AUSTRALIAN GOVERNMENT RESPONSE

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

'HARMONISATION OF LEGAL SYSTEMS WITHIN AUSTRALIA AND BETWEEN AUSTRALIA AND NEW ZEALAND'

2008

INTRODUCTION

The Australian Government welcomes the House of Representatives Standing Committee on Legal and Constitutional Affairs' report on 'Harmonisation of legal systems within Australia and between Australia and New Zealand.'

The Government regards the harmonisation of legal systems across Australian jurisdictions as vital to an equitable and efficient justice system for all citizens. The Government is also committed to expanding legal harmonisation efforts between Australia and New Zealand, where there is mutual benefit to both countries.

National consistency in law can assist in reducing the regulatory burden on businesses and consolidate fragmented legislative arrangements for governments. Benefits such as these produce direct flow on effects for individuals by clarifying legal entitlements and obligations in areas such as consumer law and privacy. Just as importantly, harmonisation of law relating to succession, powers of attorney and criminal law improves access to justice for those individuals most in need of legal protection, for example children and older persons.

The Government agrees with the Standing Committee that many benefits can flow from increased legal harmonisation between Australia and New Zealand. The Government's response to the Committee's report identifies scope for invigorating existing mechanisms for trans-Tasman legal harmonisation and establishing new initiatives to increase economic ties between our two countries. While firmly acknowledging the sovereignty of both Australia and New Zealand, the response outlines the Government's commitment to exploring opportunities for trans-Tasman legal harmonisation in a range of areas, for example the development and protection of infrastructure, technology and financial systems.

The Standing Committee of Attorneys-General (SCAG) features strongly, both in the Standing Committee's report and the Government's response, as a key forum to progress legal harmonisation projects. In March 2008, SCAG agreed to conduct a comprehensive review of existing harmonisation projects, to identify new priorities and develop strategies to fast-track progress on specific initiatives.

SCAG Ministers also committed to engaging with external stakeholders and the legal profession in meaningful consultation on reform proposals. To this end, SCAG will convene a one-day conference in the latter half of 2008 to draw on the expertise of representatives from the legal profession, government lawyers and academics. This direct engagement with practitioners will help shape the Australian Government's strategic approach and renewed focus on legal harmonisation into the future.

RECOMMENDATION 1

The Committee recommends that:

- *The Australian Government seek bipartisan support for a constitutional amendment to resolve the limitations to cooperative legislative schemes identified by the High Court of Australia in the* Re Wakim and R v Hughes *decisions at the Standing Committee of Attorneys-General as expeditiously as possible;*
- *The Australian Government draft this constitutional amendment so as to encompass the broadest possible range of cooperative legislative schemes between the Commonwealth and the States and Territories;*
- *A dedicated and wide-ranging consultation and education process should be undertaken by the Australian Government prior to any referendum on the constitutional amendment; and that*
- *Any referendum on the constitutional amendment should be held at the same time as a federal election.*

Proposed response:

The Government notes the recommendation.

The Government will explore more effective reforms to facilitate federal and State co-operative schemes. Since the decision of the *High Court in R v Hughes* in 2000, the possibility of constitutional amendment as a means of addressing concerns about particular cooperative legislative schemes has been explored in great detail at meetings of SCAG. This included consideration of draft constitutional amendments. However, the Commonwealth and the States did not reach agreement on all technical issues and in 2006 the item was removed from the SCAG agenda.

Constitutional reform is difficult to achieve without extensive national support. Amendments designed to overcome the particular limitations identified by the High Court in *Re Wakim and R v Hughes* would not remove the need for complex arrangements involving Commonwealth, State and Territory legislation to achieve co-operative objectives. Recent experience suggests that co-operative objectives can be achieved by the reference mechanism already provided by s 51(xxxvii) of the Constitution. Further consideration is being given to this complex but important area.

RECOMMENDATION 2

The Committee recommends that the Senate and the House of Representatives of the Australian Parliament invite the New Zealand Parliament to establish a trans-Tasman standing committee to monitor and report annually to each Parliament on appropriate measures to ensure ongoing harmonisation of the respective legal systems.

The Committee further recommends that the trans-Tasman standing committee be required to explore and report on options that are of mutual benefit, including the possibility of closer association between Australia and New Zealand or full union.

