



Law and Justice (Cross Border and Other Amendments) Bill 2009

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Law and Bills Digest Section

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Law and Justice (Cross Border and Other Amendments) Bill 2009

Date introduced: 19 March 2009

House: House of Representatives

Portfolio: Attorney-General

Commencement: Royal Assent

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of the Law and Justice (Cross Border and Other Amendments) Bill 2009 is to amend existing legislation that facilitates law enforcement, judicial procedures and dispute resolution across more than one jurisdiction. Within this broad cross-jurisdiction theme, each of the three schedules of the Bill deal with distinct issues. Notably, Schedule 1 will facilitate the operation of the Cross Border Justice Scheme to the Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Aboriginal lands of the central desert region of Australia to enable judicial officers, police and other officials to deal with offenders from any of the participating jurisdictions (Western Australia, South Australia and the Northern Territory).

Background

The Bill makes a number of amendments that are intended to make legal processes more flexible, cheaper and less complicated when more than one jurisdiction is involved. The Bill also amends existing legislation to confirm the capacity of a prisoner to give evidence by audiovisual link before an interstate court, authority, tribunal or person.

Cross Border Justice Scheme

An initiative of a working group of the Standing Committee of Attorneys-General comprising Western Australia, South Australia and the Northern Territory has been established to streamline the delivery of justice services and improve public safety in cross border regions in those jurisdictions. This initiative was developed and planned since 2003 and was agreed to in 2007, before the Rudd Government was elected. It has been a cooperative arrangement between the jurisdictions. At the time of agreement, South Australian Premier Mike Rann said:

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Anecdotal reports from police suggest the investigation of many minor offences is not pursued owing to the expense and time obtaining an extradition warrant to a court authorised to hear the charge. If that is true then it is not in the interests of justice and needs to be addressed.¹

Inspector Ashley Gordon from the South Australian Police has recorded that:

The concept was initially modelled on the Ngaanyatjarra Pitjanjatjara Yankunytjatjara Women's Council (NPYWC), a non-Government organisation who provides support and advocacy services for Aboriginal women and had already been operating under a tri-State model in the area. They had achieved numerous successes by operating as one organisation across the border of Western Australia, Northern Territory and South Australia, recognising that these borders mean little to the local Anangu people and that State provided services were hampered by jurisdictional boundaries.²

Explicitly, the initiative, known as the Cross Border Justice Scheme, has a number of strategic objectives including the development and implementation of legislation that allows police, courts and corrections to operate in a multi-jurisdictional environment, free of the constraints of State borders.

The Ngaanyatjarra Pitjanjatjara Yankunytjatjara (NPY) Aboriginal lands of the central desert region of Australia cover a vast area of some 450,000 square kilometres.³ This is where the Cross Border Justice Scheme will operate. Within this area lie the State borders of Western Australia, South Australia and the Northern Territory. See the map on the following page for a visual representation of the area.⁴

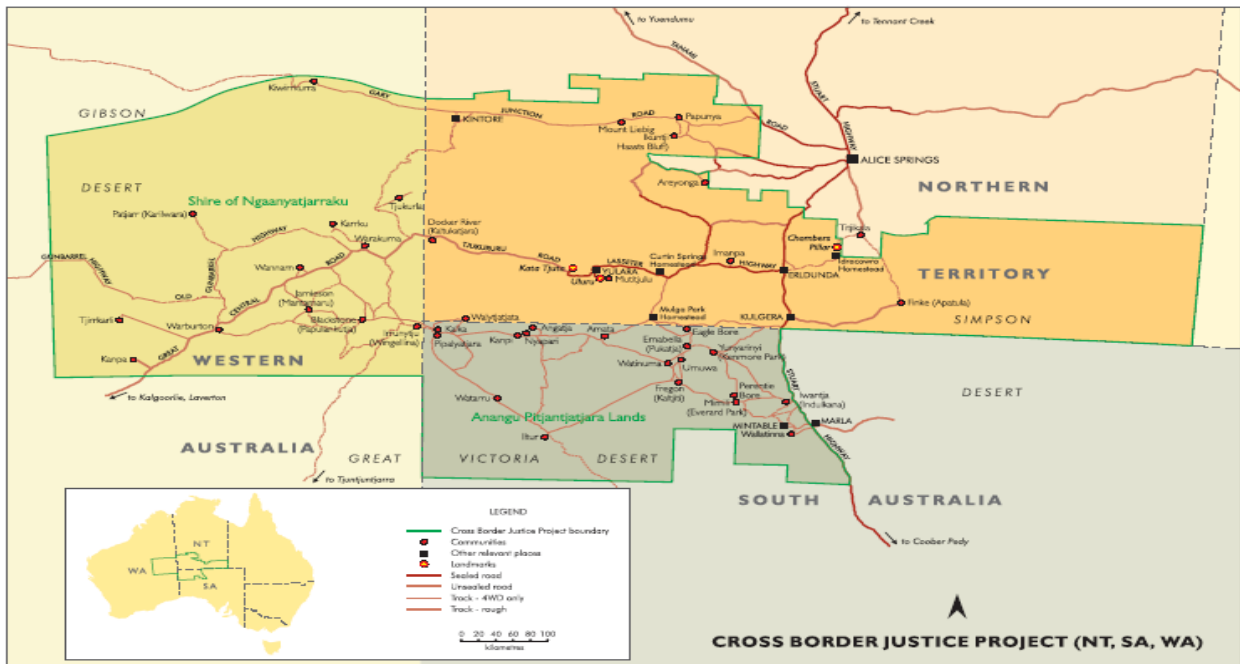
Because of the frequently moving lifestyle of the local people in the NPY lands, as Inspector Gordon notes above, law enforcement and other authorities in Western Australia, South Australia and the Northern Territory have been hindered by varying protocols and legislation.

