



COMMUNIQUÉ

The Standing Council of Attorneys-General (SCAG) convened on 28 April 2023 in Darwin. The meeting was chaired by the Hon Mark Dreyfus KC MP, Commonwealth Attorney-General. All jurisdictions, except New Zealand, were represented.

CLOSING THE GAP JUSTICE POLICY TARGETS

Participants noted the significant role that must be played by the Standing Council of Attorneys-General in achieving the justice Targets and Outcomes (10 and 11) under the National Agreement on Closing the Gap. Participants noted that Target 10 – to reduce the rate of First Nations adults in incarceration by at least 15 per cent by 2031 – is going backwards, and that significant and transformational criminal justice reform will be required by all Australian governments to turn the tide on First Nations adult incarceration.

All Attorneys-General acknowledged the need to do better, collectively, to improve justice outcomes for First Nations Australians.

Participants noted the central role of the Justice Policy Partnership (JPP) in achieving the justice Targets and Outcomes, consistent with the principles of partnership and shared decision-making under the National Agreement on Closing the Gap, and agreed the JPP will be invited to present at the next Standing Council of Attorneys-General.

Participants agreed that all jurisdictions have a responsibility to consider justice policy Targets and Outcomes when making law and policy changes, noting our collective responsibility to meet the Targets by 2031.

JUSTICE REINVESTMENT

Participants:

- (a) **noted** recent progress in establishing a new national justice reinvestment initiative by the Australian Government, including the rollout of national design consultations and community readiness support and initial partnerships in Alice Springs and Halls Creek.
- (b) **noted** the Australian Government is seeking to collaborate further with jurisdictions to maximise the impact of this First Nations justice initiative, including on future design consultations, data-sharing and co-contribution arrangements.

MINIMUM AGE OF CRIMINAL RESPONSIBILITY

Participants noted the ongoing work of the re-convened Age of Criminal Responsibility Working Group (Working Group) to develop a proposal to increase the minimum age of criminal responsibility.



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Participants look forward to considering the Working Group's report, to be delivered to the Standing Council of Attorneys-General ahead of its next meeting, which will focus on how jurisdictions may support children diverted from the criminal justice system, particularly First Nations children.

Participants re-affirmed the critical importance of this work in addressing Targets and Outcomes 10 and 11 of the National Agreement on Closing the Gap. Consistent with commitments from jurisdictions to work in partnership with First Nations people under the National Agreement, Participants agreed that nominated First Nations representatives of the Justice Policy Partnership would be formal members of the Working Group.

Participants acknowledged the progress made by the Northern Territory, the Australian Capital Territory and Victoria to raise the minimum age of criminal responsibility.

NATIONAL PLAN TO RESPOND TO THE ABUSE OF OLDER AUSTRALIANS

Participants:

- (a) **agreed** to develop a successor National Plan to the *National Plan to Respond to the Abuse of Older Australians (2019-2023)*
- (b) **agreed** to consider further advice on key milestones relating to the development of the successor National Plan during 2023
- (c) **noted** a progress update in relation to enduring powers of attorney reform projects.

OPCAT

Participants committed to continue to work together towards full implementation of OPCAT obligations.

VOLUNTARY ASSISTED DYING

Participants discussed the interaction between voluntary assisted dying laws and Commonwealth criminal laws.

NATIONAL COORDINATED LEGISLATIVE PROHIBITIONS ON 'SPIT HOODS'

Participants:

- (a) **agreed** to work together to consider the feasibility of nationally co-ordinated action(s) (including legislative prohibition) to prohibit the use of 'spit hoods'.

MODEL DEFAMATION REFORM

Participants **approved in principle** the final policy recommendations for Part B of the Stage 2 Review of the Model Defamation Provisions. Part B recommends extending the defence of absolute privilege to police and other complaints-handling bodies in order to address the 'chilling effect' of defamation



law on the reporting of certain conduct. This is subject to any necessary further targeted consultation by jurisdictions and final agreement at the next SCAG meeting.

Participants **noted** the significant work led by Victoria and undertaken by the interjurisdictional Defamation Law Working Party. Careful consideration of the feedback received during public consultation has informed refinements to the Part B reforms. By extending the defence of absolute privilege, the reforms will protect victim-survivors who report alleged criminal and unlawful conduct to police and other complaints-handling bodies from the threat of defamation. The reforms will also improve uniformity between jurisdictions by determining a consistent approach to the circumstances where absolute privilege is extended.

The Part B policy recommendations are to:

- extend absolute privilege to all matter published to police by creating a new defence in section 27 of the Model Defamation Provisions.
- extend absolute privilege to matter published to state and territory complaints-handling bodies that have functions to receive and handle complaints about conduct intended to be captured by this reform (such as sexual offences). The relevant bodies will be determined by jurisdictions and listed in Schedule 1 of their respective Defamation Acts.
- develop a high-level agreement between participants regarding the use of Schedule 1 to implement the reform with the aim of increasing consistency among jurisdictions.
- note that the Commonwealth Attorney-General's Department will consider the most appropriate mechanism for extending absolute privilege to matter published to federal complaints-handling bodies that have functions to receive and handle complaints intended to be captured by this reform.

The Part B reforms strike the right balance between protecting people who want to report alleged criminal and unlawful conduct, and protecting alleged perpetrators from unjust reputational damage. The reforms do this by limiting the availability of the defence of absolute privilege to confidential settings, such as reports or complaints to police or other complaints-handling bodies, who are bound by privacy rules and other safeguarding obligations. The reforms will not protect matters published in the media or in other public forums, such as online platforms.

In relation to the Part A reforms that address internet intermediary liability for the publication of third party content, participants noted that on 9 December 2022 they approved in principle final amendments to the Model Defamation Provisions. This is subject to final agreement in the first half of 2023.