Proposed response:

The Government notes that this recommendation is directed to the Houses of the Australian Parliament.

However, as the report notes, there are several existing fora within which legal harmonisation between Australia and New Zealand is currently being pursued.

A key forum in this context is SCAG. Since 2006, New Zealand has participated in SCAG as a full member of the Committee. As part of this, New Zealand has an annual item on the SCAG agenda and New Zealand officials are invited to participate in new and existing SCAG working groups to encourage information and knowledge sharing.

Other existing fora working to implement legal harmonisation initiatives include:

- official bilateral working groups, for example the Trans-Tasman Working Group on Court Proceedings and Regulatory Enforcement and the Trans-Tasman Council on Banking Supervision
- formalised arrangements for the discussion of policy proposals and implementation issues, for example as established by the *Memorandum of Understanding Between the Government of New Zealand and the Government of Australia on Coordination of Business Law*, and
- informal discussions between Ministers and officials (both directly and in the context of broader regional and multilateral fora).

The Government takes the view, consistent with the overall objective of increasing efficiency through harmonisation, that creating a new standing committee to consider appropriate measures to ensure the ongoing harmonisation of the Australian and New Zealand legal systems may lead to overlap between the work of the new committee and that of existing bodies such as SCAG.

The Government suggests the Senate and the House of Representatives of the Australian Parliament write to the New Zealand Parliament proposing that an appropriate existing mechanism be used to monitor and suggest harmonisation measures and to explore and report to both Parliaments on options that are of mutual benefit. SCAG is an appropriate existing mechanism that could be considered for this purpose.

RECOMMENDATION 3

The Committee recommends that the Australian Government actively pursue with the New Zealand Government the institution of a common currency for Australia and New Zealand. The Committee further recommends that appropriately equitable arrangements would need to be put in place with respect to the composition of a resulting joint Reserve Bank Board

Proposed response:

The Government does not accept the recommendation.

The current arrangements work well for Australia. Before pursuing any change in this area the Government would need to be confident that it would enhance the existing arrangements.

The Australian monetary and currency regime has played an important role in Australia's recent economic prosperity. In particular, it has helped to absorb shocks in the global economy, such as the 1997 Asian Financial Crisis, and the more recent rises in world commodity prices. It has also helped to deliver low and stable inflation which has averaged around 2.5 per cent per annum over the last 16 years.

This stability has in turn set the foundation for a strong economy. The Australian economy has enjoyed 16 years of uninterrupted economic growth, and in January 2008 the unemployment rate was 4.1 per cent, the lowest rate of unemployment in 33 years.

RECOMMENDATION 4

The Committee recommends that the participating Australian governments move to offer New Zealand Government Ministers full membership of Australasian (currently Australian) ministerial councils.

Proposed response:

The Government accepts the recommendation in part.

The Government welcomes the involvement of New Zealand Government Ministers in Ministerial Councils. However, New Zealand should only be given full membership of those Ministerial Councils which consider matters that New Zealand has an interest in.

The Council of Australian Governments (COAG) has agreed Broad Protocols for the Operation of Ministerial Councils. Paragraph 10 of the Broad Protocols states that 'Except for matters where membership is explicitly set out by statute or agreement, it is up to individual Ministerial Councils to decide whether other countries or any other parties should be members or attend proceedings'.

Some Ministerial Councils have no relevance to New Zealand. For example, the Ministerial Council for Commonwealth-State Financial Relations is a forum for implementing an agreement on financial relations between the Australian Government and the States, and has no relevance to New Zealand. In some cases it is entirely appropriate

for New Zealand to have full membership rights. However, even in those Ministerial Councils in which New Zealand has an interest, full membership may not be appropriate. For example, State and Territory Governments may not agree to equal membership of the Ministerial Council for Corporations, which votes on proposals to amend the corporations legislation.

As provided for by the COAG Protocols, the Government considers that the participation of New Zealand Government Ministers in Australian Ministerial Councils is an issue best left for individual Councils to decide.

RECOMMENDATION 5

The Committee recommends that the Australian Government propose to the New Zealand Government the legal harmonisation of the Australian and New Zealand banking regulation frameworks in order to foster a joint banking market.

Proposed response:

The Government accepts the recommendation in principle.

