

Additional comments by Liberal Senators

1.1 Liberal senators do not disagree with the committee's recommendation that the bill be passed, but are nonetheless concerned about the issues raised in the submission of the Aboriginal Legal Rights Concerns of the Aboriginal Legal Rights Movement (ALRM) about aspects of the cross border justice proposal.

1.2 The majority of the ALRM's submission focussed on the proposed South Australian legislation rather than the Bill before the committee. In that submission, the ALRM drew to the committee's attention a number of concerns that the organisation held about the South Australian legislation, and about the Cross Border Justice scheme in general.

1.3 The ALRM was highly critical of the SA legislation, describing it as 'extraordinarily complex' and 'a sledgehammer to crack a walnut'. The submission identified a number of points of concern, some of which included:

- the SA Bill allows for reversal of the onus of proof in relation to the facts of connection to the Cross Border Region, which ALRM considered inappropriate in relation to matters relevant to proof of an arrest;
- the laws will operate retrospectively and can be used with respect to offences committed before the commencement of the legislation;
- the legal concept of residence is very elastic particularly when the English common law principles are to be applied to nomadic people. ALRM claimed that there is the potential for real incongruity in applying English common law concepts of residence to such persons;
- there is a lack of clarity about appeals processes;
- issues relating to resource implications of the Cross Border Legislation for ALRM services and other legal aid provision;
- significant financial implications for the commonwealth resulting from training needs for ATSILS lawyers and field staff, as well as Legal Aid Commission lawyers;
- potentially limited cross admission for its practitioners in respect of Western Australia and Northern Territory Law;
- questions about the appropriate extension of Cross Border principles to Guardianship Boards and Mental Health Legislation;
- questions about Guardianship Orders for persons with mental handicaps from acquired brain injury being extended to the Tristate Region;
- possibility of custodial sentences being imposed is inevitably increased by aggregation of interstate matters; and a danger of forum shopping;
- a lack of clarity about arrest notifications;

- concerns in relation to the operation of the Coroner's Jurisdiction under the Tristate Legislation and regarding the proposed affect of the Legislation on the Coroner's Jurisdiction on Deaths in Custody;
- concern is that persons remanded in custody or imprisoned as a result of the scheme could be imprisoned a long way from home causing significant social and family disruption to the members of these communities.

1.4 Liberal Senators agree that the South Australian legislation is out of scope of the committee's inquiry into the Bill, and that the detail and operation of that legislation is a matter for the South Australian Parliament.

1.5 However, Liberal Senators wish to emphasise that in supporting the bill, they do not condone aspects of the cross border laws contained in the South Australian and other State and Territory legislation, such as the retrospective application of the laws.

1.6 Liberal senators urge the States and Territories to give consideration to the issues raised by the ALRM in its submission to this committee.

Senator Guy Barnett Senator Russell Trood Senator Mary Jo Fisher
Deputy Chair