



COMMUNIQUÉ

Council of Attorneys-General 29 November 2019, Adelaide

A meeting of the Council of Attorneys-General (CAG) was held on 29 November 2019 in Adelaide, South Australia. All jurisdictions were represented by Ministers.

The meeting was chaired by the Hon Vickie Chapman MP, Attorney-General, South Australia.

SUMMARY OF DECISIONS

Family Violence - Criminal Enforcement of Family Law Personal Protection Injunctions

Participants agreed in principle that family law personal protection injunctions will be recognised on the National Domestic Violence Order Scheme and enforced by state and territory police, once Commonwealth criminal offences for breaches of these injunctions commence.

Family Violence Working Group Progress Update

Participants noted work underway to improve responses to family violence, including measures to increase the family violence competency of legal practitioners, assess the merits of expanding the exercise of family law jurisdiction by state and territory courts, and improve information sharing between the family law, child protection and domestic violence systems.

Family Violence Working Group: National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems

Participants endorsed in principle a high-level National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems. Participants agreed for the Family Violence Working Group to operationalise the National Framework over the course of 12 months and report back to the Council of Attorneys-General at the end of 2020.

Options to Improve Consistency between Jurisdictions on Surrogacy Regulation

Participants recognise the important issues raised in the *Surrogacy Matters* report by the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into the regulatory and legislative aspects of domestic and international surrogacy arrangements. Participants agreed to

Terms of Reference to establish a Working Group on Surrogacy to advise the Council on opportunities for attaining greater national consistency in legal and policy frameworks regulating surrogacy in Australia.

Model Bill to Amend Uniform Evidence Law Test for Admissibility of Tendency and Coincidence Evidence in Criminal Trials

Uniform Evidence Law CAG members:

- (a) Noted that the Australasian Parliamentary Counsel's Committee has prepared a Model Bill to implement the proposed reform of the Uniform Evidence Law test for admissibility of tendency and coincidence evidence in criminal proceedings agreed by CAG on 28 June 2019
- (b) Agreed to implement the Model Bill, and
- (c) Noted feedback received from judicial, legal and other stakeholders across jurisdictions about the proposed reforms.

Response to Royal Commission Recommendations Concerning Confessional Privilege

Participants agreed to consider the application of the following principles in their respective legislation:

- Confessional privilege cannot be relied upon to avoid a child protection or criminal obligation to report beliefs, suspicions or knowledge of child abuse;
- Confessional privilege cannot be relied upon by a person, in civil or criminal proceedings, to excuse a failure to comply with any child protection or criminal obligation to report beliefs, suspicions or knowledge of child abuse; and
- Confessional privilege cannot be relied upon by a person who had an obligation to report beliefs, suspicions or knowledge of child abuse, to avoid giving evidence in civil or criminal proceedings against a third person for child abuse offences.

Implementation Update on the Child Abuse Royal Commission

Participants noted that all Australian governments are continuing to work together to progress implementation of the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse requiring national consistency and coordination. The Australian Government Attorney-General's Department is working with Australian Government agencies, ministerial councils, and states and territories to produce the Australian Government's 2019 Annual Progress Report on implementation progress, which will be tabled in Parliament in December 2019. This is the second of five annual reports the Australian Government has committed to deliver until December 2022. States and territories are also preparing their second of five annual reports and will also report annually until 2022. All reports will be published on the Australian Government Response website (www.childabuseroyalcommission.gov.au).

Elder Abuse - Enduring Power of Attorney Law Reform

Participants:

- (a) Agreed to pursue a staged approach to enduring power of attorney reform for financial decisions, first focussing on law reforms to support the establishment of a mandatory national register of enduring power of attorney instruments, followed by further consideration of reforms to enhance safeguarding provisions and enhance access to justice arrangements
- (b) Agreed to consider a detailed proposal and implementation plan for a Commonwealth established and maintained register in stage 1 reforms at the first CAG of 2020.

Elder Abuse - National Plan to Respond to the Abuse of Older Australians – Progress Report

Participants noted the progress of the Commonwealth, state and territory governments in implementing measures to respond to elder abuse, in line with commitments outlined in the *National Plan to Respond to the Abuse of Older Australians 2019-2023* and its accompanying Implementation Plan.

