

SCAG Summary of Decisions - July 2008

1. Planning for the Future

a. Review of SCAG agenda and Strategic Plan

Ministers reviewed the SCAG agenda and agreed to:

- A revised agenda
- The Strategic Plan (attached)
- The Communique (attached)

2. Addressing disadvantage

a. Anti-Discrimination Laws Harmonisation

Ministers:

- (a) noted that the Anti-Discrimination Law Harmonisation Working Group will identify options for harmonisation in the short, medium and longer term, taking into account related Commonwealth, State and Territory policy initiatives,
- (b) approved as the terms of reference for the Working Group, to develop options in consultation with all jurisdictions' human rights or equal opportunity commissions for harmonising Commonwealth, State and Territory anti-discrimination laws and complaint handling systems for the consideration of Ministers, including:
 - (i) as a priority—identify and progress non-legislative options to enhance access by individuals and businesses to complaint handling procedures in all jurisdictions (Stage 1)
 - (ii) identify options for reform in the medium term—undertake a needs analysis to identify potential areas for minor legislative and procedural reforms that could lead to significantly improved harmonisation, including any barriers and resources required to implement options (Stage 2)
 - (iii) identify longer-term options for reform that examine opportunities for (and obstacles to) substantive reforms to anti-discrimination laws, procedures, and institutional and/or co-operative arrangements (Stage 3)

b. Human Rights

Ministers noted the Commonwealth's regular update on developments in human rights matters.

c. Same Sex Reforms

Ministers:

- (a) noted that the Commonwealth will continue to follow progress on implementation of relationship registers
- (b) noted that on 25 June 2008 the Commonwealth introduced into Parliament the *Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008* (De Facto Bill) implementing references of power from various States (New South Wales, Queensland, Victoria and Tasmania) on property settlement and spouse maintenance matters

State and Territory Ministers requested the Commonwealth consider amending section 60H of the Family Law Act to allow children of same sex relationships to be recognised as a child of the relationship for the purposes of the section.

d. National Framework for Protecting Australia's Children

The Commonwealth updated Ministers on the proposed National Framework for Protecting Australia's Children.

Discussion Paper: Australia's children: safe and well, A national framework for protecting Australia's children:

http://www.facsia.gov.au/family/child_protection_discussion_paper/

e. National Action Plan on Violence Against Women

The Commonwealth updated Ministers on the proposed National Action Plan on Violence Against Women.

Media release: PM Launches Inaugural Meeting of National Council to Reduce Violence against Women and Children

http://www.tanyaplibersek.fahcsia.gov.au/internet/tanyaplibersek.nsf/content/nat_council_violence_05june08.htm

f. Surrogacy

Ministers:

- (a) noted that the Australian Health Ministers' Conference and the Community and Disability Services Ministers' Conference have not yet approved release of the surrogacy consultation paper
- (b) request SCAG officers to arrange for coordinated release of the paper out of session, once that approval has been obtained, and
- (c) noted that, in line with other jurisdictions, NSW has referred this issue to its Legislative Council Standing Committee on Law and Justice.

3. Developing Court Excellence

a. Judicial Exchange

Ministers:

- (a) noted the draft set of principles and draft Judicial Officers Exchange Arrangements – Model Provisions designed to underpin the program between judicial officers of interested State and Territory courts and members of interested administrative appeals tribunals
- (b) requested officers to consult with heads of jurisdiction and heads of administrative appeals tribunals regarding the principles and Model provisions, and
- (c) agreed that the final form of the principles and Model Provisions may be settled out of session.

b. NJC Funding

Ministers:

- (a) agreed to fund the National Judicial College of Australia for a further three years according to the current funding formula, and
- (b) agreed to increase the base level of funding for the National Judicial College by an additional \$70,000 in accordance with the current funding formula.¹

c. Suppression Orders

Ministers:

- (a) noted the information about:
 - (i) the Commonwealth, State and Territory legislative provisions empowering courts or tribunals to make suppression orders and
 - (ii) each jurisdiction's arrangements for recording and notifying the media about making or changing suppression orders,
- (b) requested officers to develop proposals on potential areas of harmonisation of suppression orders legislation,
- (c) noted the Federal Court of Australia has indicated an in principle willingness to host a national electronic register of suppression orders,
- (d) agreed in-principle to establish a national register of suppression orders subject to the development of a proper legal and administrative framework, and
- (e) requested officers to report back to Ministers at the November meeting.

