

COMMUNIQUÉ

MEETING OF ATTORNEYS-GENERAL – 12 NOVEMBER 2021

A Meeting of Attorneys-General (MAG) was held on 12 November 2021 by videoconference. The meeting was chaired by Senator the Hon Michaelia Cash, Commonwealth Attorney-General. All jurisdictions were represented.

Australian of the Year for 2021 – Grace Tame

Participants welcomed the opportunity to hear from Australian of the Year for 2021, Grace Tame, and thanked her for her advocacy on behalf of victim-survivors of sexual abuse and sexual assault. Ms Tame spoke on a number of significant issues including the importance of national consistency regarding ‘persistent sexual abuse of a child’, legislation relating to the age of consent, and the definition of ‘sexual intercourse’.

SUMMARY OF DECISIONS

Family Violence – National Information Sharing Framework

Participants endorsed the *National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems*, and noted the resourcing, privacy and legislative implications arising from its implementation. Participants agreed the Family Violence Working Group will oversee the implementation of the National Framework, and that future updates in relation to this work will be provided out of session.

Enduring Power of Attorney Law Reform

Participants noted feedback received during public consultation that law reform is needed to effectively reduce financial elder abuse involving enduring powers of attorney, and tasked officials to develop recommendations and a timetable for a more nationally consistent approach, for consideration by Attorneys-General by the end of 2022.

Protecting Older Australians – National Register of Enduring Powers of Attorney

Participants tasked officials to consider alternative models for the National Register of Enduring Powers of Attorney, informed by stakeholder consultation, for Attorneys-General consideration and agreement by the end of 2022.

Model Defamation Review – Update

Participants discussed the progress of the Stage 2 Review of the Model Defamation Provisions. Part A of the Stage 2 Review addresses the question of internet intermediary liability in defamation for the publication of third-party content. This includes the matters raised in the recent High Court decision in *Fairfax Media Publications Pty Ltd & Ors v Voller* [2021] HCA 27.



Part B considers whether defamation law impacts reports of alleged unlawful conduct to certain entities including police, statutory investigative bodies and professional disciplinary bodies. A key question is whether it is necessary and appropriate to extend absolute privilege to these circumstances.

Almost 50 written submissions were received from stakeholders in response to the Stage 2 Discussion Paper that was released for public consultation in April 2021. Four stakeholder roundtables were held in September and early October 2021 to discuss the key issues. Participants noted that the issues being considered by the Stage 2 Review are complex and topical.

There is significant stakeholder and public interest in the project. Attorneys-General agreed it is appropriate for the Stage 2 Review of the Model Defamation Provisions to remain a MAG priority in 2022. Attorneys-General also noted that the Stage 1 amendments to the Model Defamation Provisions commenced in NSW, Victoria, South Australia, Queensland and the Australian Capital Territory on 1 July 2021. Tasmania noted that Stage 1 of the amendments to its Act commenced today, 12 November 2021.

Respect@Work Recommendation 26 – Alignment of sexual harassment laws

Participants:

- (a) agreed the areas of focus for potential legislative alignment across jurisdictions, noting that any changes to legislation will be a matter for individual jurisdictions to determine
- (b) noted that officials will continue to meet at least quarterly to discuss progress and share analysis, research, findings and experiences that may be relevant to inform alignment efforts, and
- (c) agreed to report back to the Meeting of Attorneys-General in mid-2022 with a progress update, including proposed next steps for each jurisdiction to determine whether reforms will be undertaken, so that a proposed timeline can be agreed between all participants to finalise implementation of recommendation 26.

Respect@Work Recommendation 39 – Protections for victims of sexual harassment as witnesses in civil proceedings

Participants:

- (a) agreed that jurisdictions will each assess the extent to which existing protections for vulnerable witnesses under current laws extend to victims of sexual harassment in civil proceedings, with jurisdictions to report back to the Meeting of Attorneys-General before the end of 2022. This work will be conducted with a view to ensuring legal frameworks minimise trauma for victims of sexual harassment who are witnesses in civil proceedings, including but not limited to defamation proceedings.
- (b) noted relevant work being advanced by jurisdictions through the Meeting of Attorneys-General to investigate concerns about the 'chilling effect' of Australia's current defamation laws as part of the Stage 2 Review of the Model Defamation Provisions and whether to extend absolute privilege to reports of criminal or unlawful conduct, including



sexual harassment, to specific bodies such as the police and professional disciplinary bodies.

- (c) noted that working group officials will continue to meet to share progress, analysis and findings on protections for alleged victims of sexual harassment who are witnesses in civil proceedings.

National principles to address coercive control

Participants agreed to further the development of National Principles to address Coercive Control. Participants also agreed to the key milestones for this project, including that the Family Violence Working Group will report to MAG on proposed draft principles for public consultation in early 2022 with a view to finalising the national principles by June 2022.

Criminal Justice Responses to Sexual Assault

Participants re-affirmed the commitment of all jurisdictions to take individual and collaborative action to improve the experiences of victim-survivors of sexual assault in the criminal justice system, including to address rates of attrition and reduce the risk of re-traumatisation.

Participants noted an update from officials on the development of a work plan on criminal justice responses to sexual assault (as agreed at the Extraordinary Meeting of Attorneys-General on 9 June 2021), and agreed for officials to report back no later than February 2022 on shared actions.

Participants noted reform being advanced at both the national and jurisdictional level to improve responses to sexual violence, including through the development of the successor to the National Plan to Reduce Violence Against Women and their Children 2010-2022.

Participants also recognised the calls from stakeholders for jurisdictions to adopt more consistent approaches to key legal concepts around sexual assault, including affirmative models of consent. Participants agreed that effective law and policy reforms need to be supported by coordinated national action to drive cultural change and build capability to improve experiences for all victim-survivors of sexual assault.

To that end, participants noted potential shared areas of focus for the work plan may include:

- supports for victim-survivors through the criminal justice process
- justice system (including police and court) processes, education and capability
- alternative pathways or options for addressing sexual offending, and
- information sharing, research and data collection.

MAG Work priorities for 2022

Participants agreed that the work program priorities for 2022 will comprise the following:

- a) Enduring Powers of Attorney (Cth)
- b) Model defamation provisions (NSW)
- c) Access scheme for digital records after death or incapacity (NSW).

Other business

Participants agreed that raising the minimum age of criminal responsibility and online vilification will be considered informally under 'other business'.

Participants discussed implementation of the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and agreed that officials would continue to discuss the intergovernmental agreement and funding.

Participants noted the concerns raised by the Australian Capital Territory, Northern Territory and Queensland about the effect of Commonwealth laws on states and territories' abilities to legislate on voluntary assisted dying. The Australian Capital Territory and Northern Territory paper notes the legislative barriers for those jurisdictions in legislating for voluntary assisted dying in their jurisdictions.

State Attorneys-General supported development of a proposal to increase the minimum age of criminal responsibility from 10 to 12, including with regard to any carve outs, timing and discussion of implementation requirements. The Northern Territory has committed to raising the age to 12, and will continue to work on reforms including adequate and effective diversion programs and services. The Australian Capital Territory has also committed to raising the age, and is working on its own reforms.