The Senate

Standing Committee on Legal and Constitutional Affairs

Law and Justice (Cross Border and Other Amendments) Bill 2009 [Provisions]

May 2009

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Substitute Member

Senator Scott Ludlam, AG, WA replaced Senator Sarah Hanson-Young for the committee's Inquiry into the Law and Justice (Cross Border and Other Amendments) Bill 2009

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TABLE OF CONTENTS

MEMBERS OF THE COMMITTEE iii

RECOMMENDATIONS vii

CHAPTER 1 1

Introduction 1

Conduct of the inquiry 1

Acknowledgement 1

Scope of the report 2

Note on references 2

CHAPTER 2 3

Background to and overview of the Bill 3

Service and Execution of Process Act 3

Evidence and Procedure (New Zealand) Act 4

The Law and Justice (Cross Border and other Amendments) Bill 4

Key provisions of the Bill 5

Chapter 3 9

Issues 9

Support for the Bill and the Cross Border Justice Scheme 9

Concerns of the Aboriginal Legal Rights Movement 10

Committee comment 11

Additional comments by Liberal Senators 13

Additional Comments by the Australian Greens 15

APPENDIX 1 19

SUBMISSIONS RECEIVED 19

APPENDIX 2 21

WITNESSES WHO APPEARED BEFORE THE COMMITTEE 21

RECOMMENDATIONS

Recommendation 1

3.16 The committee recommends that the Bill be passed.

CHAPTER 1

Introduction

1.1 On 19 March 2009, the Senate referred the Law and Justice (Cross Border and Other Amendments) Bill 2009 (Bill) for inquiry and report by 7 May 2009.

1.2 The Bill was introduced in the House of Representatives on 19 March 2009 by the Attorney-General, the Hon. Robert McClelland MP. This Bill seeks to amend two Acts: the *Service and Execution of Process Act 1992* and the *Evidence and Procedure (New Zealand) Act 1994*.

1.3 Proposed amendments to the Service and Execution of Process Act will, if passed, establish the Cross Border Justice Scheme 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); and clarify that prisoners may give evidence by audio or video link when subpoenaed to give evidence in interstate court or tribunal proceedings.

1.4 Proposed amendments to the Evidence and Procedure (New Zealand) Act are intended to expand the range of proceedings covered by the scheme established between Australia and New Zealand for the service of subpoenas in certain family law proceedings between the two jurisdictions.

Conduct of the inquiry

1.5 The committee advertised the inquiry in *The Australian* newspaper on 25 March 2009. Details of the inquiry, the Bill and associated documents were placed on the committee's website. The committee also wrote to organisations and individuals, inviting submissions by 9 April 2009.

1.6 The committee received 2 submissions which are listed at Appendix 1. Submissions were placed on the committee's website for ease of access by the public.

1.7 The committee held a public hearing in Melbourne on 28 April 2009, and received evidence from representatives of the Attorney-General's Department. A list of witnesses who appeared at the hearing is at Appendix 2, and copies of the Hansard transcript are available through the internet at http://www.aph.gov.au/hansard.

Acknowledgement

1.8 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearings.

Scope of the report

1.9 Chapter 2 provides an overview of the Bill. Chapter 3 discusses the key issues raised in submissions and evidence.

Note on references

1.10 References in this report are to individual submissions as received by the committee, not to a bound volume.

1.11 Due to delays in the production of the Hansard Transcript, this report was prepared without reference to evidence received at the public hearing.

CHAPTER 2

Background to and overview of the Bill

2.1 The Law and Justice (Cross Border and Other Amendments) Bill 2009 (Bill) seeks to amend the *Service and Execution of Process Act 1992* and the *Evidence and Procedure (New Zealand) Act 1994.*

Service and Execution of Process Act

2.2 The *Service and Execution of Process Act 1992* (SEPA) established a cooperative scheme for the service and execution of process and the enforcement of judgments between States and Territories.[1] This Act, which itself replaced the original *Service and Execution of Process Act 1901*, is the principle legislation dealing with the interstate service of legal process and the enforcement (or execution) of court orders outside the State or Territory in which they are made.

