



Western Australia

Cross-border Justice Act 2008

Compare between:

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Cross-border Justice Act 2008

An Act to facilitate the administration of justice in regions straddling the State's borders with South Australia and the Northern Territory, and for related purposes.

Part 1 — Introduction

Division 1 — Preliminary matters

1. Short title

This is the *Cross-border Justice Act 2008*⁺.

2. Commencement

This Act comes into operation as follows:

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions⁺.

3. Act binds Crown

This Act binds the State and, so far as the legislative power of the State permits, the Crown in all its other capacities.

Division 2 — Object of this Act

4. Act gives effect to cooperative schemes

This Act gives effect to one or more cooperative schemes between the State and one or both of the other participating jurisdictions for the purpose of facilitating the administration of justice in one or more cross-border regions.

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

- (1) The object of this Act is to facilitate the administration of justice in the cross-border regions.
- (2) The object is to be achieved mainly by enabling the following things to be done —
 - (a) police officers, magistrates and other office holders of the State to exercise their powers under the law of the State in another participating jurisdiction;

- (b) police officers, magistrates and other office holders of the State to hold offices and exercise powers under the law of another participating jurisdiction;
- (c) police officers, magistrates and other office holders of another participating jurisdiction to exercise their powers under the law of that other jurisdiction in the State;
- (d) police officers, magistrates and other office holders of another participating jurisdiction to hold offices and exercise powers under the law of the State;
- (e) the courts of summary jurisdiction of the State to hear and determine proceedings, and to otherwise exercise their jurisdiction and powers under the law of the State, in another participating jurisdiction;
- (f) the sentences, orders and other decisions made by those courts under the law of the State to be served, carried out or otherwise given effect to by persons in another participating jurisdiction;
- (g) the courts of summary jurisdiction of another participating jurisdiction to hear and determine proceedings, and to otherwise exercise their jurisdiction and powers under the law of that other jurisdiction, in the State;
- (h) the sentences, orders and other decisions made by those courts under the law of that other jurisdiction to be served, carried out or otherwise given effect to by persons in the State;
- (i) any other persons who are required under the law of the State to do things to do those things in another participating jurisdiction;
- (j) any other persons who are required under the law of another participating jurisdiction to do things to do those things in the State.

6. How this Act to be construed

This Act is to be construed as enabling —

- (a) office holders and courts of the State and other persons to exercise powers they have under the law of the State within the geographical area of another participating jurisdiction; and
- (b) office holders and courts of another participating jurisdiction and other persons to exercise powers they have under the law of that other jurisdiction within the geographical area of the State.

Note for this Division:

A person who has a connection with a cross-border region may be (but is not required to be) dealt with under the State's cross-border laws. In deciding whether or not to deal with the person under the State's cross-border laws, an office holder or prescribed court of the State will have regard to what best facilitates the administration of justice in the region. For example, if an offence is alleged to have been committed in the cross-border region where the alleged offender and the witnesses to the alleged offence ordinarily reside, the administration of justice in that region is likely to be facilitated if the alleged offender is dealt with under the State's cross-border laws. The administration of justice is not likely to be facilitated in a cross-border region if the alleged offender is arrested in the region but the offence is alleged to have been committed in, and the alleged offender and the witnesses to the alleged offence ordinarily reside in, Perth.

Division 3 — Interpretation

7. Terms used

- (1) In this Act, unless the contrary intention appears —

another participating jurisdiction means —

- (a) South Australia; or
- (b) the Northern Territory;

appropriate modifications —

- (a) of a law of the State — has the meaning given in section 13; or

- (b) of a law of another participating jurisdiction — means appropriate modifications of that law under that other jurisdiction’s cross-border laws;

arrest includes to apprehend and to take into custody;

authorised officer, of a participating jurisdiction, means —

- (a) a police officer of the jurisdiction; or
(b) an office holder of the jurisdiction who is prescribed by the regulations;

bring up order, of a participating jurisdiction, means —

- (a) if the jurisdiction is the State —
(i) an order made under the *Prisons Act 1981* section 85; or
(ii) an order made under section 103; or
(iii) any other order made under the law of the State directing that a person who is in custody be brought before a judicial body as defined in section 103(1);

or

- (b) if the jurisdiction is another participating jurisdiction — a bring up order of that other jurisdiction under its cross-border laws;

carry out, an order, includes to comply with the requirements of, and to perform the obligations under, the order;

CEO (corrections) means the holder of the office of chief executive officer of the Public Sector agency principally assisting the Minister to whom the administration of the *Sentence Administration Act 2003* Part 8 is committed in its administration;

community corrections officer, of a participating jurisdiction, means —

- (a) if the jurisdiction is the State — a community corrections officer as defined in the *Sentence*

Administration Act 2003 section 4(2) as modified by the regulations; or

- (b) if the jurisdiction is another participating jurisdiction — a community corrections officer of that other jurisdiction under its cross-border laws;

Note for this definition:

The definition of **community corrections officer** is affected by section 10.