Legal Assistance

Attorneys-General agreed to the updated *National Strategic Framework for Legal Assistance*, which will commence on 1 July 2020 and provides the overarching objective and principles for all government funded legal assistance services. Attorneys-General also made positive progress on narrowing the issues to be resolved in ongoing negotiations for the *National Legal Assistance Partnership*, and remain committed to its finalisation sufficiently in advance of the expiry of current arrangements on 30 June 2020.

Upholding Suppression Orders in the Digital Age

Participants noted progress on New Zealand’s work to strengthen overseas publishers and online content hosts’ compliance with suppression orders, including:

- (a) a possible system of mutual recognition of suppression orders with Australia, and other comparable jurisdictions; and
- (b) options to improve access to information about suppression orders in force.

Draft Amendments to the Model Defamation Provisions

In late 2018, Attorneys-General agreed to a timetable to reform Australia’s Model Defamation Provisions (MDPs) that enables Parliaments to enact changes from mid-2020. To achieve this deadline, the timetable provides for public consultation on draft amendments to the MDPs in December 2019 and January 2020.

Attorneys-General agreed to release draft Model Defamation Amendment Provisions for public consultation. The draft amendments address key issues identified by stakeholders throughout a series of consultations in 2019, ensuring that defamation law strikes a better balance between protecting reputations and freedom of speech.

Participants also agreed that the Defamation Working Party will progress a second stage of reforms focused on the responsibilities and liability of digital platforms for defamatory content published

online as well as other new and emerging issues affecting defamation law. Consultation on these issues will commence in the first half of 2020.

Age of Criminal Responsibility Working Group

Participants:

- (a) Noted that there is strong interest in the review of the age of criminal responsibility, and recognise the importance of the views, knowledge and expertise of interested stakeholders and individuals.
- (b) Agreed that the Working Group undertake targeted and public consultation as soon as practicable.
- (c) Noted that the Working Group will continue to progress the review, taking into account stakeholder contributions, and will provide a report with recommendations to the Council of Attorneys-General in 2020.

Criminal Justice Stay Warrants

Participants noted Western Australia's progress in establishing a statutory power for Western Australian courts to issue criminal justice stay warrants.

Harmful Online Content

Participants agreed to include the regulation of online harmful content as a standing agenda item at future CAG meetings to enable CAG to play an important oversight role and inform future cooperative work to ensure all Australians are protected from the full range of harmful online content.

The Use, Review and Oversight of Forensic Evidence in Criminal Trials

Participants agreed to share their experiences on the use of forensic evidence in criminal trials in their jurisdiction and to review existing laws and practices, with Victoria Leading a Working Group in close consultation with relevant bodies, and including representatives from all interested jurisdictions, to report back to CAG.

Terrorism Model Referral of Power Legislation—Post-Sentence Preventative Measures and Hoax Offence

Participants agreed to continue to work towards establishing a lowest risk option for furthering work towards a new Commonwealth terrorism hoax offence.

Participants agreed that there is a sufficient constitutional basis and low risk to the Commonwealth continuing detention order regime and proposed extended supervision order provisions.

Crimes at Sea Intergovernmental Agreement

Participants signed a new Crimes at Sea Intergovernmental Agreement. The new Agreement ensures that changes to Australia's maritime boundaries due to the entry into force of the *Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea* are captured by the Crimes at Sea National Cooperative Scheme.

Establishment of Commonwealth Offences for Match-Fixing and Related Corruption in Sport

Participants noted the Australian Government's intent to establish Commonwealth offences for match-fixing and related corruption, and noted a schedule of behaviours currently being considered to be subject to Commonwealth offences, guided by those behaviours previously agreed by participants at the November 2011 meeting of the Standing Council on Law and Justice.

Information Sharing with Local Government to Support Cross Border Debt Recovery

Participants agreed to hold a roundtable consisting of representatives from each state and territory, and the Australian Local Government Association, to investigate opportunities for information sharing with local government to support cross border debt recovery.