2.3 As explained in the Bills Digest for the 1992 Act, the need for Commonwealth legislation in relation to the service and execution of legal process arose from the independent legal nature of the States and Territories. The legislation is necessary to enable persons (including law enforcement authorities) in one State or Territory to take legal proceedings against a person in another state or territory to enforce their legal rights or to enforce the criminal law.[2]

2.4 The original 1901 Act, which was amongst the first passed after Federation (Act No. 11) enabled a writ or other process commencing civil and criminal proceedings in State and Territory courts to be served throughout Australia.[3] It also provided that other process in proceedings, including process to secure witnesses (e.g. subpoenas and summonses) could be served throughout Australia. It also established procedures for the execution of warrants for the apprehension of persons throughout

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1 'Process' means the documents by which legal proceedings are commenced, or by which witnesses are brought before the court. 'Service' is the delivery of a writ, summons, subpoena, or other document relating to court proceedings. 'Execution' is the enforcement of a court order, such as a warrant for the apprehension of a person. Department of the Parliamentary Library, Service and Execution of Process Bill 1992, *Bills Digest*, 1992, p. 1.

2 Department of the Parliamentary Library, Service and Execution of Process Bill 1992, *Bills Digest*, 1992, p. 1.

3 The Hon. Peter Duncan MP, Parliamentary Secretary to the Attorney-General, Second Reading speech on the Service and Execution of Process Bill 1992, *House of Representatives Hansard*, 9 Nov 1992, p. 2941.

Australia and procedure by which orders given by a court in one State or Territory may be enforced in another State or Territory.[4]

2.5 The original Act was extensively updated by the 1992 Act, following a detailed and lengthy examination of the subject by the Australian Law Reform Commission. Major objectives of the 1992 reforms were to simplify procedures for the interstate service of process and enforcement of judgments and extend their application to tribunals exercising adjudicative functions.[5]

Evidence and Procedure (New Zealand) Act

2.6 This Act implements arrangements agreed with New Zealand to facilitate the obtaining of evidence in litigation involving Trans-Tasman elements. It provides:

- for service and enforcement in Australia and New Zealand of New Zealand and Australian subpoenas in all civil proceedings except family proceedings;
- for Australian and New Zealand Courts to take evidence from New Zealand and Australia by video link or telephone, in all proceedings; and
- special rules for judicial notice of New Zealand laws and for proof of New Zealand public and official documents in all proceedings.[6]

The Law and Justice (Cross Border and other Amendments) Bill

2.7 The objectives of the Bill are as follows:

- facilitate operation of a Cross Border Scheme (the Cross Border Justice Scheme) which is to be established by Western Australia, South Australia and the Northern Territory, and other similar cross border initiatives (Schedule 1);
- make amendments to SEPA to confirm the capacity of a prisoner to give evidence by audiovisual link before an interstate court, authority, tribunal or person (Schedule 2); and
- amend the *Evidence and Procedure (New Zealand) Act 1994* (EPNZ Act) to extend the cooperative scheme for the service of subpoenas between Australia and New Zealand to certain family proceedings (Schedule 3).

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4 Department of the Parliamentary Library, Service and Execution of Process Bill 1992, *Bills Digest*, 1992, p. 1.

5 Service and Execution of Process Bill 1992, Explanatory Memorandum, p. 2.

6 Evidence and Procedure (New Zealand) Bill 1994, Explanatory Memorandum.

Key provisions of the Bill

Schedule 1 : Amendments relating to the cross border justice scheme

2.8 As explained in the Explanatory Memorandum, the Cross Border Justice Scheme is a joint initiative between Western Australia, South Australia and the Northern Territory, established under State and Territory legislation. This Scheme will initially apply in the border region known as the Ngaanyatjarra Pitjantjatjara Yankunytjatjara lands (NPY lands). These lands cover more than 476 000 square kilometres, and are situated where the borders of the two States and the NT meet.

2.9 The scheme will allow judicial officers, police and other officials working in the criminal justice system to deal with offenders from any of the participating jurisdictions, provided the offender has a connection with the region (for example, the alleged offence occurred in the region or the offender was arrested in the region).[7]

2.10 Schedule 1 of this Bill facilitates the establishment of the scheme by ensuring that SEPA will not override arrangements prescribed under the scheme where those arrangements would be inconsistent with arrangements under SEPA. The key provisions in the Bill that facilitate the establishment of the scheme provide that SEPA will not apply where the Cross Border Justice Scheme, or another scheme established under legislation prescribed under by regulations under the Act, would otherwise operate.