confiscation includes forfeiture;

connection with a cross-border region has the meaning given in Part 2 Division 2;

court document, of a prescribed court of a participating jurisdiction, means a document that is lodged, served or issued in a cross-border proceeding of the court;

cross-border jurisdiction, of a prescribed court of a participating jurisdiction, means the court's jurisdiction in relation to a cross-border proceeding of the court;

cross-border laws, of a participating jurisdiction, has the meaning given in section 8;

cross-border proceeding, of a prescribed court of a participating jurisdiction, means —

- (a) if the court is a prescribed court of the State — a proceeding of the court referred to in section 68(2) that may be heard and determined by that court in another participating jurisdiction under section 68(1); or
- (b) if the court is a prescribed court of another participating jurisdiction — a cross-border proceeding of that court under that other jurisdiction's cross-border laws;

cross-border region has the meaning given in section 19;

custodial order, of a participating jurisdiction, means —

- (a) if the jurisdiction is the State —
 - (i) a warrant of commitment issued under section 99; or

- (ii) a remand warrant issued under section 101; or
- (iii) a bring up order of the State;

or

- (b) if the jurisdiction is another participating jurisdiction — a custodial order of that other jurisdiction under its cross-border laws;

detention centre, in a participating jurisdiction, means —

- (a) if the jurisdiction is the State — a detention centre as defined in the *Young Offenders Act 1994* section 3; or
- (b) if the jurisdiction is another participating jurisdiction — a detention centre in that other jurisdiction under its cross-border laws;

drink or drug-driving laws, of a participating jurisdiction, means the provisions of the law of the jurisdiction relating to a person driving or attempting to drive a vehicle —

- (a) while under the influence of or impaired by alcohol, drugs or both; or
- (b) while alcohol, drugs or both are present in the person's oral fluid or blood;

Note for this definition:

The definition of **drink or drug-driving laws** is affected by subsection (2).

drink or drug-driving offence, under the law of a participating jurisdiction, means an offence under the law of the jurisdiction the elements of which include a person driving or attempting to drive a vehicle —

- (a) while under the influence of or impaired by alcohol, drugs or both; or
- (b) while alcohol, drugs or both are present in the person's oral fluid or blood;

Note for this definition:

The definition of **drink or drug-driving offence** is affected by subsection (2).

exercise, a power, includes to perform a function or duty;

juvenile justice officer, of a participating jurisdiction, means —

- (a) if the jurisdiction is the State — a juvenile justice officer as defined in the *Young Offenders Act 1994* section 3 as modified by the regulations; or
- (b) if the jurisdiction is another participating jurisdiction — a juvenile justice officer of that other jurisdiction under its cross-border laws;

Note for this definition:

The definition of **juvenile justice officer** is affected by section 10.

lodge, a document, includes to file a document;

magistrate, of a participating jurisdiction, means —

- (a) if the jurisdiction is the State — a magistrate of a prescribed court of the State; or
- (b) if the jurisdiction is another participating jurisdiction — a magistrate of that other jurisdiction under its cross-border laws;

Note for this definition:

The definition of **magistrate** is affected by section 10.

non-custodial order, of a participating jurisdiction, means —

- (a) if the jurisdiction is the State —
 - (i) a sentence imposed on, or an order made against, a person in respect of an offence or alleged offence under the law of the State, other than a sentence or order requiring the person to be kept in custody or to pay a fine; or
 - (ii) an early release order as defined in the *Sentence Administration Act 2003* section 4(2); or
 - (iii) an order to attend for work and development issued under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 47 or 47A; or

- (iv) a work and development order made under section 48 of that Act;

or

- (b) if the jurisdiction is another participating jurisdiction — a non-custodial order of that other jurisdiction under its cross-border laws;

office holder, of a participating jurisdiction, means —

- (a) if the jurisdiction is the State — a person who holds an office under the law of the State; or
- (b) if the jurisdiction is another participating jurisdiction — a person who holds an office under the law of that other jurisdiction;

Note for this definition:

The definition of **office holder** is affected by sections 9 and 10.

participating jurisdiction means —

- (a) the State; or
- (b) another participating jurisdiction;

police officer, of a participating jurisdiction, means —

- (a) if the jurisdiction is the State —
 - (i) a person who holds office under the *Police Act 1892* Part I as a member of the Police Force of Western Australia; or
 - (ii) a person who holds office under the *Police Act 1892* Part III as a special constable; or
 - (iii) a person who holds office under the *Police Act 1892* Part IIIA as an Aboriginal police liaison officer; or
 - (iv) a person who holds office under the *Police Act 1892* Part IIIB as a police auxiliary officer;

or

- (b) if the jurisdiction is another participating jurisdiction — a police officer of that other jurisdiction under its cross-border laws;

Note for this definition:

The definition of **police officer** is affected by section 10.