The Australian and New Zealand banking markets are among the most highly integrated in the world. Given the high degree of commercial integration, there is benefit in moving towards a joint banking market. The Australian and New Zealand Governments are committed to maintaining momentum towards the goal of seamless banking regulation to minimise regulatory hurdles while seeking to improve the quality and reduce the cost of regulation in both countries.

In February 2005, the responsible Australian and New Zealand ministers established the Joint Trans-Tasman Council on Banking Supervision as the next step towards a single economic market in banking services. In particular, the Council was asked to promote a joint approach to banking supervision that delivered a seamless regulatory environment in banking services.

As a result, the banking supervisory framework has been harmonised. In Australia, the Financial Sector Legislation Amendment (Trans-Tasman Banking Supervision) Act 2006 was passed. This significantly improved the ability for cooperation between Australia and New Zealand's banking supervisors, and brought compliance cost reductions and efficiency benefits. Reciprocal legislative reforms were made in New Zealand. The mechanisms have now been put in place for the prudential regulators to efficiently manage a potential future financial crisis involving Trans-Tasman business.

In addition to the work of the Council, the regulators (the Reserve Bank of New Zealand, the Australian Prudential Regulatory Authority and the Reserve Bank of Australia) have entered into arrangements to further enhance working relationships, information sharing and cooperation between the two countries.

RECOMMENDATION 6

The Committee recommends that, wherever possible, the Australian Government should seek to utilise the joint regulator model for legal harmonisation between Australia and New Zealand.

Proposed response:

The Government accepts the recommendation in part.

Whenever appropriate and practical, a joint regulator model should be considered as an option for legal harmonisation between Australia and New Zealand. However, as the Committee correctly observes, in seeking harmonisation, there is merit in 'utilising a range of approaches and mechanisms' and 'it is necessary to fit the method to the matter'.

Trans-Tasman interaction can take many forms and be affected by a range of factors. Different vehicles will suit different situations and a joint arrangement may not always be appropriate to achieve legal harmonisation between Australia and New Zealand. While creating a joint body may be suitable in some cases, it can be a complex solution that may not suit all forms of regulatory interaction.

Alternative arrangements that might be considered in relation to a particular area of harmonisation may include: regular meetings at relevant levels of government; shared representation on boards, committees or other bodies; staff exchanges; joint ventures (and other non-incorporated activities); alignment through coordinated policy or law reform; and the use of agreements relating to the mutual recognition of laws, judgments, awards or findings.

The costs and benefits of different forms of arrangements should be actively considered in deciding which is most suitable for any given harmonisation goal.

RECOMMENDATION 7

The Committee recommends that the Australian Government investigate with the New Zealand Government the feasibility of instituting a referred legislative responsibility mechanism between the two countries whereby:

- *One Parliament can voluntarily cede legislative competency on a specific matter to the other Parliament for an agreed period; and*
- *The resulting regulatory framework could apply in each country.*

Proposed response:

The Government does not accept this recommendation.

The Government will work with the New Zealand Government, but will not cede legislative competency over matters which affect Australians to a foreign country. The Government remains committed to investigating and strengthening arrangements which would have the advantage of facilitating and streamlining mutual recognition in areas where there is significant common ground.

RECOMMENDATION 8

The Committee recommends that, consistently with work towards national harmonisation in this area within Australia, the Australian Government discuss with the New Zealand Government the legal harmonisation of Australian and New Zealand legislation governing non-excludable implied warranties in consumer contracts.

Proposed response:

The Government accepts the recommendation.

The Government will propose that the Ministerial Council on Consumer Affairs (MCCA) discuss the legal harmonisation of Australian and New Zealand legislation governing non-excludable implied warranties in consumer contracts. At the end of its meeting on 23 May 2008, MCCA agreed to the Commonwealth initiating a review of the statutory warranties schemes in Australian jurisdictions.

This is an issue that will be considered by COAG's Business Regulation and Competition Working Group which, in consultation with MCCA, will respond to the Productivity Commission's recent inquiry into Australia's consumer policy framework. The Commission examined ways to improve the harmonisation and coordination of consumer policy and its development and administration across jurisdictions in Australia, as well as ways to avoid regulatory duplication and inconsistency. It recommended that Australian Governments should implement a new national generic consumer law to apply in all jurisdictions generally based on the consumer protection provisions of the Trade Practices Act. COAG has agreed that it will respond to the Report in October 2008, and that this will form the Government's response.

