwealth legislation, supported by a text based referral of legislative power by the States to the Commonwealth
- (c) that COAG has requested SCAG to provide COAG with a proposed Inter-governmental Agreement (IGA) for the new national system by the end of 2007
- (d) that COAG's decision was subject to further consideration of the financial arrangements for the establishment of the new national system
- (e) that the Prime Minister has written to SCAG outlining COAG's decision and noting that the decision makes further SCAG consideration of in-principle support for a referral of powers unnecessary
- (f) that the Prime Minister has written to Premiers and Chief Ministers indicating that the Commonwealth will consider reasonable requests from each State and Territory for a one-off payment for transition to the national system, which could include an amount for any adverse impact on revenue that is not able to be mitigated before the decommissioning of registers commences in 2008
- (g) that the Commonwealth is providing \$113.3 million over five years to the Attorney-General's Department to develop the new national system
- (h) the outline of the proposed Commonwealth PPS legislation attached to the Officers' Paper
- (i) the reports on the outcomes of consultations on Discussion Papers 2 and 3 attached to the Officers' Paper

2. Harmonisation of Statutory declarations (Cth)

Ministers:

- (a) noted that the Working Group has developed a paper, setting out the following options:
 - (i) Either:
 - i. retain statutory declarations – abolish statutory form
 - ii. retain formal statutory declarations form
 - harmonise statutory declarations forms, and/or
 - mutual recognition of statutory declaration forms
 - (ii) statutory declarations – witnessing
 - no requirement for witnessing
 - anyone 18 years or over authorised to witness
 - single comprehensive list of witnesses
 - reciprocal recognition of witnesses
 - (iii) harmonise offences and penalties
- (b) Ministers expressed their preliminary views on the options and supported the development of a simple and streamlined national model process for statutory declarations. Some Ministers indicated support for anyone over 18 years being authorised to witness statutory declarations and the harmonisation of offences and penalties.
- (c) agreed that jurisdictions consult on the options, with a view to developing proposals for reform in relation to forms, witnessing of statutory declarations, and offences and penalties, and
- (d) agreed that the Secretary of SCAG write to the Council of Chief Justices (Sub Harmonisation Committee) to draw the options paper to its attention.

3. Accession to Hague Convention on Service Abroad (Cth)

Ministers:

- (a) noted that the Working Group's consultations within jurisdictions and with the Council of Chief Justices of Australia and New Zealand on issues related to Australia's accession to the Service Convention is now complete
- (b) agreed with the Working Group's advice that the Service Convention be implemented in Australia by a model involving one Central Authority and Additional Authorities in each State and Territory to handle foreign requests for service
- (c) agreed that jurisdictions commence reviewing their Rules of Court and relevant legislation to enable Australia to accede to the Service Convention, and

- (d) agreed that the Secretary write to the Council of Chief Justices' Rules Harmonisation Committee to support the Committee developing model uniform Rules of Court for implementation of the Service Convention.

4. Uniform Evidence Laws

a. Uniform Evidence Laws (Cth/NSW/Vic)

Ministers

- (a) endorsed the model Uniform Evidence Bill developed by the officers' working group (attached to the Officers' Paper) with the exception of the confidential communications privilege, and noted that adoption of model provisions is a matter for each jurisdiction,
- (b) decided against proceeding with an Intergovernmental Agreement,
- (c) agreed that the officers' working group continue to consider the issues identified in Attachment C to the Officers' Paper and other issues regarding the model Uniform Evidence Bill as directed by Ministers, and
- (d) asked the SCAG Secretary to write to members of the Expert Reference Group thanking them for their work in reviewing draft amendments to the Uniform Evidence Acts and write to the drafters to thank them for their efforts in preparing the Model Bill.

b. Confidential Communications Privilege (Cth/NSW)

Ministers

- (e) endorsed insertion of the NSW version of the confidential communications privilege into the Model Uniform Evidence Bill, noting that adoption of model provisions is a matter for each jurisdiction.

5. Harmonisation of Administrative Law (Cth)

Ministers agreed to remove this item from the agenda.

6. Consistency in SCAG Model Legislation (Cth)

Ministers:

- (a) noted and commended the Parliamentary Counsel's Committee (PCC) protocol for the drafting of national uniform legislation
- (b) agreed that officers refer to this protocol and the high level principles agreed to by Ministers at the November 2006 SCAG meeting, when developing future SCAG model legislation
- (c) agreed that the Secretary write to the COAG Secretariat requesting that the protocol be drawn to the attention of all Ministerial Councils and suggesting that in doing so the COAG Secretariat inform Ministerial Councils of the high level principles agreed to by SCAG Ministers

- (d) agreed that the Secretary write to PCC commending them for their effort in this very important area, endorsing PCC's commitment to keeping the protocol under review and asking PCC to consider developing a review program aimed at further minimising differences in drafting style, and
- (e) noted that PCC has provided a second edition of the Protocol and has established a sub-committee to develop model Interpretation Act provisions, and requested that officers consider the second edition and report back to Ministers at the next meeting.

7. Surrogacy (Vic/WA)

Ministers

- a) noted the Victorian Law Reform Commission (VLRC) Report on Assisted Reproductive Technology (ART) and Adoption, which includes recommendations about reforming surrogacy laws in Victoria (VLRC Report), and
- b) subject to the agreement of Community Services Ministers Council, agreed to establish a working group to: identify other portfolio areas that might need to be consulted; identify areas for agreement; and develop proposals for donor registers, giving priority to the experience of States in managing formal and informal registers of donor information, and
- c) requested officers to bring forward proposals for consideration by Ministers at the next meeting.