¹ Victoria has the Judicial College of Victoria and does not contribute in the National Judicial College of Australia.

d. Access to Court Information

Ministers:

- (a) noted the Report on Access to Court Information prepared by the NSW Attorney General's Department,² and
- (b) agreed that work on harmonisation of access to court information should be progressed in conjunction with, but separate to, the proposal to develop a national register of suppression orders.

e. Judicial Complaints Handling

Ministers agreed to establish a working group to examine the feasibility of establishing a national judicial complaints handling mechanism and report back to Ministers at the next meeting.

Ministers noted that NSW will not participate in this project.

f. National Judiciary

Ministers agreed to establish a working group to examine the feasibility of establishing a national judiciary.

4. Harmonisation

a. Personal Property Securities Law Reform

Ministers:

- (a) noted the indicative timetable for PPS reform
- (b) requested officers provide Ministers with:
 - a paper on the Commonwealth regulations that will need to be made under the PPS Bill, and
 - a report on the public consultation on the *Personal Property Securities Bill 2008* (the Bill) and the *Personal Property Securities (Transitional and Consequential Amendments Bill) 2008*
- (c) noted that officers will provide Ministers with an overview of the consequential amendments to State and Territory legislation that may need to be made as a consequence of the Bill and a draft timeline for each State and Territory to make the necessary consequential amendments before the Commonwealth Act commences
- (d) noted the substantial progress to date on PPS reform, including:
 - that on 16 May 2008, the Commonwealth Minister released a consultation draft PPS Bill and accompanying Transitional Arrangements Bill for public comment by 15 August 2008

² To be made available shortly.

- that on 16 May 2008, a Request For Tender (RFT) for the systems integration services to develop and build the national PPS register was released
- the report on the development of the PPS register

b. Electronic Transactions Amendments

Ministers:

- (a) agreed that the Commonwealth, in consultation with States and Territories, develop a public consultation paper on proposed amendments to the electronic transactions regime; and
- (b) agreed that consultations with the business community and other interested parties on proposed amendments proceed and that a report on the consultations be provided at the next SCAG meeting.

c. Statutes of Limitation

Ministers:

- (1) Noted the table setting out information on the limitation laws of each jurisdiction that apply in the commercial context.
- (2) Noted that the table is a valuable resource that will greatly assist the public and practitioners to navigate the various limitations periods in the commercial context in Commonwealth, State and Territory legislation.
- (3) Noted that NSW will provide the table to the Law Council of Australia, for comment and inclusion on their website. Officers will also make a link to the table available on the SCAG website.
- (4) Agreed that without real evidence that a lack of harmonisation is a significant problem, the item should be removed from the agenda.
- (5) Requested the SCAG Secretary to write to the relevant Ministerial Council referring the issue of harmonisation of workplace injury limitation periods for its consideration.

d. Tort Law: Proportionate Liability

Ministers:

- (a) agreed to release Mr Tony Horan's report 'Proportionate Liability: Towards National Consistency' and Professor Jim Davis's report 'Proportionate Liability: Proposals to Achieve National Uniformity' to external stakeholders. Officers will make the reports available on the SCAG website.
- (b) asked Officers to develop drafting instructions for model uniform proportionate liability legislation consistent with the Working Group's preliminary analysis of the recommendations made by Horan and Davis,

- (c) agreed to Officers undertaking targeted consultation on the drafting instructions provided that the drafting instructions do not indicate a preferred position on the issue of 'contracting out' and,
- (d) requested that Officers report back to Ministers about the outcomes of the consultation, and taking into account the outcomes of the consultation, prepare policy recommendations/final drafting instructions for consideration by Ministers at the November 2008 meeting.

e. National Electronic Conveyancing System

Ministers noted that:

- (a) COAG agreed, at its meeting on 3 July 2008, that a new electronic conveyancing system is to commence in 2010,
- (b) the Business Regulation and Competition Working Group (BRCWG) of COAG will oversee the implementation of a new e-conveyancing system, and
- (c) the BRCWG has established a small working group to provide advice to it on implementing electronic conveyancing.