RECOMMENDATION 9

The Committee recommends that the Australian Government propose to the New Zealand Government the legal harmonisation of the Australian and New Zealand telecommunications regulation frameworks with a view to fostering a joint telecommunications market.

Proposed response:

The Government does not accept the recommendation.

The Government does not agree to propose to the New Zealand Government the legal harmonisation of the telecommunications regulatory frameworks but would consider the inclusion of telecommunications in the Australia-New Zealand Closer Economic Relations Trade Agreement (CER) Work Program. Australia and New Zealand are moving towards alignment of certain aspects of the telecommunications frameworks through a variety of forums, but the pace of change and differences between the two markets will require responses by Government and relevant agencies that may be different in each market. The inclusion of telecommunications on the CER would provide improved certainty for telecommunications companies in both Australia and New Zealand wishing to enter the other market in regard to the regulatory environment they can expect, such as levels of

access to existing infrastructure, competitive safeguards and transparency issues and would be in line with Australia's Free Trade Agreements with Singapore and the USA.

The Government welcomes the New Zealand Government's recent introduction of new pro-competitive regulatory measures, including unbundling of the local loop, which more closely aligns the New Zealand telecommunications regime with those of most OECD countries, including Australia.

The inclusion of telecommunications under the CER has also been recommended by the recent Joint Standing Committee on Defence, Foreign Affairs and Trade report on *Australia's trade and investment relations under the Australia and New Zealand Closer Economic relations Trade Agreement.*

RECOMMENDATION 10

The Committee recommends that the Australian Government propose to the New Zealand Government that a formal and regular ministerial-level dialogue on telecommunications regulation issues be established between the two countries with a particular focus on consultation prior to regulatory change in either country.

Proposed response:

The Government accepts the recommendation in principle.

The Government accepts in principle the recommendation to propose a regular ministerial-level dialogue on telecommunications regulation, noting that meetings could be arranged to coincide with existing forums which are attended by both Ministers. However, the Government does not consider it would be appropriate to consult with New Zealand at the ministerial-level prior to any regulatory change.

The Government notes that the recent Joint Standing Committee on Defence, Foreign Affairs and Trade report on *Australia's trade and investment relations under the Australia and New Zealand Closer Economic relations Trade Agreement* has proposed the establishment of a Telecommunications Ministerial Council.

RECOMMENDATION 11

The Committee recommends that the Australian Government again raise mutual recognition of power of attorney instruments at the Standing Committee of Attorneys-General with a view to expediting uniform and adequate formal mutual recognition among the jurisdictions, especially in relation to those jurisdictions that have not yet implemented the draft provisions endorsed by the Standing Committee in 2000.

Proposed response:

The Government accepts the recommendation.

While the regulation of power of attorney instruments is primarily a matter for State and Territory governments, the Government agrees that mutual recognition of power of attorney

instruments should continue to be raised at SCAG. SCAG has previously considered this issue and in 2000 SCAG endorsed draft provisions for the mutual recognition of powers of attorney. A number of jurisdictions have implemented the draft provisions, including New South Wales, Victoria, Queensland, Tasmania and the Australian Capital Territory. SCAG also considered this issue at the April 2007 meeting.

The Government will continue to encourage the remaining states (South Australia, Northern Territory and Western Australia) to move towards implementation of the draft provisions as a legislative priority.

RECOMMENDATION 12

The Committee recommends that the Australian Government propose that the Standing Committee of Attorneys-General investigate an expansion of the class of permitted overseas witnesses for statutory declarations along with the national legislative harmonisation of offence provisions relating to statutory declarations.

Proposed response:

The Government accepts the recommendation in principle.

As part of the SCAG initiatives relating to harmonisation of legal systems within Australia, in November 2006 Ministers asked officers to form a working group to develop proposals for harmonisation of statutory declarations regulations and forms.

The working group is chaired by the Commonwealth and is focussed on three main areas for harmonisation:

- the forms that may be used
- the classes of persons who may witness a statutory declaration, and
- offences and penalties that relate to statutory declarations.

The issue of expanding the class of overseas witnesses to statutory declarations is being considered as part of the discussions on the classes of persons who may witness statutory declarations.

