

## **CROSS-BORDER JUSTICE BILL 2007 EXPLANATORY MEMORANDUM**

The purpose of this Bill is to enable Western Australia to participate in cross-border justice schemes in conjunction with South Australia and the Northern Territory.

Cross-border justice schemes established under the legislation will involve police, magistrates, fines enforcement agencies, community corrections officers and prison officers, among others, being able to deal with offenders from any one of the participating jurisdictions, providing they have a connection to the cross-border region. These schemes will facilitate the administration of justice and enhance the safety of the communities in the regions covered by them.

The Bill will serve as a model for legislation in the other participating jurisdictions.

### **PART 1 – INTRODUCTION**

#### **Division 1 – Preliminary matters**

**1. Short title**

The Act is entitled the *Cross-border Justice Act 2007*.

**2. Commencement**

Sections 1 and 2 of the Act commence the day the Act receives assent. The rest of the Act will commence on proclamation, with different proclamation dates for different provisions.

**3. Act binds the Crown**

This provision is included to rebut the common law presumption that statutes are intended not to bind the Crown.]

#### **Division 2 – Object of this Act**

**4. Act gives effect to cooperative schemes**

The Act will enable more effective delivery of justice services to cross-border regions. This is to be achieved through cooperative schemes with those jurisdictions with which Western Australia (WA) shares a border ie South Australia (SA) and the Northern Territory (NT).

**5. Object of Act and how it is to be achieved**

In order to meet its objective of furthering the cause of justice administration in the cross-border regions, the Act confers on police, magistrates, courts of summary jurisdiction, and other office holders the capacity to exercise their WA powers in SA and/or the NT. It also confers on them the capacity to accept appointment to hold office under the laws of SA and/or the NT, and to exercise the powers associated with that office. They will be able to exercise those powers either in SA and/or the NT, or do so in WA. Similarly, WA courts of summary jurisdiction will be able to sit, deal with matters and sentence offenders under WA law when the court is sitting in either of these other two

jurisdictions. Likewise, the courts of summary jurisdiction of SA and/or the NT will be able to function within this State.

**6. How this Act is to be construed**

The Act provides reciprocal recognition of WA courts and officials applying WA law within the boundaries of SA and/or the NT; and of their SA and/or NT counterparts applying the laws of those jurisdictions within the boundaries of WA.

**Division 3 – Interpretation**

**7. Terms used in this Act**

This clause defines the commonly used terms used in the Act. Most importantly, it specifies that the other participating jurisdictions are SA and the NT, the two jurisdictions with which WA shares a border. This, therefore, precludes this Act being used for cooperative schemes involving other jurisdictions such as those along the eastern seaboard of Australia.

The definitions of offices such as “**CEO (corrections)**” and “**community corrections officer**” are derived from the relevant Acts that more generally define these terms eg the *Sentence Administration Act 2003*.

Other definitions have been drafted specifically for the purposes of this Act. They include “**cross-border jurisdiction**” which is the jurisdiction exercised by a “**prescribed court**” of a “**participating jurisdiction**” when dealing with a “**cross-border proceeding**”. A “**cross-border proceeding**” is defined as a proceeding falling within the meaning of clause 68 of this Act, or falling within the meaning of the equivalent legislation in SA or the NT. A “**prescribed court**” is further defined as being (for WA) the Magistrates Court, or the Children’s Court other than when a judge is presiding in a matter before the Children’s Court, and for the other participating jurisdictions, the courts prescribed in their equivalent legislation.

Some definitions such as “**connection with a cross-border region**” are included in this clause, but they are simply cross-referenced to another clause which sets out their meaning.

In some cases, a term is defined in a general reference to the laws of a participating jurisdiction. This is to accommodate the range of relevant Acts which may be applied under this Bill. For example, “**vehicle impounding laws**” refers to those laws dealing with the impounding or confiscation of vehicles in the course of their application to driving offences. This acts to limit their application to those situations likely to be encountered by those administering the provisions of this Bill. This definition deliberately limits the context to impounding or confiscation under driving laws, and does not include confiscations that could occur under the confiscation of the proceeds of crime legislation.

**8. Meaning of “cross-border laws”**

This Bill is the primary legislation to enable the creation of cross-border justice schemes. It works in conjunction with other laws that also have application to these schemes, and collectively this Bill and these other laws are the “**cross-border laws**” for WA. Other laws include those which will apply to cross-

border schemes as modified by the regulations (see clauses 13 and 14). Other cross-border laws include those which make special provision for the schemes (eg the appointment of cross-border magistrates under the *Magistrates Court Act 2004* (WA)).

This clause also sets out what constitutes the cross-border laws of SA and WA, and these are consistent with those of WA.

**9. Persons who exercise office are office holders**

This clause provides that office holders under cross-border laws are people who exercise a power conferred upon them by a cross-border law. Not all office holders are government officials, and office holders include, for example, contractors under the *Court Security and Custodial Services Act 1999* (WA) who may exercise powers to fulfil a contract for the provision of court security or custodial services. The contractor is taken to be, but is not appointed as, an officer of the court.

Similarly, under the *Young Offenders Act 1994* (WA), an officer of the Department of Corrective Services may exercise powers in relation to young offenders. The officer's local designation is, but the officer does not hold the office of, juvenile justice officer. Additionally, under clause 106, an authorised officer of SA or the NT may carry out a WA custodial order but is not appointed as an authorised officer of this State.

**10. References to office holders**

Under cross-border laws a person may hold a secondary office. For example, a WA magistrate could hold as a secondary office, the office of a magistrate of SA as conferred under SA law. This clause brings the holder of a secondary office into the scope of being an office holder. Even if the office ceases to exist, someone who retains the powers of that office is still taken to be an office holder.

**11. References to written laws of another participating jurisdiction**

Legislation is often amended. This clause provides continuity by making it clear that if another jurisdiction amends its cross-border laws, then any reference to those laws in the *WA Cross-border Justice Act* still has effect.

**12. Use of notes and examples**

Due to the complexity of this legislation, the Bill includes notes and examples to assist readers understand the meaning of some provisions. However, these are only aids to interpretation and have no legislative force.

**Division 4 – Modifications of other laws of State**

**13. Appropriate modifications**

The intent of the cross-border laws is to respond to the difficulties in the administration of justice in remote border regions. It is not intended that the capacity for police officers, magistrates and so on to perform their functions across borders and exercise the powers of another jurisdiction can be extended to apply in other parts of the State. Some laws will be applied differently under cross-border justice schemes than elsewhere. Rather than make complicated amendments to these other Acts, they are to be modified by regulation. Modifications to other Acts are to apply only in the context of dealing with a

cross-border justice matter (eg the *Prisoners (Interstate Transfer) Act 1983* (WA) will be modified so that SA and NT prisoners sentenced under a cross-border justice scheme will be able to be moved to a prison in WA through administrative arrangements and continue to serve the sentence as a SA/NT sentence. In other circumstances a sentence not imposed under a cross-border justice scheme would be translated into a WA sentence when a prisoner transfers.)

#### **14. Effect of modifications**

An Act which has been modified for the purpose of implementing a cross-border justice scheme, has to be applied on the basis of its modified form when it is being used in this context. If an office holder invokes the cross-border laws when dealing with a matter under this Bill, they do not have the option of applying the non-modified form of another cross-border law.

### **Division 5 – Relationship between State’s cross-border laws and other laws**

#### **15. Law of another participating jurisdiction: office holders, prescribed courts, persons serving sentences**

Participating jurisdictions still exercise control over what can and cannot be done within their borders, and still exercise control over what their office holders may or may not be permitted to do. This requires provisions from an office holder’s home jurisdiction that enables them to exercise powers in another jurisdiction, and corresponding provisions from that other jurisdiction to allow them to exercise those powers within that State or Territory

For example, it is not enough for WA to legislate so that its office holders can exercise their powers under WA laws in another jurisdiction. The other jurisdiction must also legislate to allow this to happen. Subclause 15(1) provides that unless the other jurisdiction has so legislated, a WA office holder cannot exercise their WA powers in that jurisdiction even though WA cross-border laws may provide for this.

Similarly, even though WA cross-border laws allow an office holder from the NT or SA to exercise powers within WA, they cannot do so unless the laws of the NT or SA, as the case may be, provide for this (subclause 15(2)).

This clause continues to provide for other reciprocal recognition in relation to courts to hear and determine matters in other jurisdictions, and the imposition and serving/carrying out of sentences.

#### **16. Law of another participating jurisdiction: other persons required to do things**

This clause extends the principle contained in clause 15 to those individuals who are not office holders but nevertheless have a legal obligation to undertake some action (eg a person in a motor vehicle accident notifying the appropriate authorities of the accident). It is intended that a person be able to make such notification outside the jurisdiction where the event occurred (eg after an accident in WA a motorist may be able to meet the requirement to notify the police by reporting the accident at a NT police station).

Under clause 16, both WA law and the other jurisdiction’s law have to permit the person to make the notification in the other jurisdiction (and vice versa if the

event has occurred in SA/NT and the person is to be able to make notification in WA).

**17. *Service and Execution of Process Act 1992 (Commonwealth)***

To date, in a situation where a police officer has arrested a person in connection with an offence alleged to have occurred in another State/Territory, the Commonwealth *Service and Execution of Process Act 1992* (SEPA) has determined how the person is dealt with. The police officer has been able to bring the person before a magistrate in the State/Territory where the arrest occurred. The magistrate, however, has only had the option to remand the person to be brought before a court in the jurisdiction of the alleged offence, and the person would then go or be taken in custody to that jurisdiction. The magistrate has had no power to deal with the matter to finalisation. This Bill will not replace this process, but rather, will provide an alternative. However, if, as is anticipated, the Commonwealth were to amend SEPA so that it would provide that it does not apply to a matter covered by WA cross-border laws, an office holder or prescribed court of the State would have to proceed under the cross-border laws and not SEPA. That is, the office holder would have no alternative but to apply cross-border laws. This, however, is dependent upon SEPA being amended in this fashion. If SEPA is not amended to give primacy to cross-border laws, but allows both systems to co-exist, then the office holder or court would have a choice as to which path to follow.

