

Submission No. 18
Date Received 5-5-05



J.P. 5/5/05

Our ref: 22-72

ATTORNEY GENERAL

MINISTER FOR HEALTH, ELECTORAL AFFAIRS

FOR WESTERN AUSTRALIA

Mr Peter Slipper
Chairman
Standing Committee on Legal & Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Dear Mr Slipper

Thank you for your letter of 8 March 2005 and the attached Terms of Reference "Harmonisation of Legal Systems".

The matters raised in your letter and your Committee's Terms of Reference have been noted and, in particular that you are "to inquire and report on lack of harmonisation within Australia's legal system, and between the legal systems of Australia and New Zealand, with particular reference to those differences that have an impact on trade and commerce". In that context, the Committee may be examining some specific areas of law, for example, limitation legislation; evidence law; and standards of products.

As you may be aware, the Standing Committee of Attorneys General, which comprises all State and Territory Attorneys General, as well as the New Zealand Attorney General, has as one of its main functions the harmonisation (both within Australia and between Australia and New Zealand) of legislation relating to legal issues. Indeed, as recently as November 2004, SCAG held a meeting in New Zealand which discussed several areas of mutual interest, including personal property securities law with a view to creating a uniform legal regime in Australia which takes into account recent New Zealand legislation on this area of law. In addition, the States have supported mutual recognition arrangements being entered into (pursuant to Commonwealth and State legislation) between Australian jurisdictions as well as between Australian jurisdictions and New Zealand. Finally, in this New Zealand context, you may be aware that, pursuant to the August 2000 Australian and New Zealand Memorandum of Understanding, it was proposed in February 2005 to work on trans-Tasman court proceedings and regulatory enforcement, accounting standard, cross-recognition of companies and mutual recognition of securities offerings. This matter, together with an Officers' Paper, was on the agenda of the March 2005 meeting of the Ministerial Council of Corporations (which comprises all Attorneys General).

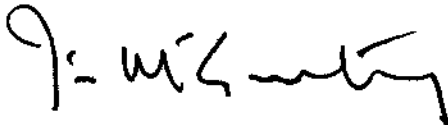
30th Floor Allendale Square
77 St George's Terrace Perth WA 6000
Tel: +61 8 9220 5000 Fax: +61 8 9221 2068

ABN: 61313082730

Some of the specific matters elaborated in your Terms of Reference, for example, limitation legislation and evidence law, have been considered by SCAG. In relation to the latter, some jurisdictions have enacted uniform evidence laws and the WA Parliament in 2004 considered a Bill to reform limitation law in WA. I propose to reintroduce that Bill in the current session of the WA Parliament. Again, as you will be aware, these specific matters are within State legislative areas of responsibility and may be beyond Commonwealth legislative competence. Of course, to the extent that Commonwealth legislation is constitutionally valid, section 109 of the Commonwealth Constitution will ensure that this legislation prevails (over inconsistent State legislation) and, therefore, achieves, from one perspective, harmonisation of the law in Australia. However, I presume that your Committee is not interpreting its Terms of Reference to require the Committee to explore the extent of Commonwealth legislative power in these areas of the law with a view to recommending Commonwealth legislation to override State laws. For example, I presume that the Committee will not be recommending a bilateral treaty between Australia and New Zealand to cover such topics as evidence and limitations so as to utilise the external affairs power as a basis Commonwealth legislation overriding State laws. In my view, "harmonisation within Australia's legal system" can and has been achieved by cooperation between the Commonwealth, States and Territories, for example, by cooperative legislative arrangements and national model laws, including where those laws are based (like the corporations law) on State references of power to the Commonwealth.

Thank you for informing me of your Committee's interest in these matters and I would appreciate being kept informed of your Committee's work on its Reference.

Yours Sincerely



JIM MCGINTY MLA
ATTORNEY GENERAL

Cc: / All Attorneys General
/ Hon Dr G Gallop MLA, Premier Western Australia

- 4 APR 2005