The working group has undertaken consultations with stakeholders in each jurisdiction on options for harmonisation in the above three areas and will report the finding to SCAG in July 2008.

RECOMMENDATION 13

The Committee recommends that the Australian Government encourage the Standing Committee of Attorneys-General to examine the Queensland Law Reform Commission succession law recommendations and to implement those on which agreement can be reached.

Proposed response:

The Government accepts the recommendation.

The Government agrees that the harmonisation of succession law is an important goal, especially in light of an increasingly mobile Australian population. Succession law is a complex and highly technical area.

In October 1991, SCAG agreed that the Queensland Law Reform Commission would coordinate and review the existing law and procedure relating to succession and recommend model laws for the States and Territories. The project was divided from the outset into four distinct areas; wills, family provisions, intestacy and administration of estates. The QLRC has so far reported on the first three areas and has prepared a supplementary report on Family Provisions. The Commission expects to report on the administration of estates to the Queensland Attorney-General in June 2008.

The regulation of succession is primarily a matter for State and Territory Governments. However, the Government will continue to raise this issue with SCAG and encourage continued efforts towards harmonisation of succession laws. At the April 2007 SCAG meeting, Ministers agreed to establish an implementation monitoring committee to guide implementation of this project.

RECOMMENDATION 14

The Committee recommends that the Australian Government propose that the Standing Committee of Attorneys-General or other appropriate forum undertake an investigation into the national legislative harmonisation of the existing regulatory frameworks for:

- *Debt Collection;*
- *Civil Debt recovery; and*
- *Stamp duty*

Proposed response:

The Government accepts the recommendation.

The Government agrees that national legislative harmonisation in the areas of debt collection, civil debt recovery and stamp duty would be a positive initiative.

Debt collection and civil debt recovery are areas regulated primarily by State and Territory governments. The appropriate forum for reform initiatives in these areas is MCCA, rather than SCAG. The Government will seek to raise these issues at the MCCA.

The States and Territories are also responsible for stamp duty. Recommendation 5.46 of the Rethinking Regulation report chaired by Mr Gary Banks of the Productivity Commission was to 'harmonise stamp duty administration across States and Territories'. The States and Territories have not acted on this recommendation and achieving harmonisation of stamp duty is not in the foreseeable future.

The Government will encourage State and Territory governments, through appropriate forums, to pursue further reforms of State taxes, such as stamp duties.

RECOMMENDATION 15

The Committee recommends that the Australian Government propose that the Standing Committee of Attorneys-General undertake an investigation into the national legislative harmonisation of partnership laws.

Proposed response:

The Government accepts the recommendation.

The Government agrees that the national legislative harmonisation of partnership laws is an issue which should be considered, with a view towards harmonising partnership laws. However, the regulation of partnerships is primarily a matter for State and Territory governments. In the majority of jurisdictions, partnership legislation is the portfolio responsibility of Consumer Affairs Ministers. The Government is of the view that the appropriate forum for reform initiatives in this area is the MCCA, rather than SCAG. The Government will seek to raise this issue at the MCCA.

RECOMMENDATION 16

The Committee recommends that the Australian Government propose that the Ministerial Council on Consumer Affairs undertake an exploration of the national harmonisation of consumer protection legislation governing the following areas:

- *Consumer contracts including non-excludable implied warranties;*
- *Unsolicited marketing and telephone marketing;*
- *Door-to-door sales;*
- *Trade promotions; and*
- *Vouchers provided in relation to sales and promotions.*

Proposed response:

The Government accepts the recommendation.

The Government will propose that the MCCA undertake an exploration of the national harmonisation of consumer protection legislation governing these areas.

These are issues that will be considered by COAG's Business Regulation and Competition Working Group which, in consultation with the Ministerial Council on Consumer Affairs (MCCA), will respond to the Productivity Commission's recent inquiry into Australia's consumer policy framework. The Commission examined ways to improve the harmonisation and coordination of consumer policy and its development and administration across jurisdictions in Australia, as well as ways to avoid regulatory duplication and

inconsistency. This could include the areas identified by the Committee in recommendation 16. It recommended that Australian Governments should implement a new national generic consumer law to apply in all jurisdictions generally based on the consumer protection provisions of the Trade Practices Act. COAG has agreed that it will respond to the Report in October 2008, and that this will form the Government's response.