2.11 Schedule 1, Item 1 inserts a new definition of 'cross border laws' in subsection 3(1) for the purposes of the new subsection 8(3A) inserted by Item 2. The definition refers to the cross border laws of a participating jurisdiction, within the meaning of the *Cross-Border Justice Act 2008* of Western Australia. Section 7(1) of the Western Australian Act defines 'participating jurisdiction' as the State or 'another participating jurisdiction'. 'Another participating jurisdiction' is defined as South Australia and the Northern Territory. The definition also extends to the laws of a State, or provisions of a law of a State, prescribed by regulation. This is to enable application of the new subsection 8(3A) to similar cross border schemes set up between jurisdictions in the future.

2.12 Schedule 1, Item 2 inserts a new subsection 8(3A) to allow cross border laws to operate unaffected by SEPA. Cross border laws, as defined in the definition inserted by Item 1 above, will have primacy over the general scheme that would otherwise apply under SEPA, to the extent that they overlap. Accordingly, the cross border laws will operate alongside SEPA except where there is a direct inconsistency with SEPA. In these circumstances SEPA will be disapplied. The Explanatory Memorandum gives an example of how this is intended to operate:

> For example, section 82 of SEPA provides that a person named in a warrant issued in another State may be apprehended by a police officer or Sheriff of

7 Explanatory Memorandum.

> the State in which the person is found, or by the Australian Federal Police. Under the Cross Border Justice Scheme, a police officer will be able to arrest a person (who has a connection with the cross border region) under a warrant and under the laws of that officer's jurisdiction in any participating jurisdiction. The effect of subsection 8(3A) will be that a person named in a warrant issued in one State may be apprehended by a person authorised to apprehend the person under a cross border law, as well as by a person authorised to apprehend the person under SEPA.

2.13 The Explanatory Memorandum also provided an example of how the scheme will over-ride SEPA where inconsistencies arise:

> For example, subsection 83(8) of SEPA requires a magistrate to order that a person produced under a warrant issued in another State be remanded on bail to appear in the place of issue of the warrant, or be taken to a specified place in the State of issue of the warrant. However, under the Cross Border Justice Scheme, appropriately appointed magistrates will have the power to deal with a matter in any of the participating jurisdictions, under the law of the place where the offence took place. As a result of s8(3A), where cross border laws would apply to allow a magistrate to hear a matter outside the jurisdiction in which the warrant was issued, subsection 83(8) of SEPA will not apply.

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

2.14 Schedule 2 to the Bill will amend SEPA to make clear that, when subpoenaed to give evidence in interstate court or tribunal proceedings, persons in prison may give evidence by audio or video link with the approval of the Court.

2.15 State and Territory legislation already provides for prisoners to give evidence by audio or audiovisual link in proceedings in the jurisdiction of their imprisonment. However, while SEPA provides for interstate service of subpoenas and enables prisoners in one State or Territory to give evidence in another, there is currently no explicit provision under the Act for a prisoner to give evidence by audio or audio visual link in proceedings in another State or Territory.

2.16 Items 1 and 2 insert new definitions, defining 'audio link' and 'audiovisual link'. 15 subsequent items replace 'video link or telephone' with the new terminology.

2.17 Items 5, 13 and 21 will amend Parts of SEPA that deal with the service of subpoenas generally. To preserve the distinction between subpoenas that require a prisoner to attend a place (either inside or outside the prison, including within the State or Territory of their imprisonment) and subpoenas that do not, these items will clarify that the exclusion of subpoenas addressed to prisoners also applies to prisoners who are required to give evidence by audio or audiovisual link.

2.18 Items 8, 16 and 22 will amend Parts of SEPA that deal with the service of subpoenas addressed to persons in prison. These items will clarify that this division

and these subdivisions will also apply where a prisoner is required to attend a place (either inside or outside the prison, including within the State or Territory of their imprisonment) to give evidence by audio or audio visual link to comply with the subpoena.

2.19 Item 24 will amend paragraph 129(a) of SEPA. Currently paragraph 129(a) requires a custodian to assist a prisoner served with an interstate subpoena to comply with that subpoena if the prisoner need not attend before the court, an authority or tribunal that issued the subpoena. The amendment will clarify that the exception to the obligation also extends to circumstances where the prisoner would, for the purposes of complying with a subpoena, be required to appear or give evidence by audio or audiovisual link before the court, an authority or tribunal that issued the subpoena.

2.20 The intention is that subpoenas requiring a prisoner to attend a place (either inside or outside the prison, including within the State or Territory of their imprisonment) to give evidence by audio or audiovisual link will be dealt with under SEPA in the same way as subpoenas requiring a prisoner to attend before a court, an authority or tribunal.