**Division 6 - Application**

**18. Offences, orders and requirements in relation to which State's cross-border laws apply**

This clause enables the cross-border laws to be applied to offences, orders or requirements that may have originated before this Bill is enacted. This provides a certain degree of retrospectivity to the legislation. It means, for example, that a person who has breached an order prior to the commencement of the *Cross-border Act* could be arrested for this breach after the commencement date using the provisions of this Act.

**PART 2 – CROSS-BORDER REGIONS**

**Division 1 – Prescribing cross-border regions**

**19. Cross-border regions to be prescribed**

A region must extend over the border of WA into the NT and/or SA and be prescribed to be considered to be a cross-border region.

**Division 2 – Connection with a cross-border region**

**20. Persons suspected of, alleged to have committed or found guilty of offences**

This clause sets out the criteria by which it is determined if a person who is suspected of, alleged to have committed, or has been found guilty of an offence has a relevant connection to a cross-border region, thus falling within the scope of this Bill.

The criteria for establishing whether a person has a connection with a cross-border region are:

- that this is where the suspected/alleged/proven offence occurred;
- when the person was arrested they were physically in the region or they normally reside in the region; or
- the person resides or resided in the region at the time the suspected/alleged/proven offence occurred.

Only one of these criteria needs to be met for a connection to a cross-border region to be established. This means, for example, that a person from elsewhere who is arrested whilst transiting a cross-border region, would fall within the scope of this Bill. Likewise, a person from the region who is arrested whilst visiting a different area can be dealt with under this Bill.

A connection also exists if at the time a person comes before a court, they ordinarily reside in the region, or the person is before the court in relation to another matter where they have a connection with the region.

For the purposes of deciding whether or not a person has committed an offence under the law of a participating jurisdiction, section 12 of *The Criminal Code* applies for WA, section 5G of the *Criminal Law Consolidation Act 1935* (SA) applies with respect to SA, and section 15 of the *Criminal Code* (NT) applies with respect to the NT.

#### **21. Persons against whom orders of prescribed courts are in force**

This clause reiterates the application and criteria for establishing a cross-border connection as set out in clause 20 and applies them to the making, variation and breaching of orders.

#### **22. Connection for purposes of making restraining orders**

An application for a restraining order falls within the scope of this Bill if the respondent to an application (ie the person against whom a restraining order is sought) has a connection to a cross-border region. The criteria for establishing this connection are that the respondent or the person in whose interests the restraining order is sought ordinarily resides in the region.

#### **23. Persons serving sentences or carrying out orders in respect of offences or alleged offences**

A person subject to a sentence or an order has a connection with a cross-border region if the sentence or order results from a court exercising cross-border jurisdiction in relation to a matter where:

- the person has a connection to the region;
- the court exercising cross-border jurisdiction has ordered the payment of a fine; or
- the person ordinarily resides in the region.

#### **24. Other persons required to do things**

Continuing with the motor vehicle example used in clause 16, person who has a legislated responsibility to take some action has a connection to a cross-border region if they are informed of this requirement while in the region, the event occurred in the region, or the person ordinarily resides in the region.

## **25. Connections are not mutually exclusive**

A person may have connections with a cross-border region under any of clauses 20-24. That is, a person may have multiple connections with a cross-border region.

### **Division 3 – Proving connection with cross-border region**

## **26. Meaning of “proceeding”**

This is a definition clause that applies for the purpose of this Division. A “**proceeding**” is either a cross-border proceeding in a prescribed court of WA, or a proceeding before a WA court where an officer of another participating jurisdiction is acting under the provisions of the *Cross-border Justice Act*.

## **27. Onus of proving person’s whereabouts at time of arrest**

Given the remoteness of the regions where cross-border justice schemes will operate, it may at times be difficult to establish precisely whether a person was arrested in or normally resided in a region for the purpose of determining whether there is a connection with a cross-border region. This clause places the onus of proof on the arrested person as to their whereabouts or normal place of residence at the time of arrest. Proof is to be determined on the balance of probabilities.

One of the aims of the cross-border justice initiative is to overcome the problem of alleged offenders using the State/Territory borders to evade police and the justice system. However, in defining a region, another “border” is by default imposed and such evasion could again occur. The onus of proof has been placed on the arrested person so as to discourage false claims of the person being outside the cross-border region and to limit the extent to which the boundaries of the region can be used to evade justice.

## **28. Onus of proving person’s residency during cross-border proceeding**

For the same reasons stated in relation to clause 27, the onus of proof for establishing if a person ordinarily resides(ed) in a cross-border region at the time of a cross-border or other proceeding, lies with the person.

### **Division 4 – Multiple cross-border regions**

## **29. Application of this Division**

The WA border with the NT and SA touches on different regions of the State. The inaugural cross-border justice scheme is planned for the area where the borders of all three jurisdictions meet. However, separate bi-lateral schemes could be developed for other regions, eg that part of the border between the NT and the Kimberley region of WA, or the region centred on the Nullarbor Plain which straddles the borders of WA and SA.

## **30. Office holders, prescribed courts, persons serving sentences**

This clause is similar to clause 15. However, it limits the extent to which, for example, a WA office holders can exercise their cross-border powers in another participating jurisdiction.

If a person whose connection with the Central Australian cross-border region is based on them being arrested or residing in SA, is brought before a WA

magistrate exercising cross-border powers in the NT under a scheme based on the Kimberley/NT border, the magistrate would not be able to deal with this person because SA will not be a party to a northern Australian scheme.

However, a person may have a connection with more than one cross-border region. An office holder or prescribed court of the State may deal with the person under the State's cross-border laws on the basis of the person's connection with one or another of those regions, having regard to what best facilitates the administration of justice in those regions.

**31. Other persons required to do things**

As with clause 30, this clause requires that a person has a connection with a particular cross-border region if they are to be authorised or allowed to take action under cross-border laws relating to that region.

**PART 3 – POLICE OFFICERS OF STATE EXERCISING POWERS IN ANOTHER PARTICIPATING JURISDICTION**

**Division 1 – Powers generally**

**32. Arrest without warrant**

A WA police officer may arrest a person (who has a connection with a cross-border region), without a warrant and under the laws of WA, in SA or the NT. The arrest will be governed by the laws of WA and can only occur if the arrest could be made in WA.

**33. Arrest under warrant**

A WA police officer may arrest a person (who has a connection with a cross-border region), under warrant and under the laws of WA, but in another participating jurisdiction. The arrest will be governed by the laws of WA.

Likewise, a magistrate may issue an arrest warrant under WA law and do so whilst in another participating jurisdiction. Again, it is a requirement that the person the subject of the warrant has a connection with a cross-border region.

Examples of the application of this clause are as follows.

Example 1 - A person is suspected of committing an offence under WA law in the WA portion of the WA/SA/NT (Central Australia) cross-border region. A WA magistrate anywhere in WA, SA or the NT may issue a warrant for the person's arrest. A WA police office may arrest the person under the warrant anywhere in any of these three jurisdictions. In this example, the person has a connection to the cross-border region that involves all three jurisdictions.

Example 2 – A person who ordinarily resides in the WA/SA (southern border) region is suspected of committing an offence under WA law in Kalgoorlie. A WA magistrate anywhere in WA or SA may issue a warrant for the person's arrest. A WA magistrate in the NT cannot issue a warrant. A WA police officer may arrest the person under the warrant anywhere in WA or SA but not in the NT. In this example, the person only has a connection to the southern border region which does not include the NT.

Example 3 – A person who ordinarily resides in the WA/NT (northern border) region is suspected of committing an offence under WA law in the WA portion of the WA/SA (southern border) region. A WA magistrate anywhere in WA,



SA or the NT may issue a warrant for the person's arrest. A WA police officer may arrest the person under the warrant anywhere in WA, SA or the NT. In this example, the person has connections to two cross-border regions which collectively include all three jurisdictions.

#### **34. Person taken into custody**

This clause empowers a WA police officer to arrest a person under the laws of WA either with or without a warrant and in any of the participating jurisdictions, and to keep the person in custody in another participating jurisdiction but under WA law. This means that a person who is arrested in the NT or SA under WA law, does not have to be returned to WA to be kept in custody. The police officer can also take the person to a police station, court or anywhere else for an authorised purpose.

#### **35. Investigation of suspected or alleged offence or breach of order**

A WA police officer may investigate a suspected offence or breach of an order made under WA law, in SA or the NT but in doing so, apply WA law governing investigations. This includes the police officer's powers to conduct interviews and searches, take photographs of people, take fingerprints and other prints, and so on. This clause only applies if the person suspected of having committed the offence or breach has a connection with a cross-border region.

Likewise, a magistrate may issue a warrant or order for the purpose of an investigation under WA law and do so whilst in another participating jurisdiction.

Examples of the application of this clause are as follows.

Example 1 – A person is suspected of committing an offence under WA law in the WA portion of the WA/SA/NT (Central Australia) region. A WA police officer may investigate the alleged offence anywhere in WA, SA or the NT. For the purpose of the investigation of the alleged offence, a WA magistrate anywhere in WA, SA or the NT may issue a warrant to search premises anywhere in WA, SA or the NT. In this case, the person has a connection with a cross-border region involving all three jurisdictions.

Example 2 – A person is arrested in the WA/SA (southern border) region for an offence under WA law alleged to have been committed in Kalgoorlie. A WA police officer may investigate the alleged offence anywhere in WA or SA but not in the NT. For the purpose of the investigation of the alleged offence, a WA magistrate anywhere in WA or SA may issue a warrant to search premises anywhere in WA or SA but not in the NT. A WA magistrate in the NT cannot issue a warrant. This is because the person has no connection with a cross-border region in the NT.