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1. Rann, M. 'Government agrees to cross border justice scheme', Media Release, 1 October 2007, accessed at <http://www.ministers.sa.gov.au/news.php?id=2221> on 15 April 2009.
 2. Gordon, A. 'The Cross Border Justice Project – Enhancing Justice and Victim Services in the Central Desert Region', available electronically [here](#). Used with permission, 25 March 2009.
 3. *ibid.*
 4. This map is from Inspector Ashley Gordon's article, Note 2. It is best viewed on-screen or printed in colour.

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Prepared by Patricia Goodrich, April 2004

The Cross Border Justice Scheme will be a service to approximately ten thousand people living on four hundred thousand square kilometres of the remotest part of Australian land commonly referred to as the Pitlands.⁵ The Cross Border Justice Scheme is bordered by the administrative centres of Alice Springs, Kalgoorlie in Western Australia and Port Augusta in South Australia. It includes the world recognised Uluru National Park.⁶

Legislation at the State and Territory level is required to facilitate the operation of this Scheme:

- Western Australia passed the *Cross Border Justice Act 2008*⁷;
- South Australia has introduced the Cross Border Justice Bill 2009⁸;
- The Northern Territory has passed the *Cross Border Justice Act 2009*.⁹

5. Coates, R. 'Towards Mutual Benefit – The Inquiry into Customary Law in the Northern Territory of Australia and other Initiatives', Northern Territory Department of Justice, p. 11. This paper was presented in 2003 by Richard Coates at the Australasian Law Reform Agencies Conference, Wellington, April 2004 and is available electronically [here](#).

6. *ibid.*

7. Details of the Bill can be found at the Western Australian Department of Premier and Cabinet's Parliamentary website, [here](#).

8. The text of the Bill can be found at the South Australian Government's website, [here](#).

9. The text of the Northern Territory Act can be found [here](#).

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Committee consideration

On 19 March 2009, the Senate referred this Bill to the Senate Legal and Constitutional Affairs Committee for inquiry and report by 7 May 2009. At the date of publication of this Digest, there have been no published submissions to the Committee. Submissions closed on 9 April 2009. Details of the Committee's Inquiry can be found [here](#).

Financial implications

The Explanatory Memorandum notes that the Bill will not have any significant financial impact.

Key issues

Cross Border Justice Scheme

The Cross Border Justice Scheme might be used as a test case for other jurisdiction harmonisation projects. In 2006, the Attorney-General's Department made a submission to the Standing Committee on Legal and Constitutional Affairs Inquiry into Harmonisation of Legal Systems Relating to Trade and Commerce on the issue. In that submission, the Department discusses the *Service and Execution of Process Act 1992* (SEPA) and stated:

Other possible amendments to improve the efficiency and effectiveness of SEPA that are currently under consideration include:

Amendment to Part 7 of SEPA, which concerns the enforcement of fines imposed by courts of summary jurisdiction to eliminate existing inconsistencies with State bail legislation.

Amendments to SEPA to accommodate the interstate taking of evidence by audio or video link under State and Territory legislation [*Note: this Bill makes these amendments*]

Amendments to allow for warrants issued by parole boards and similar bodies to be executed interstate, and

Amendments in relation to applications for summary judgment against interstate defendants.¹⁰

10. Attorney-General's Department, Supplementary Submission to the Standing Committee on Legal and Constitutional Affairs: Inquiry into Harmonisation of Legal Systems Relating to Trade and Commerce, 25 May 2006, available [here](#).

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There is still work to do on the harmonisation of jurisdictional justice matters and it is not clear how much progress the Standing Committee of Attorneys-General has made in the consideration of these possible amendments.

Trans-Tasman Treaty

The Trans-Tasman Court Proceedings and Regulatory Enforcement Treaty was signed by Australia and New Zealand in July 2008. This Bill will implement some measures that are included in the Treaty.