RECOMMENDATION 17

The Committee recommends that, if it is not already on the Council agenda by the time of this report, national harmonisation of electrical product safety legislation should be incorporated into the work of the Ministerial Council on Consumer Affairs towards a national consumer product safety regulatory system.

Proposed response:

The Government accepts the recommendation in principle.

Electrical safety regulation, including electrical product safety, is the responsibility of State and Territory governments. At the MCCA meeting of September 2006, Ministers supported a review by the Electrical Regulatory Authorities Council (ERAC) of the electrical equipment safety system as it relates to consumer product safety, subject to funding. The review has now been completed. The Standing Committee of Officials of Consumer Affairs considered the findings of the review on 4 March 2008. ERAC will proceed with the implementation of the recommendations, in consultation with ministers responsible for electrical appliance safety.

RECOMMENDATION 18

The Committee recommends that the Australian Government, in consultation with the not-for-profit sector and the States and Territories:

- *Investigate the establishment of a single national regulator for the not-for-profit sector;*
- *Investigate the development of a simple but adequate legal structure for not-for-profit organisations;*
- *Initiate work towards the national legislative harmonisation of simple but adequate reporting and disclosure requirements for not-for-profit organisations; and*
- *Undertake a review of current licensing and registration requirements for not-for-profit organisations across the jurisdictions with a view to legislative harmonisation of these requirements.*

Proposed response:

The Government accepts the recommendation in part.

The regulation of not-for-profit entities is currently shared between the Commonwealth and the States and Territories for constitutional reasons. The Government is considering how

best to engage with the State and Territory governments to investigate the development of a consistent regulatory framework for not-for-profit organisations across Australia.

The Government is also reviewing the financial reporting requirements of unlisted public companies, a structure commonly used by not-for-profit entities regulated at the Commonwealth level. As part of this, Treasury is considering whether there is scope to develop a best practice reporting framework for not-for-profit entities that can also be adopted by entities currently regulated at the State and Territory level.

RECOMMENDATION 19

The Committee recommends that the Australian Government should formulate a harmonised national legislative framework for the development of hazardous substance reporting and monitoring requirements in consultation with the science industry and the States and Territories.

Proposed response:

The Government accepts the recommendation in principle.

The Government is aware of this issue and in accordance with its election commitments is vigorously pursuing regulatory reform, elevating Deregulation to a Cabinet-level Ministry through the Minister for Finance and Deregulation and appointing a Minister Assisting the Finance Minister on Deregulation. COAG, at its meeting of 20 December 2007, established a Business Regulation and Competition Working Group to: accelerate and broaden the regulation reduction agenda to reduce the regulatory burden on business; accelerate and deliver the agreed COAG regulatory hot spot agenda; further improve processes for regulation making and review, including exploring a national approach to processes to ensure no net increase in the regulatory burden, and common start dates for legislation; and deliver significant improvements in Australia's competition, productivity and international competitiveness.

COAG's regulatory hot spots were agreed its meeting of 10 February 2006 and include reform of chemicals and plastics regulation. COAG agreed to establish a ministerial taskforce to develop measures to achieve a streamlined and harmonised system of national chemicals and plastics regulation and reaffirmed its commitment in April 2007.

The Productivity Commission is conducting an independent public study of regulation in the sector. It is expected that the results of the study will be significant in developing proposals for regulatory reform both within and across the national, State and Territory jurisdictions.

In terms of materials deemed hazardous on the grounds of national security basis, COAG determined in December 2002 to conduct a national review of the regulation, reporting and security surrounding the storage, sale and handling of hazardous materials, including radiological, biological and chemical substances. The review aims to assist counter-terrorism efforts by limiting opportunities for, and enhancing detection of the illegal/unauthorised use of hazardous materials. The Department of the Prime Minister and Cabinet has managed the review, and in doing so has consulted widely with relevant

Commonwealth agencies, the States and Territories and industry and non-government stakeholders.

COAG has endorsed reports addressing biological and radiological hazards, and a round of public consultation on a draft report on hazardous chemicals is scheduled for February to March 2008.

RECOMMENDATION 20

The Committee recommends that the Australian Government propose that the Standing Committee of Attorneys-General or other appropriate forum undertake an investigation into the feasibility of establishing a trans-Tasman judicial commission to provide a comprehensive informational resource for the Australian and New Zealand judiciary in relation to Australian and New Zealand judicial decisions.