Example 3 – A person is suspected of committing an offence under WA law in the WA portion of the WA/NT region and is subsequently arrested for the alleged offence in the WA/SA region. A WA police officer may investigate the alleged offence anywhere in WA, SA or the NT. For the purpose of the investigation of the alleged offence, a WA magistrate anywhere in WA, SA or the NT may issue a warrant to search premises anywhere in WA, SA or the NT. In this example, the person has connections to two cross-border regions which collectively include all three jurisdictions.

### **36. Return of person not charged to place of arrest or other place**

Cross-border justice schemes will operate in the more remote areas of the State where there are large distances between population centres and limited transport availability. Therefore, if a WA police officer has kept a person in custody in another jurisdiction (see clause 34), and the person is released from custody, the police officer must take reasonable steps to ensure the person is returned to where they were arrested or to a place reasonably nominated by the person. However, if to take a person released from custody to a particular place is likely to endanger the safety of the person or another person, the police officer is not required to assist the person go to that place.

### **37. Relationship of this Part with *Criminal Investigation (Extra-territorial Offences) Act 1987***

The provisions of the *Criminal Investigation (Extra-territorial Offences) Act 1987* continue to apply and are not affected by Part 3 of this Bill.

## **Division 2 – Road traffic powers**

### **Subdivision 1 – Vehicle or driver licensing laws**

#### **38. Powers in relation to offences**

A WA police officer may exercise their powers under WA vehicle or driver licensing laws in SA or the NT if a person is suspected of having committed an offence under these WA laws and the person has a connection with a cross-border region.

#### **39. Other powers**

Clause 39(1) defines “**licensing powers**” to mean those powers that a WA police officer can exercise under WA vehicle or licensing laws in addition to those powers referred to in clause 38. If a person ordinarily resides in the WA segment of a cross-border region, a WA police officer can apply WA vehicle and licensing laws with respect to that person.

### **Subdivision 2 – Drink or drug-driving laws**

#### **40. Terms used in this Subdivision**

This is a definition clause specifying what constitutes a “**sample**”, and what a “**test**” is and what “**testing procedures**” are for the purposes of this Subdivision.

#### **41. Conduct of preliminary alcohol and drug test in cross-border region**

It may be necessary for a WA police officer to take a breath or oral fluid sample from a person in the WA section of a cross-border region for the purpose of conducting a preliminary alcohol or drug test under WA law.

A WA police officer may also be a SA or NT police officer who holds an appointment as a special constable of WA. In this case the testing equipment and procedures which they use may be that of the SA or NT police forces and not that of WA. It is also possible that WA police officers may conduct joint patrols with officers from the NT or SA and use NT or SA police vehicles for this purpose. Again, if this patrol was to stop a person in WA and seek to take a

sample using the equipment in the NT or SA police vehicle then the procedures of that jurisdiction would apply.

Subclause 41(2), therefore, provides that if a person is required to comply with the testing procedures used in implementing SA or NT drink driving laws, then they are required to follow these procedures as if they were found in WA law.

Likewise, subclause 41(3) provides for tests which follow SA or NT procedures in relation to a WA person, as being WA procedures of the purposes of testing the sample.

#### **42. Powers that may be exercised in another participating jurisdiction**

This clause applies if a WA police officer has required a person in the WA portion of a cross border region to provide a sample for a preliminary alcohol or drug test under WA law. The clause requires that the person from whom the sample is being taken has some connection with a cross-border region. This clause has to be read in conjunction with clause 44 which provides that a WA police officer cannot take a sample for preliminary drug or alcohol testing under WA law in another participating jurisdiction. This clause authorises samples to be taken at later stages in the sampling process in another participating jurisdiction (see clause 43).

#### **43. Providing or taking sample in another participating jurisdiction**

Clause 41 deals with the situation of a sample being taken from a person and tested in WA under WA law, and allows for this to occur using the procedures of the NT and SA. Clause 43 deals with the situation of a WA police officer taking a sample for testing from a person under WA laws in SA or the NT and using the procedures of SA or the NT. In this situation, the person is again taken to be required to provide a sample using the procedures under WA law.

A test of a sample using NT or SA procedures is again taken to be a test under WA laws. Furthermore, a certificate issued under NT or SA drink or drug-driving laws can be accepted as prima facie evidence for the purpose of sections 70(1) or (3a) of the *Road Traffic Act 1974* (WA). Similarly, in these circumstances, the analysis of a sample taken in a breath or blood test can be used for the purpose of sections 68(4)(a) or 69(2) (as the case requires) and section 71 of the *Road Traffic Act 1974* (WA).

The option of taking a sample or having it tested in accordance with WA procedures remains an option.

#### **44. Preliminary alcohol or drug test cannot be conducted in another participating jurisdiction**

A WA police officer's power to take samples for testing in another jurisdiction, does not include the taking of samples for preliminary testing under WA law.

### **Subdivision 3 – Vehicle impounding laws**

#### **45. Powers**

For the purpose of this section a “**person**” connected with a vehicle is someone who is suspected, alleged or found guilty of committing the offence which makes the vehicle subject to impounding or confiscation. A WA police officer can exercise WA vehicle impounding laws in SA or the NT if the person connected with the vehicle also has a connection to a cross-border region and

the impounding or confiscation is pursuant to an order made by a prescribed WA court.

#### **Subdivision 4 – Miscellaneous matters**

##### **46. Law of State applies**

The powers exercised under this Division are governed by WA law, taking into account any modifications to specific laws.

##### **47. Relationship with Division 1**

This Division does not diminish any powers which a WA police officer may exercise in accordance with Division 1 (Powers generally).

#### **Division 3 – Restraining orders laws**

##### **48. Meaning of “WA police order”**

This clause provides that for the purposes of this Division a “WA police order” is an order made by a WA police officer under Part 2, Division 3A of the *Restraining Orders Act 1997* (WA).

##### **49. Making of WA police orders**

If a person against whom a WA police order is sought or made has a connection with a cross-border region, a WA police officer may make the order in SA or the NT. The making of the order is governed by WA law. For the purpose of deciding whether or not the person against whom the WA police order is sought or proposed to be made has a connection with a cross-border region, proposed section 22 and Part 2 Division 4 apply.

##### **50. Enforcement of WA police orders**

If a WA police order is made against a person in another participating jurisdiction, and the person in whose interest the order was made ordinarily resides in a cross-border region, a WA police officer may exercise their powers in relation to the person against whom the order has been made. Breaches of these orders are to be dealt with under Part 6, Division 3 of the *Restraining Orders Act* (WA). The powers conferred under this clause are governed by WA law.

#### **Division 4 – Offence**

##### **51. Offence to interfere with exercise of power**

This clause provides that if a person subject to WA law in another jurisdiction takes an action that would be an offence under WA law in WA, then the action is an offence under WA law. The penalties for such offences are the same as those prescribed for State offences ie an offence of this type when committed in WA. Where a State offence is indictable, it is also indictable if the offence is committed under this Part in SA or the NT.

Example:

Under the *Criminal Investigation Act 2006* section 44(2)(g)(i), a WA police officer executing a search warrant in respect of premises in WA may order a person to leave those premises. A failure to comply with the order is an offence under section 153(1) of that Act attracting a penalty of \$12,000 or 12 months’

imprisonment. If a WA police officer executing a search warrant in respect of premises in SA or the NT orders a person to leave those premises, a failure to comply with the order is an offence under this Act attracting the same penalty.

## **PART 4 – POLICE OFFICERS OF ANOTHER PARTICIPATING JURISDICTION EXERCISING POWERS IN STATE**

This Part is the corollary of Part 3 in that it confers powers on NT and SA police officers to exercise their NT and SA powers in WA.

### **Division 1 – Power generally**

#### **52. Arrest without warrant**

SA and NT police officers can arrest people in WA under SA and NT law, as the case may be, without warrant. They can do so if, under their own State/Territory's law they would be entitled to arrest the person without warrant in their home jurisdiction. It is necessary that the person being arrested has a connection to a cross-border region.

It is not enough, however, for WA to say that NT and SA officers can exercise their NT or SA powers in WA. Ordinarily, an arrest in WA would be covered by WA law. Therefore, it is necessary to disapply WA law in a situation such as this. This is achieved through subclause 52(2).

#### **53. Arrest under warrant**

A person who has a connection to a cross-border region can be arrested by a SA or NT police officer under warrant and under the laws of SA or the NT, as the case may be. A magistrate of the NT or SA can issue a warrant for arrest of the person under NT or SA law. Again, WA law dealing with arrests under warrant is disapplied in relation to this arrest and warrant to enable the NT and SA laws to operate in this situation. Examples of how clause 53 may operate are as follows.

Example 1 – A person is suspected of committing an offence under SA law in the SA portion of the WA/SA/NT (Central Australia border) region. A SA magistrate anywhere in WA may issue a warrant for the person's arrest. A SA police officer may arrest the person under the warrant anywhere in WA.

Example 2 – A person who ordinarily resides in the WA/NT (northern border) region is suspected of committing an offence under NT law in Katherine. A NT magistrate anywhere in WA may issue a warrant for the person's arrest. A NT police officer may arrest the person under the warrant anywhere in WA.

Example 3 – A person who ordinarily resides in the WA/SA (southern border) region is suspected of committing an offence under SA law in Port Augusta. A SA magistrate anywhere in WA may issue a warrant for the person's arrest. A SA police officer may arrest the person under the warrant anywhere in WA.

#### **54. Person taken into custody**

In this clause the "arresting jurisdiction" is the NT or SA, ie the other participating jurisdiction under whose laws a person is being arrested in WA. A police officer of the arresting jurisdiction may arrest a person (either with or without a warrant) and keep them in custody in WA. It is necessary that the

arrested person has a connection with a cross-border region for this to apply. Once the person is in custody, they can be taken to a police station, court or other authorised place in WA. WA custody laws are disapplied in this situation and do not govern this arrest.