This Bill will amend the range of proceedings covered by the cooperative scheme established between Australia and New Zealand for the service of subpoenas across the Tasman in all civil proceedings, including family law proceedings.

Main provisions

Schedule 1 – Cross Border Justice Scheme

Items 1 and 2 of Schedule 1 of the Bill will amend the *Service and Execution of Process Act 1992*.

While the Cross Border Justice Scheme will be established under State and Territory legislation, the amendments contained in Schedule 1 are necessary to ensure that SEPA will not override arrangements prescribed under the scheme where those arrangements would be inconsistent with arrangements under SEPA.¹¹

Item 1 will insert a new definition of ‘cross-border laws’ in subsection 3(1) of the SEPA. **Proposed paragraph 3(1)(a)** will define cross-border laws as the cross border laws of a participating jurisdiction, within the meaning of the *Cross-Border Justice Act 2008* (WA).

Item 2 will make it clear that the cross-border laws that are unaffected by SEPA will continue to operate. Where there is a direct inconsistency between SEPA and the cross border laws, **proposed subsection 8(3A)** will operate to disapply SEPA¹².

11. Explanatory Memorandum, p. 1.

12. In this context, “disapply” is a technical legal drafting term, meaning to decline to apply a law that previously applied: <http://en.wiktionary.org/wiki/disapply>, accessed 14 April 2009. Note that it is unusual (but not problematic here) for a federal law to disapply itself from the operation of state laws so that inconsistent state laws are preserved from becoming invalid by virtue of section 109 of the Constitution.

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Schedule 2 – Amendments relating to taking evidence by audio or audiovisual link

A new definition of ‘audio link’ is inserted into SEPA by **item 1**. The broad definition ensures consistency with the range of approaches taken under State and Territory legislation.

Similarly, **item 2** inserts a new definition of ‘audiovisual link’ into SEPA.

Consequential amendments replacing references in the SEPA to ‘video link or telephone’ with ‘audio link’ or ‘audiovisual link’ are listed in **items 3, 4, 5, 7, 9, 10, 11, 12, 14, 15, 17, 18, 19, 20 and 23**. These amendments will explicitly allow prisoners to give evidence by audio or audiovisual link in proceedings interstate.

Schedule 3 – Amendments relating to New Zealand

This Schedule will make amendments to the *Evidence and Procedure (New Zealand) Act 1994*. This Act provides for co-operation between Australia and New Zealand in relation to the service and enforcement of subpoenas; the taking of evidence by the courts, by video link or telephone; the taking of judicial notice of public and official acts and documents.

Item 1 creates a new definition of ‘excluded family proceedings’ into the *Evidence and Procedure (New Zealand) Act 1994* (EPNZ Act). The importance of this provision is that it explicitly excludes any proceeding made under the Convention on the Civil Aspects of International Child Abduction. The provision notes that this Convention was signed at The Hague on 25 October 1980. Without this exclusion, the Convention could not operate efficiently as it is intended. The Convention was drafted to:

protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access.¹³

The Convention requires that Contracting States ‘shall act expeditiously in all proceedings seeking the return of children’¹⁴. It seems appropriate then, that this Bill excludes those proceedings to ensure the Convention can achieve its goals. This exclusion also exists in New Zealand’s corresponding legislation.

The definition in **proposed subsection 3(1)** also excludes those people whose matters are dealt with by State and Territory guardianship boards. It would be outside the scope of the SEPA to facilitate the interstate service of subpoenas issues by State and Territory guardianship bodies. Therefore, this amendment keeps the procedures consistent as it

13. Hague Convention, preamble. Available on the Treaties Series Database at <http://www.austlii.edu.au>

14. Hague Convention, Article 11.

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would be undesirable (and unintended) to be able to serve subpoenas in New Zealand but not between states and territories in Australia.

The remaining items amend the EPNZ Act to remove the exclusion that currently applies to the service of subpoenas relating to family law proceedings. The items are technical in nature. **Item 3** will amend section 7 to expand the application of Part 2 of the EPNZ Act to family proceedings other than ‘excluded family proceedings’. **Item 4** will make consequential amendment to subsection 7(b). **Item 6** will provide that the changes will apply to proceedings that are *commenced* on or after the commencement of these provisions. **Item 7** will make a technical amendment to subsection 25(3) of the EPNZ Act regarding the taking of evidence within the permitted powers under New Zealand law.

Concluding comments

This Bill makes necessary amendments to the existing service and evidence rules of procedure where a matter crosses jurisdictional borders. As mentioned earlier, the state-based legislative regime introduced to facilitate the Cross Border Justice Scheme might be used as a model for similar future harmonisation projects and so the success of the Cross Border Justice Scheme should be monitored. To date, this Bill has not attracted much media scrutiny. The necessary State legislation for the South Australian, Western Australian and Northern Territory jurisdictions has been introduced or passed. New Zealand has also already made the necessary corresponding changes to its legislation.

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