



Hon. Robert McClelland MP
Attorney-General

TRANSCRIPT

**PRESS CONFERENCE WITH COMMONWEALTH SECRETARIAT DEPUTY
SECRETARY-GENERAL MMASEKGOA MASIRE-MWAMBA
COMMONWEALTH LAW MINISTERS MEETING
INTERCONTENTAL HOTEL, SYDNEY
Monday 11th July 2011**

Subject: CLMM, Climate change, International child abduction, Cybercrime

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**MMASEKGOA
MASIRE-MWAMBA:**

Good afternoon ladies and gentlemen. Thank you very much for joining us this afternoon. We wanted to take this opportunity to brief you on the reason we are here. And on the deliberations that are currently taking place with respect to the Law Ministers Meeting. My name is Mmasekgoa Masire-Mwamba, the Deputy Secretary General from the Commonwealth Secretariat. Amongst the areas that I am responsible for, in my Office is the legal and political development.

By way of background, we have the Law Ministers meeting that is scheduled to start tomorrow. As I speak to you we are in the midst of a senior officials meeting which is a preparatory meeting for the Ministers tomorrow. The current attendance level is that we have 41 delegations that are present out of which 40 of them are led at Minister level or Attorney-General level. This is the very first time that the Commonwealth Law Ministers Meeting has been held in Australia. The delegates will amongst other things be discussing detention and overcrowding in prisons, judicial independence, administration of justice, counterterrorism, provision of legal aid and assistance and Commonwealth action in terms of international law, juvenile justice and human trafficking. In a nutshell we are looking at legal issues that are cross-cutting in nature, legal issues which are not specific at a country level but from a Commonwealth point of view, legal issues that are very important. We will talk for example on counterterrorism we are also talking about the need for the countries to collaborate and to be able to share information and expertise in responding to the challenge of new technologies, the challenge of terrorism as a whole.

The second point which I wanted to highlight is that the Commonwealth comprises 32 small States; these are small developing countries, small states which in some cases are particularly vulnerable to the effects of climate change. They are particularly vulnerable from a financial and capacity building point of view and therefore it creates a fora that is a little bit ahead in terms of positioning and



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articulating the challenges faced by small States whether they are climate change, financial, economic development and legal as we are meeting here today.

With that brief introduction maybe I can just comment on a final point being our engagement with respect to youth and how it is we are incorporating and building a platform for youth to participate. Yesterday we had a specialised session that was looking principally at youth in the law, the challenges of professionalism, the challenges of expanding justice making and access to justice and therefore tapping onto the young lawyers from a *pro bono* point of view but also from their responsibility in making their profession and adhering to standards of regulation and conflict situations. I thank you very much and would like to invite the Attorney-General to make some comments.

**ROBERT
McCLELLAND:**

Thank you, I'd obviously would like to formally welcome to Australia, Mrs Masire Mwamba. As she has indicated we have already had a very fruitful discussion with representatives of the legal profession from the South Pacific, and in particular young lawyers from the region. Just talking through their challenges, issues in respect to capacity building, ongoing training, interaction, mentoring and so forth.

Just in terms of the significance of the Commonwealth to Australia, I'd thought it may be worth mentioning, that this is the largest meeting of Law Ministers in the world. The Commonwealth covers about 2 billion people from every continent in the world, every religion in the world. The trade between Commonwealth countries was estimated three years ago to be in the order of \$4 trillion and Australia's foreign trade with Commonwealth countries makes up about 20% of our overseas trade.

In terms of those issues of cooperation that Mrs Masire-Mwamba has indicated, all crucial and all tremendously important. Indeed, the theme of the conference is building a just and secure Commonwealth and that means not only addressing those issues such as cooperation in respect to criminal law, including counterterrorism, cyber security matters but also more that we can do in the civil law area, given the extent of that international trade. But also specific issues that arise such as forced and servile marriage, people trafficking and even international child abduction.

Having the opportunity to draw together the expertise from around the Commonwealth to look at common challenges against the backdrop of our common legal heritage is a particularly constructive thing to do.

Thank you and any questions we are very happy to answer.

JOURNALIST: Can you maybe drill down some of those issues that you are going to be looking at. Are there any areas of change? What about child abduction for example which has had publicity in recent times?



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McCLELLAND: Yes. Certainly there will be a paper presented and discussion will be around encouraging countries to be parties to the Hague Convention on Child Abduction where there are protocols in place for those issues to be determined by local courts - applications from overseas but determined by local courts. That will be significant.