Schedule 3 – Amendments relating to New Zealand

2.21 Item 1 inserts a new definition of 'excluded family proceedings' into the EPNZ Act. The purpose of this new definition is to exclude two categories of family proceedings from the expanded application of the Act. The effect of this new definition is that family proceedings will fall within the scope of the EPNZ Act except where those proceedings are proceedings in respect of applications made under the *Hague Convention on the Civil Aspects of International Child Abduction 1980* or relate to the status or property of a person who is not, or may not be able to, fully manage his or her affairs.

2.22 The Explanatory Memorandum explains that the continued exclusion from the scheme of proceedings relating to the Hague Convention is considered necessary as there is concern that the special regime established by the Convention, which aims to hear cases quickly, would be undermined if the arrangements established under the Trans-Tasman scheme applied to these proceedings. These proceedings are also specifically excluded under the equivalent New Zealand Act.

2.23 The definition also maintains the exclusion of proceedings relating to the status or property of a person who is not, or may not be able to, fully manage his or her affairs.

2.24 Item 2 repeals the definition of 'family proceedings' under the EPNZ Act as a consequence of amendments to sections 7 and 18 in items 3, 4 and 5.

2.25 Item 3 will amend Part 2 of the EPNZ Act, which deals with Australian subpoenas. Currently, section 7 provides that Part 2 applies to a subpoena issued in proceedings in a federal court or a court of a State or Territory specified under regulations other than a criminal or family proceeding. This item will amend Section 7

to expand the application of Part 2 to family proceedings other than 'excluded family proceedings'.

2.26 Item 4 is a consequential amendment to paragraph 7(b), as a result of item 3.

2.27 Item 5 will amend Part 3 of the EPNZ Act, which deals with New Zealand subpoenas. Consistent with the amendment to section 7, this item removes family proceedings, other than 'excluded family proceedings', from those proceedings excluded from the operation of the provisions in Part 3.

2.28 Item 6 provides that removal from the EPNZ Act of the general exclusion of family proceedings (other than 'excluded family proceedings') will apply to proceedings commenced on or after the commencement of this measure.

2.29 Item 7 is a technical amendment to subsection 25(3) of the EPNZ Act to correct a circular provision.

Chapter 3

Issues

3.1 The committee received two submissions to this inquiry, from the following organisations:

- WA Department of the Attorney-General; and
- Aboriginal Legal Rights Movement.

3.2 Both submissions focussed on the amendments in Schedules 1 and 2. No submissions were received in relation to Schedule 3.

Support for the Bill and the Cross Border Justice Scheme

3.3 The WA Department of the Attorney-General expressed strong support for the Bill, noting that it is 'pivotal'[1] for the successful implementation of the Cross Border Justice Scheme (the scheme) later in 2009.

3.4 The submission provided useful background on the scheme, noting that it had its origins in a meeting held in Alice Springs in 2003 between representatives from justice agencies, the judiciary, police and community groups.

3.5 At that meeting, representatives of the NPY Women's Council urged the governments of WA, SA and the NT to solve the problem of offenders using the state/territory borders to evade police or the criminal justice system. The Women's Council highlighted significant safety and security issues in the region, including high levels of family violence, sexual abuse, substance misuse and relatively limited access to justice and other services.

3.6 The Governments of the three jurisdictions initiated the Cross-border Justice (CBJ) project in response to these issues. The submission explains that the objective of the CBJ project is to minimise the effect of borders in the region for the purposes of law enforcement and delivery of justice services. It will enable police, magistrates, fines enforcement agencies, community corrections officers and prisons of one jurisdiction to deal with offences that may have occurred in another of the participating jurisdictions.

3.7 The CBJ scheme will not officially commence until complementary legislation has been proclaimed in WA, SA and the NT.

3.8 The submission highlights that the CBJ project is without precedent and has been 'an impressive exercise in collaboration' and co-operation between the

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1 *Submission 1*, p. 4.

jurisdictions concerned and the Commonwealth Government.'[2] The WA Department's submission concludes that the CBJ project:

> …was established in response to a genuine community need. Successful development and implementation will have a real and positive impact on the lives of the women and children in the cross-border communities.