#### **55. Investigation of suspected or alleged offence or breach of order**

In this clause the “investigating jurisdiction” is the NT or SA, ie the other participating jurisdiction under whose laws an investigation is being conducted. If a police officer of the investigating jurisdiction suspects a person who has a connection with a cross-border region of having committed an offence or has breached an order, the police officer can conduct that investigation in WA but under the laws of the investigating jurisdiction, ie SA or the NT. Likewise, a magistrate of the investigating jurisdiction may issue a warrant under NT or SA law, as the case may be, for the purpose of an investigation. WA laws of investigation are disapplied to investigations governed by the laws of an investigating jurisdiction.

Example 1 – A person is suspected of committing an offence under SA law in the SA portion of the WA/SA/NT (Central Australia) region. A SA police officer may investigate the alleged offence anywhere in WA. For the purpose of the investigation of the alleged offence, a SA magistrate anywhere in WA may issue a warrant to search premises anywhere in WA, SA or the NT.

Example 2 – A person arrested in the WA/NT (northern border) region for an offence under NT law alleged to have been committed in Katherine. A NT police officer may investigate the alleged offence anywhere in WA. For the purpose of the investigation of the alleged offence, a NT magistrate anywhere in WA may issue a warrant to search premises anywhere in WA or the NT but not in SA.

Example 3 – A person who ordinarily resides in the WA/SA (southern border) region is suspected of committing an offence under SA law in Port Augusta. A SA police officer may investigate the alleged offence in WA. For the purpose of the investigation of the alleged offence, a SA magistrate anywhere in WA may issue a warrant to search premises anywhere in WA or SA but not in the NT.

#### **56. Relationship of this Division with *Criminal Investigation (Identifying People) Act 2002 Part 12***

The provisions of Part 12 of the *Criminal Investigation (Identifying People) Act 1987 (WA)* continue to apply and are not affected by Division 2, Part 4 of this Bill. The effect of this is that a police officer of another participating jurisdiction who is investigating an offence under the law of that other jurisdiction may, for the purpose of examining or obtaining material from the body of a person in WA, elect to use the powers the police officer has under this Division, or to proceed under the *Criminal Investigation (Identifying People) Act 1987 (WA)*.

### **Division 2 – Road traffic powers**

#### **Subdivision 1 – Vehicle or driver licensing laws**

#### **57. Powers in relation to offences**

If a person has a connection to a cross-border region, and a police officer of the

NT or SA suspects or alleges that the person has committed an offence under NT or SA vehicle or driver licensing laws, police officers can exercise their NT or SA powers, as the case may be.

**58. Other powers**

If a person ordinarily resides in a cross-border region, a NT or SA police officer can apply NT or SA licensing laws to the person in WA. In this situation, the police officers are exercising their “licensing powers” ie the powers conferred on them under NT or SA licensing laws, as the case may be.

**Subdivision 2 – Drink or drug-driving laws**

**59. Powers that may be exercised in State**

This clause empowers SA and NT police officers to exercise their SA/NT powers in relation to taking samples for a preliminary alcohol or drug test under SA/NT law in WA. The clause requires that the person from whom the sample is being taken has some connection with a cross-border region. This clause has to be read in conjunction with proposed section 60 which says that a WA police officer cannot take a sample for preliminary drug or alcohol testing under WA law in another jurisdiction.

**60. Preliminary alcohol or drug test cannot be conducted in State**

A SA or NT police officer’s power to take samples in WA, does not include the taking of samples for preliminary testing under SA or NT law.

**Subdivision 3 – Vehicle impounding laws**

**61. Powers**

For the purpose of this section a person connected with a vehicle is someone who is suspected, alleged or found guilty of committing the offence which makes the vehicle subject to impounding or confiscation. A SA or NT police officer can exercise SA or NT vehicle impounding laws in WA if the person connected with the vehicle also has a connection to a cross-border region and the impounding or confiscation is pursuant to an order made by a prescribed SA or NT court.

**Subdivision 4 – Miscellaneous matters**

**62. Law of State does not apply**

The powers exercised under this Division are not governed by WA law other than this Act.

**63. Relationship with Division 1**

This Division does not diminish any powers which a NT or SA police officer may exercise in WA in accordance with Division 1 (Powers generally).

**Division 3 – Restraining orders laws**

**64. Meaning of “NT police order”**

This clause defines “NT police order” as being an order made by a NT police officer under the restraining order laws of the NT.

### **65. Making of WA police orders**

If a person against whom a NT police order is sought or made has a connection with a cross-border region, a NT police officer may make the order in WA. WA laws are disapplied in this circumstance. For the purpose of deciding whether or not the person against whom the NT police order is sought or proposed to be made has a connection with a cross-border region, proposed section 22 and Part 2 Division 4 apply.

### **66. Enforcement of NT police orders**

If a NT police order is made against a person in WA, and the person in whose interest the order was made ordinarily resides in a cross-border region, a NT police officer may exercise their powers in relation to the person against whom the order has been made. WA law is disapplied to this situation.

## **PART 5 – PRESCRIBED COURTS OF STATE EXERCISING CROSS-BORDER JURISDICTION**

### **Division 1 – Preliminary matters**

### **67. Operation of courts outside State not limited**

This clause makes reference to section 8 of the *Magistrates Court Act 2004* (WA), which provides for where and when the Magistrates Court operates, and section 13 of the *Children’s Court of Western Australia Act 1988* (WA), which makes the same provision for that Court. The clause does not limit the application of these sections of these other two Acts, and provides that the application of Part 5 is subject to these other provisions.

### **Division 2 – Jurisdiction and powers of courts**

### **68. Proceedings that may be heard in another participating jurisdiction**

If a person who is the subject of a court proceeding has a connection with a cross-border region for the purpose of that proceeding, a WA court may deal with the matter in a location in SA or the NT. This only applies to proceedings under the following Acts or sections of Acts, namely:

- section 11, *Magistrates Court Act* (criminal jurisdiction);
- section 19 of the *Children’s Court of Western Australia Act* (criminal jurisdiction);
- *Bail Act 1982*;
- *Sentencing Act 1955*;
- *Young Offenders Act 1994*;
- *Restraining Orders Act 1997*;
- orders made under sections 27A or 28 of the *Firearms Act 1973*;
- *Road Traffic Act 1974* (provisions relating to disqualification from holding a drivers licence, to extraordinary licences, and impounding and confiscation of vehicles and the sale or disposal of those vehicles).

Regulations may prescribe proceedings under other Acts that fall within the scope of what a WA court may deal with in another jurisdiction.

A WA court can only hear and determine a matter in SA or the NT, if the court is able to do so in WA.



Example 1 – A person is charged with an offence under WA law alleged to have been committed in the WA portion of the WA/SA/NT (Central Australia) region. The charge may be heard by a WA magistrate sitting anywhere in WA, SA or the NT.

Example 2 – A person who ordinarily resides in the WA/SA (southern border) region is charged with an offence under WA law alleged to have been committed in Kalgoorlie. The charge may be heard by a WA magistrate sitting anywhere in WA or SA but not in the NT.

Example 3 – A person is arrested in the WA/SA/NT region for an offence under WA law alleged to have been committed in Perth (“the WA/SA/NT charge”). The person also has an outstanding charge for an offence under WA law alleged to have been committed in the WA portion of the WA/NT (northern border) region (the “WA/NT charge”). The WA/SA/NT charge may be heard by a WA magistrate sitting anywhere in WA, SA or the NT. The WA/NT charge may be heard by a WA magistrate sitting anywhere in WA or the NT. It may also be heard by a WA magistrate sitting anywhere in SA, but only if it is heard with the WA/SA/NT charge.

#### **69. Exercise of jurisdiction and powers**

A prescribed WA court can exercise its cross-border powers in either WA or one of the other participating jurisdictions. To enable the court to exercise its cross-border powers in another participating jurisdiction, it is empowered to sit in that jurisdiction and to have registries there as well. The powers that a WA cross-border court, or a magistrate or registrar of that court, may exercise in another jurisdiction include compelling witnesses, administering oaths, punishing for contempt and issuing warrants, summonses and other process. It can only exercise powers that it is also entitled to exercise in WA. Even if the matter is not heard and determined in another participating jurisdiction, the court may still exercise its powers in that jurisdiction in dealing with a cross-border matter eg obtaining a pre-trial order.

#### **70. Practice and procedure**

A WA court sitting as a cross-border court follows WA (and not SA or NT) practice and procedure regardless of where it is sitting, subject to any modifications in the regulations.

#### **71. Rules of evidence**

A WA court sitting as a cross-border court follows WA (and not SA or NT) rules of evidence regardless of where it is sitting, subject to any modifications in the regulations.

#### **72. Offence to fail to comply with order, judgment, warrant or summons**

If a WA court is sitting outside of WA and exercising cross-border jurisdiction, it is an offence to fail to comply with an order, judgment, warrant or summons made by that court at that sitting, as long as it would also be an offence if the same failure to comply would be an offence if the court were sitting in WA. Penalties for offences will be prescribed by regulation, and if the failure to comply would constitute an indictable offence if it occurred when the court was

sitting in WA, then it is also an indictable offence if it occurs when the court is sitting in another participating jurisdiction.

### **Division 3 – Miscellaneous matters relating to cross-border proceedings**

#### **73. Legal practitioners of another participating jurisdiction entitled to appear**

People are only entitled to engage in legal practice (including representing someone else in court) if they are permitted to do so under the legal profession laws of a jurisdiction. Recent legislative changes have resulted in legal practitioners (ie lawyers holding practising certificates) being able to engage in legal practice in any Australian jurisdiction, not just the one(s) for which they hold a practising certificate eg a WA lawyer holding a WA practising certificate can appear in a NT or SA court on the strength of that practising certificate. This clause makes it clear that this also applies to a legal practitioner from NT or SA appearing for a person in a cross-border proceeding in a WA where the person has a connection with a cross-border region for the purposes of that proceeding.

