



COMMUNIQUÉ

Council of Attorneys-General

27 July 2020

A meeting of the Council of Attorneys-General (CAG) was held on 27 July 2020 by videoconference. All jurisdictions were represented.

The meeting was chaired by the Hon Elise Archer MP, Attorney-General, Tasmania.

SUMMARY OF DECISIONS

National Commissioner for Defence and Veteran Suicide Prevention

In recognition that reducing lives lost to suicide is a priority for all governments, participants agreed to work together to support the prevention of deaths by suicide of Australian Defence Force members and veterans, through the establishment of the new National Commissioner for Defence and Veteran Suicide Prevention. The National Commissioner will have ongoing Royal Commission-like powers to inquire into these tragic deaths, and make recommendations for future prevention.

Participants also agreed to work together, in consultation with the Council of Chief Coroners, to establish a new National Coronial Centre for Defence and Veteran Suicides to assist Coroners to develop a common understanding of the issues for consideration in individual Defence and veteran death by suicide cases, and to support the National Commissioner in identifying broader systemic issues for further inquiry.

Operationalising the National Strategic Framework for Information Sharing Between the Family Law and Family Violence and Child Protection Systems

Participants affirmed their commitment to improved information sharing between the family law and family violence and child protection systems, and noted the ongoing work of the Family Violence Working Group that will support the Attorneys'-General consideration of operationalising the National Framework.

Family Violence Working Group progress report

Participants noted the continuing work undertaken by the Australian and state and territory governments to respond to the family violence impacts of COVID-19, and improve safety outcomes for families. Participants also noted the work of the Australian Government to develop a family violence risk-screening and triage pilot in conjunction with the family law courts.

Enduring Power of Attorney Register

Participants agreed in-principle to the proposed broad policy design for a national register of enduring documents, and tasked the Commonwealth to present a final proposal on the possible implementation and costing of the scheme, including resolution of outstanding issues, before the end of 2020.

Access to digital records after death or loss of decision-making capacity

Participants recognised the important issues raised in *Report 147: Access to Digital Records Upon Death or Incapacity* by the New South Wales Law Reform Commission. This report recommends enacting a statutory scheme governing access to the digital records of persons who have died or lost decision-making capacity. Given the prevalence of digital records in people's lives, access to those records is increasingly necessary to deal effectively with the financial and personal affairs of people who have died or lost decision-making capacity. Enacting a scheme which regulates access to such records will provide legal clarity, which will assist estate administration, guardianship and power of attorney arrangements. Such a scheme would also benefit custodians that store or maintain digital records, by establishing clear rules about when access should be granted.

Participants agreed to form a Working Group to consider developing a nationally consistent approach to the regulation of access to digital records upon death or loss of decision-making capacity.

Working Group on Surrogacy

Participants agreed to an extension of time for the Working Group on Surrogacy to report to CAG on opportunities for attaining greater national consistency in legal and policy frameworks regulating surrogacy in Australia, due to COVID-19.

Age of Criminal Responsibility Working Group

Participants noted the Working Group's work to date and noted that the Working Group identified the need for further work to occur regarding the need for adequate processes and services for children who exhibit offending behaviour.

Criminal justice stay certificates and cost recovery for unlawful non-citizens detained by Australian Border Force

Participants agreed that any changes to liability for the costs associated with the housing of unlawful non-citizens subject to a criminal justice stay certificate in immigration detention should not occur until ministerial-level consultation takes place.

Draft amendments to the Model Defamation Provisions

Participants approved amendments to the Model Defamation Provisions. Attorneys-General agreed that all jurisdictions will enact and commence the amendments as soon as possible. This marks the conclusion of Stage 1 of the Council of Attorneys-General's review of the Model Defamation Provisions led by NSW over the past 18 months. When enacted, the amendments will reset defamation law to strike a better balance between protecting individual reputations and freedom of expression, particularly regarding matters of public interest.

Key changes include:

- Introduction of a single publication rule in each jurisdiction's limitation laws.
- Introduction of a serious harm threshold for defamation claims, to be determined by the judicial officer as soon as practicable before the trial.
- Clarification of the concerns notice procedure and procedure for offers to make amends, including requiring that concerns notices must be served with sufficient time for a response to be provided before proceedings can be commenced.
- Introduction of a new public interest defence modelled on section 4 of the UK *Defamation Act 2013*.
- Clarification of the operation of the cap on non-economic damages.

Participants agreed to progress a second stage of reform proposals focusing on the responsibilities and liability of digital platforms for defamatory content published online, as well as other issues Attorneys-General ask the DWP to consider further. At the next CAG meeting, Council of Attorneys-General agreement will be sought to release a Stage 2 discussion paper for public consultation.

COVID-19 and Criminal Justice Sector Continuity

Participants noted the update on current and planned measures courts in each jurisdiction are implementing to enable the continuity of the criminal justice system in the context of COVID-19.