3.9 The committee also notes advice from the Commonwealth Attorney-General's department in response to a question taken on notice, that:

- the former Attorney-General wrote to his State and territory colleagues in April 2006 consulting them on the proposed SEPA amendments, and all jurisdictions supported the proposal; and
- in February 2009, the current Attorney-General also circulated a draft of the proposed amendments to the States and territories, and no issues or concerns were raised in relation to the correspondence.[3]

Concerns of the Aboriginal Legal Rights Movement

3.10 The committee also received a submission from the Aboriginal Legal Rights Movement (ALRM).[4] This submission did not raise any specific concerns about the direct effects of the Bill. Concerning the Bill, the ALRM stated that it made no submission in relation to the schedule 1 amendments, other than they appear to achieve what the Explanatory Memorandum specifies. Commentary on schedule 2 was confined to how well audio-visual links were working on NPY lands.

3.11 The majority of the ALRM's submission focussed on the proposed South Australian legislation.

3.12 The ALRM's focus on the South Australian legislation presents a particular difficulty for the committee as it is well out of scope of the committee's inquiry into the Bill. Further, the detail and operation of the South Australian legislation is a matter for the South Australian Parliament alone. The committee does not consider it would be appropriate for a Senate committee to either comment on or seek to influence such legislation, and so confines itself to drawing the submission to the attention of the South Australian Attorney-General.

3.13 One area raised by the ALRM that the committee considers it can reasonably flag is the question of custody notifications. The ALRM submitted that it was unclear what effect the Cross-Border legislation will have on compulsory custody notifications, stating that none of the Bills comprising the scheme have yet made mention of it. The ALRM argued that the *Commonwealth Crimes Act 1914* imposes a detailed obligation upon Commonwealth officers investigating Commonwealth

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2 *Submission 1*, p. 3.

3 Correspondence from the Attorney-General's Department dated 1 May 2009, p. 3.

4 *Submission 2*.

offences to notify the Aboriginal and Torres Strait Islander Legal Service of the arrest of an Aboriginal or Torres Strait Islander person and suggested that this model should be a benchmark for the States and Territories.[5]

3.14 The committee has not investigated this proposal, nor does it make any recommendation in this regard as it is clearly outside of the scope of the Bill. Nonetheless, it draws the matter to the attention of the relevant jurisdictions for attention if this is considered to be warranted.

Committee comment

3.15 As noted by the WA Attorney-General's Department in its submission, the Cross Border Justice scheme to be implemented by Western Australia, South Australia and the Northern Territory was established in response to a genuine community need. Its implementation has the potential to have a real and positive impact on the lives of the women and children in the cross-border communities. This Bill facilitates the operation of the scheme and is seen as 'pivotal' to its success. As such, the committee is strongly of the view that the Bill should be supported.

Recommendation 1

3.16 The committee recommends that the Bill be passed.

Senator Trish Crossin

Chair

5 *Submission 2*, p. 9.

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

Additional Comments by the Australian Greens

1.1 The Greens are not satisfied that this report adequately addresses the issues and concerns raised in the submissions received, or in the Committee's extremely brief hearing on the Law and Justice (Cross Border and Other Amendments) Bill.

1.2 The Committee's report was prepared without reference to the Hansard Transcript because it had not been produced in a timely fashion. Because it is inadequately staffed, Hansard transcripts are apparently sometimes outsourced, in this case negatively impacting the deliberative function of this Committee and inquiry.

1.3 This report was also prepared before the Attorney General's Department had responded to requests by two non-Government parties to address concerns and issues raised by the Aboriginal Legal Rights Movement, for which there was insufficient time in the hearing. I am very much unsatisfied with response provided by the Attorney General's Department, which was only offered after I prompted the Committee Secretary to seek it.

1.4 The Aboriginal Legal Rights Movement (ALRM) raised relevant and pertinent issues about how the cross border jurisdictional laws between the Northern Territory, South Australia and Western Australia will practically operate. Because this Bill will establish cross border jurisdictional laws principally over Aboriginal land and people, predominantly the Ngaanyatjarra, Pitjantjatjara and Yunkunytjatjara people, the concerns of the ALRM are worthy of a proper response.

1.5 However, because the ALRM in various parts of their submission used the South Australia experience and laws as a prism through which to view the impact of this Bill, their concerns are simply and conveniently dismissed. The fact is that this federal Bill will give authority and will facilitate the operation of laws passed on the state level. As such the case study offered by the ALRM is actually illustrative of problems that may arise and should have prompted more thoughtful and thorough answers than those received.

1.6 The ALRM raised general practical concerns about the adequacy of audiovisual and audio equipment and identified the need to ensure provision of translations into the languages of people facing court. They also raised questions about how this complex criminal legislation might enable forum shopping.