Legal profession legislation also enables certain authorised non-legal practitioner individuals to appear on someone's behalf in a court. This includes individuals authorised under section 48 of the *Aboriginal Affairs Planning Act 1972* (WA) to appear in court on behalf of a person of Aboriginal descent in relation to a criminal matter. This clause ensures that this entitlement is retained for the purposes of a cross-border matter before a WA court sitting outside WA.

#### **74. Court documents may be lodged, served or issued in another participating jurisdiction**

This clause authorises a court document of WA court to be lodged, served or issued in SA or the NT.

#### **75. Court documents in wrong form do not invalidate proceedings or decisions**

A cross-border court of any of the participating jurisdictions may find itself dealing with matters from two or even three of the jurisdictions at any one sitting. It is unreasonable to expect that each individual court will at all times have available the forms of each jurisdiction. It would be counter-productive to prevent a court from hearing a matter just because the form from the relevant jurisdiction is not available. It may be that a person with a cross-border connection is brought before a WA court in WA on a WA charge, and it is found that there is an outstanding charge in relation to another matter from the NT or SA where the person also has a cross-border connection. It is in the interests of justice that the court be able to deal with both matters at the one sitting, rather than delay dealing with the NT/SA matter for want of a NT/SA form.

This clause ensures that if a document that is lodged, served or issued in a WA court is in the form used in SA or NT, then that document is still effectual for its intended purpose. There is no right of appeal on the basis that the wrong jurisdiction's form was used. Subclause 75(3), however, does give a WA court the flexibility to order that a WA form be used.

#### **76. Application of *Court Security and Custodial Services Act 1999***

This is the Act which governs the provision of security services to WA courts. It will not apply to WA courts sitting outside of WA. In this situation, the WA

court would fall under the equivalent legislation and services of the NT or SA, as the case may be.

**77. Law of State applies**

WA courts exercising cross-border jurisdiction is governed by the laws of WA except where this Act provides otherwise. Those other laws which apply may also be modified by the regulations and apply in their modified form.

**Division 4 – Registration of interstate restraining orders**

**78. Part 2 Divisions 2 and 4 do not apply**

Part 2 Division 2 sets out the criteria for determining if a person has a connection to a cross-border region. For the purposes of this Division, a different approach has been taken because of the peculiar nature of restraining orders and the registration process.

Part 2 Division 4 provides for the creation of multiple cross-border regions. However, in order to broaden the application of the cross-border scheme in relation to restraining orders, proposed sections 80(b) and 81(b) do not require a connection with a cross-border region. Clause 78 has been included to ensure that the specific requirements of proposed sections 80 and 81 will apply and not those of Part 2 Division 4.

**79. Terms used in this Division**

This is a definition clause. As well as defining “**NT restraining orders**” and “**SA restraining orders**” as restraining orders of those respective jurisdictions, it defines “**register**” in the context of Part 7 the *Restraining Orders Act 1997* (WA).

**80. Registration of SA restraining orders under WA law**

If a SA restraining order is made, amended or varied by a SA court, and either the respondent to the restraining order has a connection to a cross-border region or the person on whose behalf the restraining order has been taken out ordinarily resides in SA, a registrar of the WA Magistrates Court can register that restraining order.

Example 1 – A SA magistrate sitting in Alice Springs makes a restraining order under SA’s restraining orders laws. For the purposes of the proceeding, the person against whom the order is made had a connection with the WA/SA/NT (Central Australia) region. The Alice Springs registry is a registry of the WA Magistrates Court. Exercising the powers of a registrar of the WA Magistrates Court, a registry officer registers the order under WA’s restraining orders laws.

Example 2 – A SA magistrate sitting in Port Augusta makes a restraining order under SA’s restraining orders laws. The person for whose benefit the order is made ordinarily resides in SA. The Port Augusta registry is a registry of the WA Magistrates Court. Exercising the powers of a registrar of the WA Magistrates Court, a registry officer registers the order under WA’s restraining orders laws.

**81. Registration of NT restraining orders under WA law**

If a NT restraining order is made, amended or varied by a NT court, and either the respondent to the restraining order has a connection to a cross-border region or the person on whose behalf the restraining order has been taken out ordinarily

resides in the NT, a registrar of the WA Magistrates Court can register that restraining order.

Example 1 – A NT magistrate sitting in Darwin makes a restraining order under the NT’s restraining orders laws. For the purposes of the proceeding, the person against whom the order is made had a connection with the WA/NT (northern border) region. The Darwin registry is a registry of the WA Magistrates Court. Exercising the powers of a registrar of the WA Magistrates Court, a registry officer registers the order under WA’s restraining orders laws.

Example 2 – A NT magistrate sitting in Alice Springs makes a restraining order under the NT’s restraining orders laws. The person for whose benefit the order is made ordinarily resides in the NT. The Alice Springs registry is a registry of the WA Magistrates Court. Exercising the powers of a registrar of the WA Magistrates Court, a registry officer registers the order under WA’s restraining orders laws.

## **PART 6 – PRESCRIBED COURTS OF ANOTHER PARTICIPATING JURISDICTION EXERCISING CROSS-BORDER JURISDICTION**

### **Division 1 – Jurisdiction and powers of courts**

#### **82. Proceedings that may be heard in State**

If a person who is the subject of a court proceeding has a cross-border connection, for the purpose of that proceeding, a prescribed court of SA or the NT may deal with that matter in WA.

Example 1 – A person is charged with an offence under NT law alleged to have been committed in the NT portion of the WA/SA/NT (Central Australia) region. The charge may be heard by a NT magistrate sitting anywhere in WA.

Example 2 – A person who ordinarily resides in the WA/SA (southern border) region is charged with an offence under SA law alleged to have been committed in Port Augusta. The charge may be heard by a SA magistrate sitting anywhere in WA.

Example 3 – A person is arrested in the WA/SA/NT (Central Australia) region for an offence alleged to have been committed under NT law in Darwin. The person also has an outstanding charge for an offence under NT law alleged to have been committed in the NT portion of the WA/NT (northern border) region. Both charges may be heard by a NT magistrate sitting anywhere in WA.

#### **83. Exercise of jurisdiction and powers**

A prescribed SA or NT court can exercise its cross-border powers in WA. To enable to do so, this clause empowers the court to sit in WA and to have registries here as well. The powers that a SA or NT cross-border court, or a magistrate or registrar of that court, may exercise in WA include compelling witnesses, administering oaths, punishing for contempt and issuing warrants, summonses and other process.

### **Division 2 – Miscellaneous matters relating to cross-border proceedings**

**84. Exception to *Criminal Code Act 1913* section 4**

Section 4 of the *Criminal Code Act 1913* (which appears as Appendix B to the *Criminal Code Compilation Act 1913*) provides that a person can only be tried or punished in WA under a law of WA (including *The Criminal Code*), the Commonwealth, or of the United Kingdom if it applies to WA. Clause 84 puts this aside for the purpose of cross-border matters so that a person in WA can be tried and punished under the law of another participating jurisdiction where a cross-border proceeding has been dealt with by a prescribed court of that jurisdiction.

**85. Privileges, protection and immunity of participants in proceedings**

People such as magistrates, legal practitioners and witnesses involved in court proceedings in WA have certain privileges, protections and immunities so that they are not inhibited in fulfilling their obligations to the court through, for example, fear of defamation. This clause extends these privileges, protections and immunities to magistrates, legal practitioners and witnesses involved in SA or NT court proceedings being conducted in WA under cross-border jurisdiction.

**86. Court documents may be lodged, served or issued in State**

This clause gives permission for SA or NT court documents in relation to a cross-border matter to be lodged, served or issued in WA.

**87. Application of *Court Security and Custodial Services Act 1999***

This is the Act which governs the provision of security services to WA courts. It will apply to SA and NT courts when they sit in WA and give the same protections to the courts of SA and the NT as they would to a WA court in this State.

**88. Law of State does not apply**

WA laws which would otherwise govern the exercise of jurisdiction by a court in this State, do not apply when a court is a prescribed court of the NT or SA exercising cross-border jurisdiction.

**Division 3 – Registration of interstate restraining orders**

**89. Part 2 Division 2 and Division 4 do not apply**

Part 2 Division 2 sets out the criteria for determining if a person has a connection to a cross-border region. For the purposes of this Division, a different approach has been taken because of the peculiar nature of restraining orders and the registration process.

Part 2 Division 4 provides for the creation of multiple cross-border regions. However, in order to broaden the application of the cross-border scheme in relation to restraining orders, clauses 90(b) and 91(b) do not require a connection with a cross-border region. Clause 89 has been included to ensure that the specific requirements of clauses 90 and 91 will apply and not those of Part 2 Division 4.

**90. Registration of WA or NT restraining orders under SA law**

This clause enables a WA or NT restraining order to be registered in WA under SA law. To register a restraining order under this clause, is to register it as a restraining order of SA. If either the respondent to the restraining order has a

connection to a cross-border region or the person on whose behalf the restraining order has been taken out ordinarily resides in SA, the Principal Registrar of the Magistrates Court of SA can register that restraining order.

Example 1 – A WA magistrate sitting in Perth makes a restraining order under WA’s restraining orders laws. For the purposes of the proceeding, the person against whom the order is made has a connection with the WA/SA (southern border) region. The Perth registry is a registry of the SA Magistrates Court. Exercising the powers of the Principal Registrar of the SA Magistrates Court, a registry officer registers the order under SA’s restraining orders laws.

Example 2 – A NT magistrate sitting in Kalgoorlie makes a restraining order under the NT’s restraining orders laws. The person for whose benefit the order is made ordinarily resides in SA. The Kalgoorlie registry is a registry of the SA Magistrates Court. Exercising the powers of the Principal Registrar of the SA Magistrates Court, a registry officer registers the order under SA’s restraining orders laws.

#### **91. Registration of WA or SA restraining orders under NT law**

This clause enables a WA or SA restraining order to be registered in WA under NT law. To register a restraining order under this clause, is to register it as a restraining order of NT. If either the respondent to the restraining order has a connection to a cross-border region or the person on whose behalf the restraining order has been taken out ordinarily resides in NT, the Registrar of the Local Court of the NT can register that restraining order.