The fact of cooperation with the justice system and the protection of witnesses who have been the victims of people trafficking will be a relevant issue. I mentioned also the issue of forced and servile marriage where my colleague Brendan O'Connor, the Minister for Home Affairs has been doing some work in Australia. That will be also a topic of discussion in a number of Commonwealth countries including issues here in Australia where there needs to be protection for those who are vulnerable to that situation right through to looking at issues such as climate change which is particularly relevant to our area.

I met for instance, yesterday, a young lawyer from Tuvalu who told me that ten years ago, Tuvalu had an additional island as part of their country and it's gone. So, he indicated to me that climate change was very real indeed from their point of view. But as the paper indicates, it will also create its own migration pressures as a result of literally land being taken away but also resources access being taken away. So, this will be a topic of discussion and how we in combination get our legal framework consistent among Commonwealth countries.

JOURNALIST: Can we go back to child abduction. Is that paper prepared by your Office, and are you proposing any changes to the laws either domestically, or do you think there should be better international laws. I know the father of the little boy who was recovered in the last 12 months from Amsterdam was proposing there be changes. Can you elaborate on that? And do you think there should be changes?

McCLELLAND: The paper to be considered is from the Commonwealth Secretariat. Certainly in Australia we have the Family Law Council examine our laws and from the Australian perspective, we think there is one gap in the law.

This is if a child is taken prior to court proceedings but fails to return despite an order of the Court, and that is certainly an issue that we are looking at. But, there is already in existence penalties within the *Family Law Act*, including the ability for the Family Court to impose a penalty of three years imprisonment in respect to taking a child, or abducting a child, contrary to an order of the Court or indeed when proceedings are pending.

The advice of the Family Law Council also raised the point that introducing a specific crime in the Criminal Code in respect to child abduction could actually make securing returns more difficult. In other words, driving the party who has taken the child or abducted the child further underground and making conciliation and resolution of the matters more difficult.

That is in the context where there have been obviously some very high profile and clearly distressing cases; obviously extremely distressing for those involved.

But that paper as I recall, isn't proposing a model law around the Commonwealth as opposed to encouraging nation states to sign up to the principles of the Hague Convention. There are a number of topics where the Commonwealth Secretariat will be proposing the adoption of model laws, but it is my recollection that that's not one of those areas.

MASIRE-

MWAMBA:

If I can maybe just pick up on that point. And indicate, that indeed, of the two things that bind the Commonwealth. The common language and the common legal systems are top in terms of what pulls us together. What that allows us to do in a forum such as this one is the issue of model laws, the issue of capacity building and the issue of implementing and/or responding to international treaties. And when we speak specifically about crimes such as child abduction, human trafficking and the forced child labour and so on, it becomes very important that we are in a forum where we can, having similar legal jurisdictions, we can then take experiences and have a more effective experience sharing from the member states that are there. But as the Attorney-General said what we are trying to do with some of these papers is that we are trying to give effect to the international provisions because a lot of these, although we may look at them from a national level, a lot of them, child abduction for example, taken at an international level is a very serious and a very complex in terms of trying to find how we can collaborate and track down and put in place the necessary legislation. So what we are doing with a number of these provisions in this conference is urging Member states and helping member states to look at their own domestic environment so that their ability to collaborate is better enhanced because we can then follow up with each other.

JOURNALIST: Can you talk about cybercrime, what you will be discussing and how big an issue that is?

McCLELLAND: That's another very good example of the Commonwealth looking at applying international principles, in this case the *European Convention on Cybercrime*, applying that into domestic law. That is one area, where it will be recommended that the Commonwealth Secretariat be engaged to develop model laws.

We have just introduced, in fact in the last couple of weeks, laws into the Australian Parliament to give effect to that *European Convention on Cybercrime*. We do have some ideas as to how a legal framework can be created to implement that in our legal system and we will be certainly be offering that to the Secretariat.

But equally Canada and the United Kingdom have similarly introduced legislation and having the Secretariat pull that together will be a very useful exercise. The paper acknowledges the extent of cybercrime at all levels, whether that is cyber-espionage and the taking of intellectual property, whether it's the use of the internet to commit crimes, most reprehensibly in respect to child pornography. It notes that as a result of international cooperation, a paedophile ring of about 70,000 people was detected and highlighted the importance of having not only laws in place but also practices in place.

For instance, the European Convention requires countries to have in place a 24 hour watch office. So if they receive a request from an overseas country to put a hold on, or put their foot on some communication, whether that be internet or telecommunications, that they put their foot on it to hold it pending the issuing of warrants and so forth.

So having that international cooperation is important and your question is very topical, because in that area cybercrime can be as easily perpetrated from any Commonwealth country against another Commonwealth country as it can from a computer terminal being in the next street within the same country.