1.7 The ALRM also raised specific concerns about how the legislation empowers cross border magistrates to be able to deal with an offender under three sets of laws, and therefore three different appeal mechanisms might be chosen from. While efficiencies are acknowledged in that a person could have all outstanding criminal matters dealt with at once, this could also produce a situation where someone could be coerced into aggregating files for the sake of administrative convenience, attracting an increased likelihood of custodial sentences being imposed.

1.8 The ALRM pointed out the lack of clarity about the effect of the cross border legislation on compulsory custodial notifications, an essential feature of Aboriginal legal

representation. The process of notification among the various state law enforcement agencies is also not clarified by this Bill. The need for a uniform definition of residence across the three jurisdictions is identified as a useful addition to the federal bill, given the difficulty of applying it to a nomadic people. These issues apply to the area in question, and are relevant to this Bill.

1.9 This appears to be a federal bill that is meant to enable and facilitate the collaborative work of three state jurisdictions being rushed through before two of the three states in question have passed their legislation. Surely the function of a federal bill should be to either establish the criteria and framework for the state bills, or be fully informed of the content and procedures spelled out in the state legislation. It should seek to harmonise and coordinate their approach and address any gaps identified by the states. What we have in this bill and process is neither.

1.10 Finally, I would like to make an observation about the extent to which this approach will ameliorate the impact of violence against women in the NPY lands, apparently the major motivation for this legislation. Because it is cited as such, it is worth examining to what extent this approach does address violence against women.

1.11 The Greens believe that everything should be done to stop violence against women, which is experienced across Australia at shamefully high levels. The 2005 survey of the Bureau of Statistics estimated that thirty-three per cent – one in three – of all Australian women have experienced physical violence since the age of fifteen. Nineteen per cent – one in five – have experienced sexual violence since the age of fifteen. Forty-nine per cent of female victims of homicide are killed as a result of a domestic altercation as compared to fifteen per cent of male victims. In Australia, domestic violence puts more women aged fifteen to forty-four at risk of ill-health and premature death than any other risk factor. This constitutes an epidemic of violence against women in our culture. Enhancing the resources and mandate of police, magistrates, enforcement agents, community corrections offices and prisons is not the only priority or strategy in preventing this violence against women.

1.12 While it most certainly does help when the police recognise violence against women as a crime, and respond when women need assistance, too often they do not take this issue seriously, and judges frequently do not apply the laws that already exist. But it also helps when governments provide services and shelters so that women can escape and heal from violence. Coping with violence on this scale is about more than beefing up law enforcement and putting more men in jail, it's about addressing the fact that violence against women by Australian men has become normalised and legitimised, and that sex discrimination is a societal problem that is structurally and culturally embedded. It is also about addressing the underlying poverty experienced by women, and in the case of the NPY lands, by Aboriginal women, which strongly effects women's ability to make choices about leaving violent relationships.

1.13 What women in this particular region have identified as a problem is that they have significantly reduced access to legal representation, and therefore justice. Women in the NPY lands are not able to access the services offered by the Aboriginal Legal Service because it is very often providing legal representation to the perpetrator. What needs to come hand in hand with efforts to enhance the capacities of law enforcement to deal with perpetrators of violence against women are legal and support services for the victims.

1.14 The Aboriginal and Torres Strait Islander Legal Services (ATSILS) has calculated its real term funding loss since 1996 at just under 40 per cent. This does not take into account unmet and increased need due to population increases and demographic changes, or changes to the substantive criminal law that particularly affects indigenous people. Funding increases need to factor in the issues of language, culture, literacy, remoteness and incarceration rates into the costs of service delivery. This indicates the need to take into account the need for Aboriginal Women's Legal Services as research has indicated that indigenous people, especially women, are dissuaded from approaching mainstream legal services.

Senator Scott Ludlam

Australian Greens

APPENDIX 1

SUBMISSIONS RECEIVED

Submission Number	Submitter
1	WA Department of the Attorney-General
2	Aboriginal Legal Rights Movement

ADDITIONAL INFORMATION RECEIVED

1 Attorney-General's Department – Answers to Questions on Notice, received 2 May 2009

2 Attorney-General's Department – Answers to Questions on Notice, received 8 May 2009

APPENDIX 2

WITNESSES WHO APPEARED BEFORE THE COMMITTEE

Melbourne, Tuesday 28 April

FITCH, Ms Catherine, Acting Assistant Secretary
Attorney-General's Department