Example 1 – A SA magistrate sitting in Kalgoorlie makes a restraining order under SA’s restraining orders laws. For the purposes of the proceeding, the person against whom the order is made has a connection with the WA/SA/NT (Central Australia border) region. The Kalgoorlie registry is a registry of the NT Local Court. Exercising the powers of the Registrar of the NT Local Court, a registry officer registers the order under the NT’s restraining orders laws.

Example 2 – A WA magistrate sitting in Perth makes a restraining order under the WA’s restraining orders laws. The person for whose benefit the order is made ordinarily resides in the NT. The Perth registry is a registry of the NT Local Court. Exercising the powers of the Registrar of the NT Local Court, a registry officer registers the order under the NT’s restraining orders laws.

### **PART 7 – BAIL OF PERSONS IN CUSTODY UNDER LAW OF STATE**

#### **92. Police officer of State may exercise powers in another participating jurisdiction**

Proposed section 34 sets out the provisions which apply when a WA police officer arrests a person either with or without a warrant under WA law in WA or in another participating jurisdiction. Under proposed section 92, the *Bail Act 1982* (WA) (with any appropriate modifications) applies to anyone held in the custody of a WA police officer in another participating jurisdiction.

#### **93. Offence to fail to comply with bail undertaking**

If a person in SA or the NT is on bail under the WA *Bail Act* and fails to comply with a bail undertaking under that Act, they have committed an offence if it would also be an offence if the failure to comply occurred in WA. Penalties for

offences will be prescribed by regulation, and if the failure to comply would constitute an indictable offence if it occurred in WA, then it is also an indictable offence if it occurs in another participating jurisdiction

## **PART 8 – BAIL OF PERSONS IN CUSTODY UNDER LAW OF ANOTHER PARTICIPATING JURISDICTION**

### **94. Police officer of another participating jurisdiction may exercise powers in State**

Proposed section 54 sets out the provisions which apply when a NT or SA police officer arrests a person either with or without a warrant under NT or SA law in WA or in another participating jurisdiction. Under clause 94, the bail laws of the NT or SA apply to any matter concerning bail for the person in custody, and not the bail laws of WA.

## **PART 9 – MENTALLY IMPAIRED ACCUSED**

### **95. Terms used in this Part**

This is a definition clause. Cross-border proceedings in prescribed courts in the NT and SA, or appeals from proceedings, are “**NT proceedings**” and “**SA proceedings**” respectively. “**State authorised hospital**” is defined in terms of section 3 of the *Mental Health Act 1996* (WA), and a “**State prison**” is a WA prison.

### **96. Persons committed to detention or custody under SA law**

Section 269V of the *Criminal Law Consolidation Act 1935* (SA) provides for a defendant with a mental impairment to be placed under the custody, supervision and care of another or in custody in a prison. Section 269X of that Act provides that if there is to be an investigation into a defendant’s mental competence to commit an offence or stand trial, the court may release the defendant on bail or commit them to an appropriate form of custody (although not a prison unless the court is satisfied that there is no practicable alternative). Clause 96 provides that if, in relation to a SA proceeding, a person is committed to detention in a hospital or prison under this SA Act, that the person can be kept in custody in a WA authorised hospital or prison.

### **97. Persons detained under NT law**

Sections 74 and 75 of the *Mental Health and Related Services Act* (NT) and sections 79 and 80 the *Sentencing Act* (NT) make provisions for detaining a person where there are issues of whether the person has a mental impairment. Clause 97 provides that if, in relation to a NT proceeding, a person is committed to detention in a hospital or prison under these NT Acts, that the person can be kept in custody in a WA authorised hospital or prison.

## **PART 10 – SENTENCES AND ORDERS UNDER LAW OF STATE**

### **Division 1 – Custodial sentences and orders**

#### **Subdivision 1 – Sentences of imprisonment or detention**

**98. Serving sentence in State or another participating jurisdiction**

If a person who is sentenced under WA law has a connection with a cross-border region, that person can be held in custody for the purpose of serving their sentence under WA law in a prison or detention centre in WA, SA or the NT.

**99. Warrant of commitment**

A “**warrant of commitment**” is the approved form that is issued by judicial officers or court registrars if a person is sentenced to imprisonment or detention. Under clause 100, a warrant of commitment has general effect and does not specify in which prison or detention centre a sentence is to be served. For that reason, the warrant is not directed to any particular authorised officer, but to authorised officers in general. This provides flexibility in where a cross-border prisoner or detainee may serve their sentence, which is one of the aims of the scheme. A WA sentence can be served in the NT or SA, and vice versa.

**Subdivision 2 – Remand**

**100. Remanded in custody in State or another participating jurisdiction**

If a person who is remanded in custody under WA law has a connection with a cross-border region, that person can be held in custody for the duration of their remand under WA law in a remand facility in WA, SA or the NT.

**101. Remand warrant**

A “**remand warrant**” is the approved form that is issued by judicial officers or court registrars if a person is remanded in custody. Under clause 102, a remand warrant has general effect and does not specify in which prison or detention the person is to be held. For that reason, the warrant is not directed to any particular authorised officer, but to authorised officers in general. This provides flexibility as to where a person the subject of cross-border proceedings can be held in custody, which is one of the aims of the scheme.

**102. Law of State applies**

When a person is remanded under proposed section 102, WA laws of remand apply except where this Act provides otherwise. Those other laws which apply may also be modified by the regulations and apply in their modified form

**Subdivision 3 – Bring up orders**

**103. Bringing prisoner or detainee in another participating jurisdiction before judicial body of State**

For certain purposes a prisoner or detainee is required or entitled to be brought before a court in relation to proceedings before a judicial body (eg sentencing). A “**judicial body**” includes a court, a Royal Commission or the Corruption and Crime Commission, or a member of one of these bodies. This clause provides that such an order can be made in relation to a person in custody in a NT or SA prison or detention centre under the law of any of the participating jurisdictions (including WA). This can only occur if the person has a connection with a cross-border region which includes the jurisdiction in which they are held. The *Prisons Act 1981* (WA) applies for the purpose of bringing up a person who is in custody in the State under the law of a participating jurisdiction.



**104. Custody of person brought up from prison or detention in another participating jurisdiction**

The person who is in charge of a prison or detention centre where a person the subject of a bring up order is held in custody, does not have to personally bring the person before the court. This function can be delegated to an authorised officer and a person who is taken from a prison or detention centre in compliance with a bring up order, must remain in the charge of an authorised officer. At the end of the proceeding involving the person brought up from prison or detention, that person must be returned to the prison or detention centre. Their absence from prison or the detention centre for this purpose is not to be held against the person.

A proceeding involving a person who is the subject of a bring up order could be adjourned. In this circumstance, they are to be confined to a prison or detention centre in a participating jurisdiction or, whilst in the charge of an authorised officer, kept at some place in a participating jurisdiction. They are then to be brought up before the judicial body when required.

**Subdivision 4 – Miscellaneous matters**

**105. Carrying out custodial orders**

WA custodial orders can be carried out by an authorised officer in WA or in SA or the NT.

**106. Application of *Court Security and Custodial Services Act 1999***

If a person is being held in custody under WA law in SA or the NT, their custody is not covered by this WA Act. Instead, the corresponding Acts of the SA and NT would apply.

**107. Application of *Prisons Act 1981***

If a person is being held in custody under WA law in a prison in SA or the NT, they do not fall within the scope of this Act. Instead, the corresponding Acts of the SA and NT would apply.

**108. Application of *Young Offenders Act 1994***

Part 9 of the *Young Offenders Act* (WA) contains the provisions relating to detention centres, and section 178 provides for the transfer of an offender from a detention centre to prison. Section 188 provides that the person who has charge of a detainee has legal custody of the detainee. Section 191 makes provisions in relation to unlawful communication with a detainee and section 193 makes provisions regarding escape for custody. Those sections of this Act which do not apply to a person held in custody in a detention centre under WA law in the NT or SA, are all of Part 9 (with the exception of section 178), and sections 188, 191 and 193.

**Division 2 – Non-custodial sentences and orders**

**109. Carrying out non-custodial orders in another participating jurisdiction**

A person who is convicted of an offence may receive a non-custodial sentence. If they have a connection with a cross-border region, they may carry out the terms of this sentence either wholly or partly in SA or the NT. Community corrections officers (CCOs) and juvenile justice officers (JJOs) supervise

offenders carrying out non-custodial sentences. This clause provides that WA CCOs and JJOs can fulfil these responsibilities under WA law in SA or the NT provided that the person against whom the order has been made has a connection to a cross-border region. WA laws govern these orders and the powers that CCOs and JJOs exercise in relation to them.

**110. Conducting diversionary programs for young offenders in another participating jurisdiction**

A juvenile who is alleged to have committed an offence may be directed to a diversionary program under Part 5 of the *Young Offenders Act* (WA). If they have a connection with a cross-border region, they may participate in a diversionary program either wholly or partly in SA or the NT. Officer holders such as JJOs and police officers may supervise a young person on a diversion program. This clause provides that WA officers can fulfil these responsibilities under WA law in SA or the NT provided that the person on the diversionary program has a connection to a cross-border region. WA laws govern these orders and the powers that officers exercise in relation to them.

**PART 11 – SENTENCES AND ORDERS UNDER LAW OF ANOTHER PARTICIPATING JURISDICTION**

**Division 1 – Custodial sentences and orders**

**111. Serving sentence of imprisonment or detention in State**

If a person who is sentenced under SA or NT law has a connection with a cross-border region, that person can be held in custody for the purpose of serving their sentence under those laws in a prison or detention centre in WA.

**112. Remanded in custody in State**

If a person who is remanded in custody under SA or NT law has a connection with a cross-border region, that person can be held in custody for the duration of their remand under those laws in a remand facility in WA.