Proposed response:

The Government does not accept the recommendation.

The aim of the Committee's recommended trans-Tasman judicial commission is to provide a comprehensive informational resource on judicial decision-making, particularly in the areas of sentencing and penalties. In Australia there are already sentencing databases available in New South Wales, Victoria, Queensland, Tasmania and the Australian Capital Territory.

Further, the former Government provided a grant to the National Judicial College of Australia to develop an electronic database with information about sentencing for Commonwealth offences. The database is designed primarily for use by the judiciary in Australia and is accessible by Australian judicial officers via a secure login on the National Judicial College of Australia website.

The database was launched on 9 February 2008 and provides users with online access to:

- statistical information on the range of penalties imposed for Commonwealth criminal offences and comparative sentencing information
- the full text of Commonwealth Acts and Regulations related to sentencing
- a Commonwealth Sentencing Principles and Practice component which contains concise commentary on sentencing principles and includes links to the full text of cited judgments from the High Court database and the legislation component, and
- summaries of significant cases decided by the High Court of Australia and State and Territory Supreme Courts about sentencing for Commonwealth criminal offences.

The Government will ask the National Judicial College of Australia to explore with courts and judicial education bodies in Australia and New Zealand the feasibility of establishing computer links between the various sentencing databases to enable judicial officers in all jurisdictions to have access to the information on those databases.

Sentencing databases also supplement the availability of judicial decisions more generally. In Australia all federal courts, State and Territory superior courts and some other courts make their decisions available online and many decisions are also published in law reports.

Decisions of New Zealand superior courts are also available online or through commercial sources.

In view of the wide availability of decisions of Australian and New Zealand courts, existing State and Territory sentencing databases and the recently established Commonwealth sentencing database, at this stage the Government does not support the undertaking by SCAG of an investigation as proposed in the recommendation. It would be a matter for other forums, including commercial publishers, to consider the feasibility of establishing an informational resource of the kind proposed.

RECOMMENDATION 21

The Committee recommends that the Australian Government seek to expedite national legislative harmonisation of limitation statutes at the Standing Committee of Attorneys-General.

Proposed response:

The Government accepts the recommendation in principle in that it is coordinating a review of limitation laws across jurisdictions in Australia. SCAG has established a working group and substantial work has been done to develop comprehensive information about current limitation laws. This information will be a valuable resource for business and the legal profession. It will also provide SCAG with a basis for considering the benefits of further legislative reform in this area.

RECOMMENDATION 22

The Committee recommends that the Australian Government propose that the Standing Committee of Attorneys-General undertake an investigation into the development and implementation of a national model contract code.

Proposed response:

The Government accepts the recommendation in part.

Contract law in Australia is primarily based on the common law, which is to a large extent a single unfragmented body of law. However, discrete inconsistencies may exist in relation to the statutory regulation of contract law.

The Government is not convinced that sufficient evidence exists supporting the codification of contract law. However, the Government agrees that an investigation should be undertaken into whether there is a need for harmonisation of the elements of contract law that are already regulated by statute, particularly in relation to consumer law.

This is an issue that will, in part, be considered by COAG's Business Regulation and Competition Working Group which, in consultation with the Ministerial Council on Consumer Affairs (MCCA), will respond to the Productivity Commission's recent inquiry into Australia's consumer policy framework. The Commission examined ways to improve the harmonisation and coordination of consumer policy and its development and administration across jurisdictions in Australia, as well as ways to avoid regulatory duplication and inconsistency. It recommended that Australian Governments should

implement a new national generic consumer law to apply in all jurisdictions generally based on the consumer protection provisions of the Trade Practices Act. The Commission also recommended that a provision should be incorporated in the new national generic consumer law that addresses unfair contract terms. COAG has agreed that it will respond to the Report in October 2008, and that this will form the Government's response.

RECOMMENDATION 23

The Committee recommends that the Australian Government, at the Standing Committee of Attorneys-General or other appropriate forum, should highlight the strong need to finally achieve a national uniform evidence law system and seek to give fresh impetus to this goal.

The Committee also recommends that the Australian Government should seek to maintain this impetus until the uniform evidence law system is achieved.

Proposed response:

The Government accepts the recommendation.

