CROSS-BORDER JUSTICE BILL 2007

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Adele Farina (Parliamentary Secretary)**, read a first time.

Second Reading

HON ADELE FARINA (South West - Parliamentary Secretary) [10.02 pm]: I move -

That the bill be now read a second time.

In June 2003, some 50 people met in Alice Springs for the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Lands Tri-jurisdictional Justice Initiatives Roundtable. Those present included members of the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council, magistrates, senior police, court administrators, community corrections officers, lawyers and others with an interest in doing something to address the deleterious effects of domestic violence, child abuse, sexual abuse, substance abuse and other forms of offending behaviour on communities in the remote region where the borders of Western Australia, South Australia and the Northern Territory meet. In response to the serious problems identified at the roundtable and the obvious need for something to be done about them, the governments of this state, South Australia and the Northern Territory initiated the cross-border justice project. This has culminated in the bill now before the house.

The Cross-border Justice Bill 2007 is one of the most innovative legislative responses to a profound community problem that we have seen in this country. Essentially, this bill seeks to break down the barriers that the borders create in the administration of justice in the cross-border region. The roundtable in Alice Springs was told that "borders are seen as whitefella constructs and it is often difficult for governments to understand this reality"; the reality being that the communities, which have for centuries lived in this region, and well before these artificial borders were created, live in and move about the region according to their own long-standing traditions and customs. However, government services have until now been framed around the borders, rather than the needs of the communities they are intended to serve. The borders also serve to protect wrongdoers, who are able to use them to evade police and the justice system. This further undermines the safety of communities in the region.

In November 2006, the Australian Institute of Health and Welfare released its report "Family violence among Aboriginal and Torres Strait Islander peoples". This report provided data for 2002 showing different experiences and attitudes to community safety between those Indigenous people living in remote regions and those living in non-remote regions. A total of 41 per cent of Indigenous people living in remote areas reported that assault was a neighbourhood or community problem, compared with 12 per cent of those living in non-remote areas. Of Indigenous people living in remote areas, 17 per cent considered sexual assault and 41 per cent considered family violence to be community problems; the comparable figures for non-remote areas were five per cent and 14 per cent respectively. Added to this, 30 per cent of Indigenous people in remote areas had been witness to violence, and 17 per cent had experienced violent crime or abuse. In comparison, 10 per cent of Indigenous people in non-remote areas had witnessed violence and nine per cent had experienced violent crime or abuse. Clearly, the experiences of Indigenous people in remote communities demands that governments act to ensure that the victims of crime in these communities are afforded much more protection by the justice system than is currently the case. The government has already recognised the need to take action through, for example, the new multifunction police facilities in remote areas and the Kalgoorlie-Boulder Community Court. These very worthwhile initiatives, however, do not deal with the problems created by the existence of the state and territory borders; the Cross-border Justice Bill does.

This bill will enable Western Australia to participate in cross-border justice schemes in conjunction with South Australia and the Northern Territory. For cross-border schemes to operate, it will be necessary for each jurisdiction to have corresponding laws. Therefore, the Cross-border Justice Bill will also serve as a model to be followed by the governments of South Australia and the Northern Territory in enacting their own cross-border legislation. These three jurisdictions have collaborated at all levels to create the legislative and administrative frameworks that will allow their justice systems to operate much more freely across the borders. Cross-border justice schemes will involve police, magistrates, fines enforcement agencies, community corrections officers and prisons of one jurisdiction being able to deal with offences that may have been committed in one of the other participating jurisdictions. This is best illustrated by example: a person alleged to have committed an offence in Western Australia is arrested in South Australia by police officers of that state exercising Western Australian powers of arrest; the person is brought before the most convenient court, which happens to be in Alice Springs, where a Northern Territory magistrate sitting as a cross-border magistrate of Western Australia is able to deal with the matter; the magistrate tries the case applying the criminal law, laws of evidence, court procedure and sentencing regimes of Western Australia; and if the person is found guilty, he or she could be given a community-based sentence under Western Australian law, which could be supervised by a community

corrections officer of any one of the three participating jurisdictions, or receive a custodial sentence, which could be served in a prison of any one of the three participating jurisdictions, whichever proves to be the most expedient.