**113. Carrying out custodial orders**

Where a custodial order has been made under the law of NT or SA, it can be carried out in WA by an authorised officer of any of the participating jurisdictions. Likewise, a WA authorised officer may carry out a custodial order made under NT or SA law in either the NT or SA.

**114. Effect of bring up order if person in custody under law of State**

A person can be held in custody under WA law in a NT or SA prison or detention centre. However, the person may be the subject of a NT or SA bring up order. If they are absent from prison or detention centre in order to comply with a NT or SA bring up order, this is not to be held against them for the purpose of the WA sentence.

**115. Application of *Court Security and Custodial Services Act 1999***

If a person is being held in custody under NT or SA law in WA, their custody is covered by this WA Act. The corresponding Acts of the SA and NT would not apply.

**116. Application of *Prisons Act 1981***

If a person is being held in custody under NT or SA law in a prison in WA, they fall within the scope of this Act.

**117. Application of *Young Offenders Act 1994***

Part 9 of the *Young Offenders Act 1994* (WA) contains the provisions relating to detention centres, and section 178 provides for the transfer of an offender from a detention centre to a prison. Section 188 provides that the person who has charge of a detainee has legal custody of the detainee. Section 191 makes provision in relation to unlawful communication with a detainee and section 193 makes provision regarding escape from custody. Those sections of this Act which apply to a person held in custody in a detention centre under WA law in the NT or SA, are all of Part 9 (with the exception of section 178), and sections 188, 191 and 193.

**Division 2 – Non-custodial sentences and orders**

**118. Carrying out non-custodial orders in State**

A person who is convicted of a NT or SA may receive a non-custodial sentence. If they have a connection with a cross-border region, they may carry out the terms of this sentence either wholly or partly in WA. CCOs and JJOs of the NT supervise offenders carrying out non-custodial sentences. This clause provides that NT and SA CCOs and JJOs can fulfil these responsibilities under NT and SA law in WA provided that the person against whom the order has been made has a connection to a cross-border region. WA laws relating to non-custodial sentences and related powers do not apply in these circumstances.

**119. Conducting diversionary programs for young offenders in State**

A juvenile who is alleged to have committed an offence in SA or the NT may be directed to a diversionary program under the relevant laws of those jurisdictions. If they have a connection with a cross-border region, they may participate in a diversionary program either wholly or partly in WA. Officer holders such as JJOs and police officers may supervise a young person on a diversion program. This clause provides that NT and SA officers can fulfil these responsibilities under NT and SA respectively in WA provided that the person on the diversionary program has a connection to a cross-border region. WA laws do not apply in these circumstances.

**PART 12 – ENFORCEMENT OF FINES**

**Division 1 – Preliminary matters**

**120. Terms used in this Part**

This is a definition clause. If a person fails to pay a fine in WA, they can have their drivers licence disqualified. “**Director General**” refers to the head of the Department of Planning and Infrastructure which is the agency responsible for administering drivers licences. The other definitions are self-explanatory.

**Division 2 – Fines under law of State**

**121. Request to enforce fine in another participating jurisdiction**

A fine that is referred to the Fines Enforcement Registry (FER) for enforcement, is registered by that office. However, it may be more expedient for a WA fine to be enforced in SA or the NT. In this case, the Fines Registrar may ask the SA or NT fines enforcement agency to register the fine for enforcement in their jurisdiction, provided that the offender has a connection with a cross-border

region. The serious nature of the payment of fines requires that such a request must be made formally in writing and is supported by a certified copy of the order imposing the fine, a certificate from the WA Fines Registrar showing the amount of the fine outstanding and providing written advice that establishes the offender's connection with the cross-border region.

**122. Effect of making request**

It is important that an offender does not find themselves in the situation of perhaps expiating a fine more than once because a fine has been referred to another jurisdiction for enforcement. In the interest of procedural fairness, the offender should only be subject to one fines enforcement regime at a time. There could also be confusion between fines enforcement agencies if they are simultaneously seeking to enforce the same fine. Therefore, when the WA Fines Registrar requests another participating jurisdiction to enforce a WA fine, the Registrar is to cancel any outstanding order or unexecuted warrant in WA in relation to that fine. If this includes cancelling a licence suspension that has resulted from non-payment of a fine, then the Registrar is to advise the Director General responsible for licensing of this. The Registrar is not to take any further action with respect to this fine unless the Registrar requests the other jurisdiction's agency to refer the fine back to WA or the other jurisdiction's agency requests that WA resume responsibility for this fine.

**123. Receipt of money by Fines Registrar**

It is always possible that an offender may pay money to the WA FER for a WA fine even though the fine has been transferred to another participating jurisdiction for enforcement. If this happens, the Fines Registrar is to give written notification to the fines enforcement agency in the other jurisdiction that this has happened.

**124. Receipt of money from reciprocating agency**

Should the fines enforcement agency in the NT or SA send any money to the WA FER in part or whole payment of a fine, then the payment is to be treated as if it were received from the offender.

**125. Resumption of enforcement by Fines Registrar**

After the WA Fines Registrar has requested another jurisdiction's fines enforcement agency to take over the enforcement of a fine, the Registrar can request that agency to refer the fine back to WA. Also, that other jurisdiction's agency can request that WA resume responsibility for a fine.

**Division 3 – Fines under law of another participating jurisdiction**

**126. Request to enforce fine in State**

If a fine has been imposed in SA or the NT, and the fines enforcement agency in that jurisdiction sends a request to the WA Fines Registrar to enforce a fine, the WA Fines Registrar has no alternative but to register the fine unless the request does not comply with the requirements set out in subclause 128(2). The serious nature of the payment of fines requires that, under clause 128(2), such a request must be made formally in writing and is supported by a certified copy of the order imposing the fine, a certificate from the NT or SA agency showing the amount of the fine outstanding and providing written advice that establishes the offender's connection with the cross-border region.

**127. Effect of registration**

Once a SA or NT fine has been registered in WA, it is enforced under WA law up to the point where the Fines Registrar would ordinarily issue a warrant of commitment. In WA, if a person fails to expiate a fine through the various means available (eg payment, completion of a Work and Development Order), the person can be imprisoned under a warrant of commitment issued by the Fines Registrar. This is not the case in the other participating jurisdictions. In SA, if a person fails to expiate a fine, the matter is referred back to the Magistrates Court for the offender to be re-sentenced. This could, but not necessarily, result in the person being sentenced to a term of imprisonment. Because of the substantial disparity in approaches to the enforcement of fines, it would be unjust if a person originally fined under SA law could find themselves imprisoned under WA law when this would not necessarily be the case in SA. Therefore, if a NT or SA fine is registered in WA for enforcement, once all other avenues of expiation have been exhausted and the only option left would be imprisonment if it were a WA fine, the WA Fines Registrar cannot issue a warrant of commitment.

**128. Receipt of money by reciprocating agency**

It is always possible that an offender may pay money to the SA or NT fines enforcement agency even though the fine has been transferred to WA for enforcement. If the Fines Registrar receives notice that this has happened, the Registrar is to record the fine and may only take further action in relation to any outstanding amount.

**129. Receipt of money by Fines Registrar**

Should the WA FER receive money in part or full payment of a NT or SA fine that has been transferred to and registered in WA for enforcement, the WA Fines Registrar is to send the money to the SA or NT fines enforcement agency. This applies to money paid by the offender or as a result of enforcement action taken by the WA Fines Registrar under WA law (eg seizure of goods).

**130. Request to cease enforcement of fine**

A SA or NT fines enforcement agency which has previously transferred a fine to WA for enforcement, can request that the WA FER ceases to take action to enforce the fine. Alternatively, the WA Fines Registrar may inform the SA or NT agency that WA will no longer be enforcing the fine. If a fine is being returned to the NT or SA agency which had requested that WA enforce the fine, the WA Fines Registrar is to cancel any outstanding order or unexecuted warrant in WA in relation to that fine. If this includes cancelling a licence suspension that has resulted from non-payment of a fine, then the Registrar is to advise the Director General responsible for licensing of this. The Registrar is to advise the NT or SA agency of what money has been received in relation to the fine and any reduction in the amount of the fine outstanding. Any money that has been received in relation to the fine is to be sent to the other jurisdiction's agency. The WA Fines Registrar is not to take any further action with respect to this fine.

**PART 13 – OFFICE HOLDERS OF PARTICIPATING JURISDICTIONS**

## **Division 1 – Holding offices and exercising powers under law of other jurisdictions**

### **131. Secondary office holders and secondary offices**

Secondary office holders are people who hold an office by virtue of holding some other office.

Example 1 – SA and NT police officers who are appointed as WA police officers under the *Police Act 1892* (WA) will be secondary office holders of WA.

Example 2 – SA and NT CCOs will be taken to be WA CCOs under the *Sentence Administration Act 2003* (WA) section 98AA as modified by the regulations and will therefore be secondary office holders of WA.

### **132. Office holders of State may be secondary office holders of another participating jurisdiction**

WA office holders may hold a secondary office from the NT or SA. This clause also authorises WA office holders to exercise the powers of their NT or SA secondary office for the purpose of administering or enforcing NT or SA cross-border laws.

### **133. Office holders of another jurisdiction may be secondary office holders of State**

SA and NT office holders may hold a secondary office under WA law. This clause also authorises them to exercise WA powers for the purpose of administering or enforcing WA cross-border laws.

### **134. Prohibition against holding or exercising powers of another office not breached**

Some WA office holders are, under other legislation, prevented from holding another office at the same time they hold an office in WA. This clause provides that if the secondary office is held under the provisions of cross-border laws, then this prohibition is not breached.

### **135. Terms of appointment of secondary office holders under law of State**

A SA or NT office holder who holds a secondary office in WA, does not receive remuneration from WA as well as from the jurisdiction of their principal office. They are only entitled to the remuneration that they receive in relation to their principal office. Should they no longer hold their principal office to which their status as a secondary office holder in WA is linked, then they cease to be a secondary office holder.