The Australian Government is committed to a national uniform evidence law system. In July 2007, SCAG endorsed a model Uniform Evidence Bill (model Bill) and noted that introduction was a matter for each jurisdiction. The Australian Government continues to encourage all jurisdictions to adopt the Uniform Evidence Scheme through enactment of the model Bill.

A second series of evidence reforms are currently being considered by a SCAG evidence working group, which developed the model Bill. The working group comprises officers from the Commonwealth, New South Wales, Victoria, Western Australia, South Australia, Tasmania, Australian Capital Territory and Northern Territory. The Australian Government will continue to work constructively with States and Territories through this forum.

RECOMMENDATION 24

The Committee recommends that the Australian Government, at the Standing Committee of Attorneys-General or other appropriate forum, should highlight the strong need to move ahead with the national implementation of the MCLOC Model Criminal Code and seek to give fresh impetus to this goal.

The Committee also recommends that the Australian Government should seek to maintain this impetus until the Code is implemented nationally.

Proposed response:

The Government accepts the recommendation.

The Government has implemented large parts of the Code. The States and Territories have only implemented these in part.

The Government is working with States and Territories to progressively implement the Model Criminal Code. Priorities for implementation were agreed by COAG on 5 April 2002 and include the model forensic procedures provisions, computer offences and serious drug offences. Implementation priorities following the completion of the COAG agreed programme are the subject of discussion between the Commonwealth and the States and Territories.

Implementation of the Model Criminal Code is monitored by SCAG, and the the Government has actively encouraged States and Territories to implement the Code. At the March 2008 SCAG meeting, Ministers reaffirmed the COAG priorities and agreed that implementation priorities should be examined further in advance of the next SCAG meeting.

RECOMMENDATION 25

The Committee recommends that the Australian Government should highlight the issue of regulatory inconsistency in privacy regulation, including in the area of workplace privacy regulation, in its submissions to the current Australian Law Reform Commission inquiry into the Commonwealth Privacy Act 1988 and related laws.

Proposed response:

The Government accepts the recommendation.

The Government supports greater consistency of information privacy regulation at the federal, State and Territory levels of government and the Australian Law Reform Commission has been informed of the Government's views.

RECOMMENDATION 26

The Committee recommends that the Australian Government raise, at the Council of Australian Governments or other appropriate forum:

- *The circulation of draft intergovernmental agreements for public scrutiny and comment;*
- *The parliamentary scrutiny of draft intergovernmental agreements; and*
- *The augmentation of the COAG register of intergovernmental agreements so as to include all agreements requiring legislative implementation*

With a view to the implementation of these reforms throughout the jurisdictions.

Proposed response:

The Government does not accept the recommendation.

The Government acknowledges the concern for openness and transparency in agreement-making that underpins this recommendation. However, in a practical sense, to give effect

to the recommendation would be almost impossible. Some intergovernmental agreements signed by COAG members are not settled until the day of the meeting or require further negotiation before being signed out-of-session. Other agreements cover matters that for security reasons should not be the subject of public consultation processes or be available to the public generally.

While in some cases scrutiny may be practical where it is agreed to by all parties, the Government does not support implementation of the suggested measures as a general practice.

RECOMMENDATION 27

The Committee recommends that the Australian governments discuss with the New Zealand Government the trans-Tasman harmonisation of legal systems in respect of all matters relating to Australian harmonisation where there can be mutual benefit. A special focus of this discussion should be the goal of achieving a single trans-Tasman legal market.

Proposed response:

The Government accepts the recommendation in part.

SCAG and other ministerial councils have recently been considering and pursuing a range of projects aimed at the harmonisation of legal systems within Australia, for example model legislation for a national legal profession, evidence laws, and identity crime.

The New Zealand Minister of Justice is a member of SCAG. The Government will continue to encourage discussion through SCAG of legal harmonisation projects that are of benefit to all Australian jurisdictions and to New Zealand, including the possibility of a single trans-Tasman legal market. The Government will also encourage New Zealand to participate in SCAG harmonisation working groups on projects where there is mutual benefit in trans-Tasman harmonisation.

The Attorney-General will discuss with the New Zealand Attorney-General separately projects that are of interest to the Commonwealth Government and New Zealand, suggesting that these matters be pursued through bilateral discussions.