5. Indigenous Justice

a. Bail and Sentencing

Ministers:

- (a) noted that the Secretariat will continue to monitor implementation of the four non-legislative recommendations in the paper previously prepared for SCAG on the extent to which bail and enforcement provisions take account of potential impacts on victims and witnesses in remote communities (Bail Paper), and
- (b) requested National Justice CEOs to develop:
 - a proposal to strengthen the ability of Indigenous communities to contribute to bail decisions concerning members of their communities, and
 - a proposal to strengthen data collection on Indigenous participation in and completion of mainstream diversion programs.

6. Justice System

a. Legal Aid Funding

Ministers:

- (a) noted that the Commonwealth is continuing to review its legal aid funding policy, including the requirement that Commonwealth legal aid funding be used for Commonwealth law matters,
- (b) agreed that the Commonwealth bring forward to the next meeting of SCAG in November 2008 recommendations on the incorporation of a focus on

objectives and outcomes for legal aid National Partnership agreements, developed in consultation with the States and Territories, and

- (c) noted the need to broaden the focus of legal aid to optimise collaborative working arrangements between all legal service providers, including legal aid commissions, community legal services and Indigenous legal services, to ensure better access to justice outcomes for disadvantaged Australians at risk of social exclusion.

b. Evidence (Stage 2)

Ministers:

- (a) noted that there is general agreement among SCAG working group officers:
 - (i) that the model Uniform Evidence Bill (model Bill) should not extend the application of privileges to non curial contexts,
 - (ii) that certificates under the section 128 and 128A privilege against self-incrimination be given mutual recognition across jurisdictions,
 - (iii) that the definition of 'unavailability of persons' be expanded to include persons who are mentally or physically unable to give evidence about a fact and that inability cannot reasonably be overcome,
 - (iv) to develop model vulnerable witness provisions, and
 - (v) to develop a model sexual assault communications privilege.
- (b) agreed that the working group work with the Parliamentary Counsels' Committee (PCC), and jurisdictions' stakeholders (including available members of the expert reference group) to develop amendments to the model Bill to reflect these agreements, to be presented for consideration by SCAG.

c. MCLOC Priorities

Ministers:

- (a) agreed that MCLOC should review and update Chapter 2 of the Model Criminal Code which covers the general principles of criminal responsibility, and
- (b) agreed that each jurisdiction should identify its own priorities for future Model Criminal Code implementation.

d. Interjurisdictional DNA

Ministers:

- (a) agreed to a National Criminal Investigation DNA Database (NCIDD) governance model incorporating a CrimTrac Consultative Forum and a standing SCAG DNA working group to report to SCAG. The CrimTrac Consultative Forum would be held bi-annually and bring together representatives from justice and police ministries to discuss NCIDD policy and operational issues, and

- (b) agreed that jurisdictions should pursue bilateral ministerial arrangements for the reciprocal registration of DNA orders, and
- (c) agreed to establish a law enforcement accountability and oversight working group to consider general accountability issues arising out of inter-jurisdictional law enforcement.

e. General Discussion – Restorative Justice

Ministers agreed to conduct an audit of Australia and New Zealand's restorative justice systems and requested officers to prepare an officers paper for the next meeting.

f. General Discussion – National Legal Profession – Costs

Ministers agreed to refer the issue of National Legal Profession Costs and Cost Assessment to the National Legal Profession Joint Working Group to develop an effective best practice model for constraining overcharging and exploitation of vulnerable consumers.