## **Division 2 – Appointment of magistrates of another participating jurisdiction to be magistrates of State**

### **136. Appointment of magistrates of Magistrates Court**

SA and NT magistrates are appointed as magistrates of the WA Magistrates Court under the provisions of the *Magistrates Court Act 2004* (WA).

### **137. Appointment as magistrates of Children's Court**

SA and NT magistrates are appointed as magistrates of the Children's Court of WA under the provisions of the *Children's Court of Western Australia Act 1988* (WA).

## PART 14 – MISCELLANEOUS MATTERS

### **138. Reporting accidents, producing driver’s licences etc. to police stations etc.**

Laws such as road traffic laws (defined for WA as being the *Road Traffic Act 1974* (WA)), place obligations on people to, for example, report certain events such as a serious motor vehicle accident to the police. This clause provides that this obligation under WA law can be met by making a report to a police station in another participating jurisdiction if the person has a connection with a cross-border region. Likewise, if a person is required to make a report to the police of another participating jurisdiction they may do so at a WA police station. For the purpose of this clause, the connection to a cross-border region can be established under clauses 20, 23 or 24, depending on which applies to the person.

### **139. Application of *Inspector of Custodial Services Act 2003***

This Act gives the Inspector of Custodial Services responsibilities regarding the oversight of prisoners in WA prisons and detention centres. Should a person be being held in custody under WA law in SA or NT, the Inspector will not have jurisdiction over that person. That person’s custody will fall within the scope of any equivalent laws in those jurisdictions. Conversely, however, if a NT or SA prisoner is being held in custody in WA, the WA Inspector of Custodial Services will have jurisdiction over that person’s custody. The Inspector’s powers are in relation to the custody of a person, and it does not matter under which jurisdiction’s laws that person is held in custody, rather the determining factor is that they are in custody in this State.

### **140. Power of Minister to enter agreements**

This Bill does not seek to deal with the operational detail of the administration of justice. For effective administration of this legislation, those responsible for providing justice services will be required to operate in a co-operative manner. Therefore, to support the successful implementation of cross-border justice schemes, it is intended that there be agreements between governments at ministerial level. This clause provides for this.

### **141. Inconsistency between Act and agreement**

As referred to in clause 142, there will be intergovernmental agreements at ministerial level to support this Bill. There will also be service level agreements at agency level for police, courts, community corrections, fines enforcement and so on. Should there be an inconsistency between the terms of any of these agreements and this Bill, the terms of the Bill will prevail.

### **142. Protection of office holders of State taking action in another participating jurisdiction**

Office holders have certain protections and immunities in relation to the performance of their official duties. This clause ensures that a WA office holder performing the duties of their WA office in SA or the NT, have the same protections and immunities as if they were performing these duties in WA.

### **143. Protection of office holders of another participating jurisdiction taking action in the State**

Office holders have certain protections and immunities in relation to the performance of their official duties. This clause provides that NT and SA office holders performing the duties of their NT or SA office in WA, have the same

protections and immunities under WA law as if they were performing these duties in the NT or SA.

**144. Disclosure of information to authorities in another participating jurisdiction**

Privacy and other laws restrict the capacity of agencies to share information about individuals unless the legislation governing the activities and powers of agencies explicitly allows the sharing of information. For the successful administration of this legislation, it will be necessary for agencies of each of the participating jurisdiction to share information with other agencies from the other participating jurisdictions eg the WA Prisoner Review Board may require information from a prison superintendent in SA or the NT in considering a parole application from a prisoner serving a WA sentence in a SA or NT prison. This clause authorises the exchange of information across the jurisdictions where an agency would be authorised to provide the same information to the equivalent body in its own jurisdiction. There is also explicit provision in this clause for the CEO (corrections) to provide information for the purpose of research. This mirrors a provision in the *Prisons Act 1981* authorising the release of information for the purpose of research.

**145. Delegation by CEO (corrections)**

This clause empowers the CEO (corrections) to delegate (in writing) their powers under the legislation. The CEO may place limits on this delegation. The person to whom the CEO delegates powers cannot delegate them further to someone else. Even though the CEO may have delegated a power, this does not prevent the CEO from also exercising that power during the currency of the delegation.

**146. Regulations**

This clause enables the Governor to make regulations specified in this Bill or regulations that are deemed necessary to enable the Bill to take effect.

**PART 15 – CONSEQUENTIAL AMENDMENTS TO OTHER LEGISLATION**

**Division 1 – *Children’s Court of Western Australia Act 1988 amended***

**147. The Act amended**

This clause provides that the *Children’s Court of Western Australia Act 1988* (WA) is the Act amended in this Division.

**148. Section 10 amended**

Clause 10 of Schedule 1 of the *Magistrates Court Act 2004* (WA) created the position of “Acting magistrates (SA and NT magistrates). However, under this Bill, SA and NT magistrates who will deal with cross-border proceedings will be appointed as full magistrates and not acting magistrates of WA. This clause 10 of Schedule 1 is to be repealed under clause 159(2) of this Bill because there will no longer be an office of “acting magistrate (SA and NT magistrate). This means that the reference to “Acting magistrates (SA and NT magistrates)” in section 10 of the *Children’s Court of Western Australia Act 1988* (WA) is now superfluous and is to be repealed.

**149. Section 12 amended**

It is a requirement that magistrates take an oath or affirmation upon taking up



their appointment. This clause, which creates a new subsection, enables a magistrate appointed as a magistrate of the WA Children's Court to take this oath outside of WA. This will enable SA and NT magistrates being appointed as magistrates of the Children's Court of WA to take up this office without having to travel to WA for the purpose of taking the required oath or affirmation.

**150. Section 13 amended**

This Act currently permits the Children's Court of WA to have registries and sit outside WA. The existing subsections 13(1) and (2) are repealed and new subsections inserted. The new subsection (13(2)) provides that the Court can have registries, sit and exercise its jurisdiction in a jurisdiction outside WA only if the other jurisdiction allows this to happen. It is not necessary that the Court obtains permission from the other jurisdiction, but it is sufficient that there is nothing in the other jurisdiction's laws to prevent the Court operating there.

**151. Section 16 amended**

Section 16 provides for the appointment of registrars and other staff to the registries of the Children's court. Section 26 of the *Magistrates Court Act 2004* (WA) provides for the appointment of administrative staff to the Court. Under clause 158 of this Bill, section 26 of the *Magistrates Court Act 2004* (WA) is to be amended to provide that, for example, a WA registrar can also hold office as a registrar of another jurisdiction. Section 16 of the *Children's Court Act* is to be amended to import these new provisions of the *Magistrates Court Act* pertaining to registrars and others. This is desirable given that in the WA courts most likely to be involved in cross-border proceedings, the registry staff for both jurisdictions are the same people.

**152. Section 29 amended**

Section 29 provides for the Court to summons witnesses etc and provides that a person can be found in contempt of the Court if, for example, they fail to appear having been summonsed or wilfully insult the Court. This clause adds a new subsection 29(5) which provides that if a person commits a contempt of the Court outside WA, it is treated as if this happened within WA.

**Division 2 – *Magistrates Court Act 2004* amended**

**153. The Act amended**

This clause provides that the *Magistrates Court Act 2004* is the Act amended in this Division.

**154. Section 8 amended**

This Act currently permits the WA Magistrates Court to have registries and sit outside WA. Section 8 has been redrafted to include a new section (13(2)) which will provide that the Court can have registries, sit and exercise its jurisdiction in a jurisdiction outside WA only if the other jurisdiction allows this to happen. It is not necessary that the Court obtains permission from the other jurisdiction, but it is sufficient that there is nothing in the other jurisdiction's laws to prevent the Court operating there.

Subsection 8(4) currently provides that the Chief Magistrate must give approval for the Magistrates Court to be convened outside WA at any given time. However, this would be impracticable in the situation where, for example, an

NT magistrate dealing with an NT matter in Alice Springs is aware that the person before the court has outstanding WA charges and that it may be convenient for all that the magistrate, upon completion of the NT matters, then sits as a WA magistrate for the purpose of dealing with the WA charges. To require the magistrate to obtain the permission of the Chief Magistrate would effectively forestall the magistrate's capacity to do this which would be counter to the objectives of this Bill. Therefore, this subsection is to be repealed.

Subsection 8(6) is being repealed because it is concerned with the office of "acting magistrate (NT and SA magistrates)", an office which is being abolished under clause 159 of this Bill.

**155. Section 15 amended**

Section 15 sets out the basis upon which a person can be found guilty of contempt of court under the *Magistrates Court Act 2004* (WA). This clause adds a new subsection 15(3) which provides that if a person commits a contempt of the Court outside WA, it is treated as if this happened within WA.

**156. Section 26 amended**

Section 26 provides for the appointment of administrative staff to the Court. It is to be amended to provide that, for example, a WA registrar can also hold office as a registrar of another jurisdiction and that a SA or NT registrar can be appointed as a WA registrar. Should a NT or SA registrar cease to hold that office, then they cannot continue to hold the concurrent office of WA registrar. NT and SA registrars holding office as WA registrars are remunerated under the laws of the NT and SA respectively.

**157. Schedule 1 amended**

Under clause 4 of this Schedule, it is a requirement that magistrates take an oath or affirmation upon taking up their appointment. A new subclause 4(3) of the Schedule will enable a magistrate appointed as a magistrate of the WA Magistrates Court to take this oath outside of WA. This will enable SA and NT magistrates being appointed as magistrates of the WA Magistrates Court to take up this office without having to travel to WA for the purpose of taking the required oath or affirmation.

Clause 10 of the Schedule was included in this Act at a time when it was envisaged that cross-border justice schemes would operate on the basis that NT and SA magistrates would "act" as WA magistrates for the purpose of dealing with WA proceedings. However, it was subsequently determined that it would be more appropriate that they be appointed as ordinary magistrates of WA. Therefore, clause 10 is superfluous and is to be repealed.