8. Uniform Trustee Company Legislation (NSW/Cth)

Ministers:

- (a) agreed to form a working group, to be chaired by the Commonwealth, to develop nationally consistent regulation for trustee companies and a single or mutual recognition scheme for their licensing, and
- (b) agreed that the working group develop a regulation impact statement outlining all options for reform including on the appropriate supervision of trustee companies, for consideration by Ministers at the next meeting.

9. Coronial Functions in a Disaster (Cth)

Ministers:

- (a) noted progress on the issue of whether a single coroner should undertake an inquest into all deaths arising out of a disaster, even where he or she does not have jurisdiction over all the bodies
- (b) noted the discussion paper attached to the officers' paper
- (c) noted that the Commonwealth, Northern Territory and Victoria supported Option 4.4 in the SCAG 'Coronial functions in a disaster' working group

Discussion Paper *Cross-border disaster inquests*. . Under this option state/territory governments would appoint the same person as a coroner in each of their states/territories following a disaster, thereby giving that person the power to conduct an inquest into deaths in all of the affected states/territories. The option has been used in the past without the need for legislative amendment.

- (e) agreed that legislative amendments were not necessary to implement this option
- (f) agreed to remove the item from the agenda.

10. Confidentiality of SCAG papers and meetings (NSW)

Ministers endorsed a policy in relation to the confidentiality of SCAG papers and meetings that provides:

- (a) SCAG records are to be classified into public domain or confidential material
- (b) public domain materials will be readily available to any person requesting them, and will be publicly available on a future SCAG website
- (c) confidential material will only be released with the consent of all Ministers
- (d) legal advice will be obtained in relation to the release of confidential material sought for use in litigation and will only be released with the consent of all Ministers, informed by that legal advice
- (e) the official record of SCAG meetings will contain a record of the actual decision made by ministers, supplemented by such key summary points of discussion as are necessary to understand the decision.

11. MCLOC implementation report (Cth)

Ministers:

- (a) noted the Model Criminal Code implementation report
- (b) requested officers to prepare a Model Criminal Code implementation plan for a future SCAG meeting, and
- (c) noted that New Zealand officials have agreed to join MCLOC.

12. Interjurisdictional DNA matching and National DNA Database (Cth)

Ministers:

- (a) noted that the Ministerial Arrangement for the Sharing of DNA Information has been signed by the Australian Capital Territory, the Commonwealth, Queensland, the Northern Territory, South Australia, Tasmania and Western Australia; that Victoria has committed to sign as soon as necessary legislative amendments commence; and that New South Wales has given in principle support, subject to Cabinet approval, to sign upon commencement of necessary legislative amendments, and
- (b) requested officers to provide a progress report on DNA matching and implementation of the April 2006 SCAG resolutions for the November 2007 SCAG meeting, and
- (c) noted issues relating to joint complaint-handling, investigation and monitoring of cross-jurisdictional DNA matching, and requested officers to report to the November 2007 SCAG meeting on possible legislative amendments to achieve a seamless oversight and accountability framework.

13. Food and Drink Spiking (Cth)

Ministers:

- (a) agreed to publication of MCLOC's Final Report on Drink and Food Spiking, which include model provisions, and
- (b) agreed to consider implementation of the model drink and food spiking offences in their own jurisdiction.

14. Bail provisions and enforcement in remote communities (Cth)

Ministers:

- (a) noted that the Bail Paper was approved out-of-session by SCAG Ministers and noted by COAG at the 13 April 2007 meeting
- (b) agreed to take forward the four non-legislative recommendations in the Bail Paper as requested by the Prime Minister, and
- (c) requested officers report to the next SCAG meeting on the progress of these measures.

15. (item removed from agenda)

16. Legal Profession National Model Laws – Information Sharing by Regulatory Authorities (Qld)

Ministers asked the National Legal Profession Joint Working Party to prepare a paper for the next meeting of the Standing Committee of Attorneys-General

advising on the implementation by regulatory authorities of the co-operative arrangements for the exchange of information contemplated under the national model laws for the regulation of the legal profession.

Censorship

17. Material that advocates terrorist acts (Cth)

Ministers:

- (a) noted the results of the public consultation on the Discussion Paper released on 2 May 2007, and
- (b) did not agree to amend the National Classification Code and each of the guidelines as set out in Attachments A, B and C to the Commonwealth Officer's Paper. NSW and South Australia supported the amendments as proposed by the Commonwealth.

General Business

Ministers discussed a range of general business items including:

(a) Interstate Enforcement of Fines (NSW)

Ministers agreed that the Commonwealth would amend the *Service and Execution of Process Act 1992* to allow mutual recognition of court imposed fines to enable fines to be registered for enforcement in accordance with the laws of the state or territory where the defendant resides. States and Territory Ministers agreed to resolve any administrative issues.

(b) Electoral Forum (Qld)

Ministers agreed that electoral matters raise important issues that are not otherwise addressed in any Ministerial forum and that the appropriate mechanism for progressing this issue would be for interested Ministers to write to their Premiers proposing that this issue be raised with the Prime Minister through COAG.