

REPORT TO LAW MINISTERS

REPORT OF THE MEETING OF
SENIOR OFFICIALS OF COMMONWEALTH LAW MINISTRIES

KINGSTOWN, ST VINCENT AND THE GRENADINES
18 NOVEMBER 2002

1. Senior Officials of Commonwealth Law Ministries met in Kingstown, St Vincent & the Grenadines, on Monday 18 November. The Meeting was chaired by Mr Donald Piragoff, Senior General Counsel in the Department of Justice, Canada, and was attended by Senior Officials from 31 countries. The Meeting agreed recommendations to Ministers as to the agenda of the Law Ministers' Meeting and recommended that they elect the Honourable Judith Jones-Morgan, Attorney General of St Vincent & the Grenadines to chair their Meeting. Senior Officials noted with pleasure that the Honourable Dr Ralph Gonsalves, Prime Minister and Minister for Legal Affairs of St Vincent & the Grenadines would be present for parts of the Law Ministers' Meeting, and recommended that Law Ministers should elect him as Co-Chair of their Meeting.
2. Senior Officials considered a number of Model Bills which featured on the draft agenda of the Law Ministers' Meeting. All had been prepared in response to a perceived need for draft legislation reflecting best international practice and suitable for adoption in Commonwealth jurisdictions.
3. Senior Officials recommend that Law Ministers endorse the model Bill on Electronic Transactions (LMM(02)11).
4. They similarly recommend the endorsement by Law Ministers of the model Bill on Electronic Evidence (LMM(02)12). Senior Officials suggested that the Commonwealth Secretariat add a note to clause 4 of the text of the Bill to clarify its effect, notably its preservation of applicable rules as to the standard of proof in civil and criminal matters and the admissibility or non-admissibility of hearsay evidence.
5. Senior Officials considered the model Bill on Computer and Computer Related Crime (LMM(02)17). They recognised the need to ensure that the Bill did not criminalise the manufacture or possession of software held for the legitimate purpose of testing the security of computer systems, or reverse the onus of proof in such cases. With this in mind Senior Officials recommend that Law Ministers endorse the draft model Bill with the substitution for clause 9(3) of the text as printed on page 18 of LMM(02)17 of the following:
 - (3) Where a person possesses more than [to be inserted] item(s) mentioned in subparagraph (i) or (ii), a court may, having regard to all the circumstances, infer that the person possesses the item with the intent that it be used by any person for the purpose of committing an offence against section 5, 6, 7 or 8.
6. Senior Officials also considered the model Bill on the Protection of Personal Information (LMM(02)8). They recognised that Law Ministers would wish to consider this model Bill alongside those on Freedom of Information (LMM(02)6) and Privacy (LMM(02)7), which Senior Officials agreed at their November 2001 Meeting to commend to Law Ministers. On the Bill on the Protection of Personal Information, Senior Officials agreed that the Bill

needed more reflection on the balance between the protection of privacy and the legitimate needs of Governments in respect of law enforcement and national security. Senior Officials recommend that Law Ministers refer the matter for further consideration, asking the Commonwealth Secretariat to prepare an amended draft in the light of written comments from Governments to be received by a specified date, the draft to be considered at the next meeting of Senior Officials.

7. Senior Officials advise Law Ministers that they may be reconvening in the course of the week to consider making recommendations affecting the text of the draft model Bill on Freedom of Information to ensure that, taken with the related model Bills, it would satisfy the requirements for a European Union adequacy finding.

St Vincent and the Grenadines
18 November 2002