

# CROSS-BORDER JUSTICE AMENDMENT BILL 2009 (WA)

## EXPLANATORY MEMORANDUM

### Overview of Bill

Western Australia's *Cross-border Justice Act 2008* was assented to in March 2008. The Northern Territory's (NT) *Cross-border Justice Act 2009* was assented to in March 2009, and South Australia (SA) introduced their Cross-border Justice Bill in February 2009.

During the SA and NT consultation process, a number of issues were raised by stakeholders. Parliamentary Counsel's office worked closely with SA and the NT to develop amendments to the model legislation to address these issues. WA agreed that amendments would be made to the *Cross-border Justice Act 2008* to reflect the changes made by SA and the NT and ensure consistency across state/territory legislation.

The Cross-border Justice Amendment Bill 2009 will amend the *Cross-border Justice Act 2008* to reflect changes made by the NT and SA to the model legislation and allow for the correction of minor drafting errors in the Act.

The Bill intends to make two substantive amendments to the Act. The first consists of the insertion of a new section (Section 139A) to clarify that the operation of the *Coroners Act 1996* (WA) will not be affected by the *Cross-border Justice Act 2008*. This amendment addresses concerns raised by the SA and NT Coroners in regards to the impact of the cross-border justice legislation on their coronial jurisdiction over deaths in custody.

Section 139A, and the reciprocal sections in the SA and NT legislation, will ensure the coronial jurisdiction of each participating state/territory is not affected by the cross-border justice legislation. The WA State Coroner agrees to this amendment.

The second substantive amendment made by the Bill is to Section 36 of the Act. In response to concerns raised by SA and the NT, this section will be amended to clarify that it specifically relates to persons 'released without charge' rather than simply 'released'.

Section 54 and 55 of the Act will be amended, not substantively, in order to make those sections clearer. Additionally, amendments will be made to sections 7, 8 and 29 to correct minor drafting errors.

### CLAUSE NOTES

#### Clause 1 – Short title

Clause 1 provides that the title of the proposed Act is the *Cross-border Justice Amendment Act 2009*.

#### Clause 2 – Commencement

Clause 2 provides that Sections 1 and 2 will come into operation on the day that the Act receives Assent. The balance of the Act (Sections 3 through 10, inclusive) will commence when Section 4 of the *Cross-border Justice Act 2008* comes into operation, or if the assent day is later than the day on which the *Cross-border Justice Act 2008* Section 4 comes into operation, the balance of the act will commence on assent day.

### **Clause 3 – *The Cross-border Justice Act 2008* amended**

Clause 3 provides that the Act amends the *Cross-border Justice Act 2008*.

### **Clause 4 – Section 7 amended**

Clause 4 proposes to correct a minor drafting error by deleting the first occurrence of “participating” and inserting “a participating” within the definition of *office holder* in Section 7(1) of the Act.

### **Clause 5 – Section 8 amended**

Clause 5 proposes to delete “2008” from Section 8(2)(a) of the Act and replace it with “2009”. This amendment to Section 8 updates the reference to the SA legislation, which will now not be enacted until 2009.

### **Clause 6 – Section 29 amended**

Clause 6 proposes to amend a minor drafting error. In Section 29 “(1) This Division” will be deleted and replaced by “This Division”.

### **Clause 7 – Section 36 amended**

Clause 7 proposes to make a substantive amendment to Section 36 of the Act. This section is amended to clarify that it specifically relates to persons ‘released without charge’ rather than simply ‘released’. In Section 36(1) “released” will be deleted and “released without charge” will be inserted.

SA and the NT expressed concern that the text in Subsection 36(1) did not make it clear it applied only to those released without charge, and agreed to this amendment to the model legislation.

### **Clause 8 – Section 54 amended**

Clause 8 proposes to make minor changes to Section 54 of the Act. The drafter of the NT *Cross-border Justice Act 2009* improved upon the drafting within Section 54 with changes which make the section clearer. The same changes are reflected in the SA *Cross-border Justice Bill 2009*.

### **Clause 9 – Section 55 amended**

Clause 8 proposes to make minor changes to Section 55 of the Act. The drafter of the NT *Cross-border Justice Act 2009* improved upon the drafting within Section 55 with changes which make the section clearer. The same changes have been included in the SA *Cross-border Justice Bill 2009*.

### **Clause 10 – Section 139A inserted**

Clause 10 proposes to make substantive amendments to the Act through the insertion of a new section (Section 139A) to clarify that the operation of the *Coroners Act 1996* will not be affected by the *Cross-border Justice Act 2008*.

The new Section 139A addresses an issue raised by the SA and NT Coroners during consultation. The SA and NT Coroners were concerned that Section 34(3) of the model

legislation would prevent a state/territory Coroner from investigating the death of a person that occurred while the person was in the custody of another state/territory.

This new section will ensure the coronial jurisdiction of each participating state/territory is not affected by the scheme. The Coroners in the three participating jurisdictions have an administrative mechanism for determining which state/territory would hold an inquest in the event that two or more of the participating jurisdictions may have the jurisdiction to investigate a death in custody.

## **Summary**

The Bill will amend the *Cross-border Justice Act 2008* (WA) to ensure it is consistent with the SA and NT cross-border justice legislation.