The Cross-border Justice Bill will allow multiple cross-border schemes to operate. Each scheme would focus on a prescribed region. The inaugural cross-border justice scheme will focus on the cross-border region in Central Australia where the boundaries of Western Australia, South Australia and the Northern Territory intersect. However, under this bill, additional cross-border schemes could be introduced for the region along the border between the Northern Territory and the Kimberley region of Western Australia, or for the Western Australian-South Australian border region on the Nullarbor Plain.

The Cross-border Justice Bill requires that certain criteria be met before a matter can be dealt with as a cross-border matter. This is to ensure that this radical change, whereby Western Australia will allow the laws of South Australia and the Northern Territory to apply within its borders, is restricted to those occasions when this is warranted in the interests of the administration of justice. Western Australia is not dismantling its borders but is selectively relaxing the rigidity with which they are enforced. A matter will fall within the scope of a cross-border justice scheme only if the offence is connected to the relevant cross-border region. The criteria that will determine whether there is a connection are: the alleged offence occurred in the cross-border region; the alleged offender was arrested in the cross-border region; or the alleged offender normally resided in the cross-border region at the time of arrest or of the alleged offence. The factor that will determine which jurisdiction's laws will apply to an alleged offence will be the location where the alleged offence occurred; that is, if a person is arrested in the Northern Territory and charged with an offence alleged to have been committed in Western Australia, the Western Australian laws of apprehension, court procedure, criminal liability and sentencing would be applied.

An important limitation on this bill is that it will apply only to matters that can be dealt with in the Magistrates Court jurisdiction. This includes matters that fall within its summary jurisdiction and those aspects of indictable offences that magistrates are able to deal with, such as bail hearings. Under this approach, the courts will still be able to deal with much of the offending behaviour in the cross-border regions. It remains preferable, however, that the more serious offences alleged to have been committed in Western Australia continue to be dealt with by the higher courts of this state.

Generally, the Cross-border Justice Bill does not create new laws for the administration of justice; rather, it simply allows existing laws to be applied in other jurisdictions and allows the laws of those other jurisdictions to be applied in Western Australia. For example, each jurisdiction will appoint magistrates of the other participating jurisdictions to their own magistracy through their own legislation governing the appointment of magistrates. Magistrates of South Australia and the Northern Territory will be appointed as Western Australian magistrates under the relevant provisions of the Magistrates Court Act 2004 and the Children's Court of Western Australia Act 1988 to administer justice under the cross-border scheme. Convicted offenders will be sentenced according to the law of the jurisdiction where the offence occurred; however, the sentence will travel with the offender; that is, a person convicted of a South Australian offence but serving a custodial sentence in Western Australia will serve the sentence as if that person were in South Australia.

The one area in which there is a change to the substantive law is that of fines enforcement. This bill will allow a fine imposed under the law of one jurisdiction to be enforced against property located in any one of the other participating jurisdictions. This is because once a fine is transferred from one jurisdiction's fines enforcement agency to that of another, the receiving agency can enforce the fine as if it were a fine of that jurisdiction. If the offender's property is located in one of the other participating jurisdictions, this can be accessed for the purpose of enforcing the fine.

These are just some examples of how the Cross-border Justice Bill will create a much more effective system of justice administration in the cross-border regions. To date, the only law that has dealt with the apprehension of alleged offenders and brought them before a court has been the commonwealth Service and Execution of Process Act 1992. Under that act, if a police officer has arrested a person in connection with an offence alleged to have occurred in another state or territory, the police officer must bring the person before a magistrate in the state or territory where the arrest occurred. The magistrate, however, has hitherto had the option to remand the person to come before a court only in the jurisdiction of the alleged offence. The person would then be admitted to bail or taken into custody to appear in that jurisdiction. The magistrate has had no power to deal with the matter to finality.

For the Cross-border Justice Bill of this state and those of the Northern Territory and South Australia to take effect, it will be necessary for the Service and Execution of Process Act to be amended. The commonwealth has also embraced the concept of cross-border justice and has announced its intention to make the necessary amendments. The Attorneys General of the Northern Territory and South Australia have also supported the bill,

as have the WA Minister for Police and Emergency Services and the Minister for Corrective Services. A tremendous amount of work has also been undertaken by the relevant government departments in creating the legislative framework and in negotiating the details that will make this important initiative work at the operational level. There has also been overwhelming support from the judiciary.

Finally and most importantly, the NPY Women's Council must be acknowledged and congratulated for its role in the instigation of this reform package. I commend the bill to the house.

Debate adjourned and bill referred to the Standing Committee on Uniform Legislation and Statutes Review, pursuant to standing orders.