Additional Comments by the Australian Greens

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Senator Scott Ludlam

Australian Greens