And in this case particularly useful because as Mrs Masire-Mwamba indicated that we are there looking out as Commonwealth countries to an international instrument that exists outside the Commonwealth. But because of our common heritage, have that ability to look at translating the application of those international principles into our broadly consistent domestic laws.

JOURNALIST: How big a problem is it though? What are the main areas that are causing concern?

McCLELLAND: Cybercrime is an increasing area of risk. Research undertaken in the United Kingdom indicated that it is probably the case of £16 billion worth of intellectual property is taken from the United Kingdom each year and while they have a bigger economy and a greater population, we would think on a proportionate basis, Australia would be looking at some of those losses.

JOURNALIST: Can you put a figure on ours, can you give us a local perspective?

McCLELLAND: There hasn't been that kind of research done in Australia. But we would be thinking on a proportionate basis, we would still be looking at very very substantial amounts. In terms of the use of the internet, as I have said for child pornography and grooming, there was that network of 70,000 paedophiles, with hundreds of people prosecuted and I think certainly more than two hundred children rescued from situations of abuse for those purposes as a result of international cooperation.

The other area where the internet can be used for crime is in respect to identity theft. And figures have recently gone out where one in six Australians has been the victim of identity theft over the internet or known someone who has. And 9 out of 10 Australians are concerned of the security of the internet in terms of their personal information. These are very substantial issues. And as the growth in use of and traffic on the internet grows exponentially, the challenges posed by these issues also grow exponentially and the need of course, as far as we can be to be ahead of those developments.

JOURNALIST: So those laws have been introduced into the Parliament? What would they do? And are you recommending that other Commonwealth countries have a look at those?

McCLELLAND: Yes. Certainly, the Secretariat will pull together, our work, Canada and the United Kingdom and other countries with a view to developing a model law. But essentially what our laws do, firstly there is that structure set in place where we will have that 24 hour facility to react to requests for assistance from international law enforcement agencies.

Our law enforcement agencies and our intelligence agencies will be able to give notice to internet service providers and carriers that they intend to seek a warrant and requesting them, and the request is a lawful request, to hold that information for a period of thirty days to enable them to obtain the warrants to secure that information. There are also in place procedures for Australian law enforcement authorities to exchange that information with foreign law enforcement authorities as part of the mutual criminal law cooperation schemes that are in place. But that will require a scheme. So essentially, it is to assist law enforcement agencies to react instantly to requests from overseas or to make requests to overseas countries to put their foot on the electronic communication to stop it blowing away in cyberspace while they go away and recover and obtain the necessary criminal law enforcement warrants and then exchange information as part of that broader assistance.

JOURNALIST: And that model can be used by other countries?

McCLELLAND: That is essentially part of the theme.

MASIRE-

MWAMBA: If I can just draw on that and first of all acknowledge that this is indeed an issue that is predominant and very urgent across the Commonwealth for two primary reasons. First of all, is cybercrime is dynamic in nature. As we speak there are new challenges that are being experienced throughout. And what also happens, because the Commonwealth is a body that incorporates some of the most developed countries, for example five of our member states being part of the G20, to some of the least developed countries. There is a whole spectrum of experiences that is represented with respect to exposure and experience in cybercrime. Not only is it an opportunity for us to look at model laws, but it is also an opportunity for countries that may have not been as exposed to some of the other challenges of cybercrime to be able position and to be able to take steps that are required specifically because of the mutual assistance program that because cybercrime is also not confined to the borders of any country, and therefore it needs and dictates that for any country to be successful there is a measure of mutual assistance that is going to be required. And therefore, it is a very urgent issue for us and I think one that will be with us for quite some time. And it will evolve over time.

McCLELLAND: That's absolutely important. As part of the forum, there will be presentations from a number of experts, in this case, there be presentations from the Australian Federal Police and another specialist in technology so we will be able to talk about the Australian experience. The Australian Computer Emergency Response Team looks at cyber issues as well as the Cyber Security Operations Centre that has been

established in the Department of Defence so we will be able to talk not only about legal structures but also practical measures as Mrs Masire-Mwamba has indicated.

Thanks very much for coming along. It's going an interesting week and a very enjoyable week. And certainly around this part of Sydney there will be a number of foreign guests walking around visiting the sites when they are not working. I'm sure Sydney-siders and all of Australia will make them very welcome indeed. Thank you.

MASIRE-

MWAMBA: Thank you very much Attorney-General. And also thank you very much members of the press. We are very excited to be here this week. We are coming back again, not to Sydney, but coming back to Australia at the end of the year in October for the Commonwealth Heads of Government Meeting. Australia is very much part of the Commonwealth and we are recognising and celebrating that this year. Thank you.

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