power includes a function and a duty;

preliminary alcohol or drug test, under a participating jurisdiction's drink or drug-driving laws, means a test that may be conducted under those laws for the purpose of providing a preliminary indication of whether or not alcohol, drugs or both are present in the blood of the driver or person in charge of a vehicle;

prescribed court, of a participating jurisdiction, means —

- (a) if the jurisdiction is the State —
 - (i) the Magistrates Court; or
 - (ii) the Children's Court other than when constituted by or so as to include a judge;

or

- (b) if the jurisdiction is another participating jurisdiction — a prescribed court of that other jurisdiction under its cross-border laws;

prison, in a participating jurisdiction, means —

- (a) if the jurisdiction is the State — a prison as defined in the *Prisons Act 1981* section 3(1); or
- (b) if the jurisdiction is another participating jurisdiction — a prison in that other jurisdiction under its cross-border laws;

registrar, of a prescribed court of a participating jurisdiction, means —

- (a) if the court is a prescribed court of the State — a person who holds office as a registrar or deputy registrar of the court; or

- (b) if the court is a prescribed court of another participating jurisdiction — a registrar of that court under that other jurisdiction's cross-border laws;

remand facility, in a participating jurisdiction, means a police station, lock up, prison, detention centre or other place in the jurisdiction in which persons on remand may be kept in custody;

restraining order, of a participating jurisdiction, means —

- (a) if the jurisdiction is the State — a restraining order or police order as respectively defined in the *Restraining Orders Act 1997* section 3; or
- (b) if the jurisdiction is another participating jurisdiction — a restraining order of that other jurisdiction under its cross-border laws;

restraining orders laws, of a participating jurisdiction, means —

- (a) if the jurisdiction is the State — the *Restraining Orders Act 1997*; or
- (b) if the jurisdiction is another participating jurisdiction — the restraining orders laws of that other jurisdiction under its cross-border laws;

secondary office has the meaning given in section 131(2);

secondary office holder has the meaning given in section 131(1);

subsidiary legislation, of a participating jurisdiction, means —

- (a) if the jurisdiction is the State — subsidiary legislation as defined in the *Interpretation Act 1984* section 5; or
- (b) if the jurisdiction is another participating jurisdiction — an instrument made under any written law of that other jurisdiction and having legislative effect;

take action means to do an act or make an omission;

vehicle impounding laws, of a participating jurisdiction, means the provisions of the law of the jurisdiction relating to the

impounding or confiscation of vehicles used in connection with driving offences under the law of the jurisdiction;

vehicle or driver licensing laws, of a participating jurisdiction, means the provisions of the law of the jurisdiction relating to the licensing of vehicles or drivers;

written law, of a participating jurisdiction, means —

- (a) if the jurisdiction is the State — a written law as defined in the *Interpretation Act 1984* section 5; or
 - (b) if the jurisdiction is another participating jurisdiction —
 - (i) an Act of that other jurisdiction for the time being in force; or
 - (ii) any subsidiary legislation of that other jurisdiction for the time being in force.
- (2) In paragraph (b) of the definitions of **drink or drug-driving laws** and **drink or drug-driving offence**, the reference to the presence of alcohol in a person's oral fluid or blood includes a reference to the presence of a quantity of alcohol in the person's oral fluid or blood that equals or exceeds a specified quantity.

[Section 7 amended: No. 42 of 2009 s. 17; No. 1 of 2010 s. 4.]

8. Cross-border laws

- (1) The following laws are the State's cross-border laws —
 - (a) this Act;
 - (b) any other written law of the State that makes express provision in order to give effect to this Act;
 - (c) any other law of the State with any appropriate modifications;
 - (d) any other law of the State to the extent its application is necessary to give effect to a law referred to in paragraph (a), (b) or (c).
- (2) The following laws are South Australia's cross-border laws —
 - (a) the *Cross-border Justice Act 2009* (South Australia);

- (b) any subsidiary legislation made under that Act;
 - (c) any other written law of South Australia that makes express provision in order to give effect to that Act;
 - (d) any other law of South Australia with any appropriate modifications;
 - (e) any other law of South Australia to the extent its application is necessary to give effect to a law referred to in paragraph (a), (b), (c) or (d).
- (3) The following laws are the Northern Territory's cross-border laws —
- (a) the *Cross-border Justice Act* (Northern Territory);
 - (b) any subsidiary legislation made under that Act;
 - (c) any other written law of the Northern Territory that makes express provision in order to give effect to that Act;
 - (d) any other law of the Northern Territory with any appropriate modifications;
 - (e) any other law of the Northern Territory to the extent its application is necessary to give effect to a law referred to in paragraph (a), (b), (c) or (d).

[Section 8 amended: No. 1 of 2010 s. 5.]

9. Persons who exercise powers are office holders

For the purposes of the State's cross-border laws, a person on whom a power is conferred under the law of a participating jurisdiction is taken to hold an office under that law.

Examples for this section:

1. Under the *Court Security and Custodial Services Act 1999*, a contractor 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.
2. Under the *Young Offenders Act 1994*, 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.

3. Under section 105, an authorised officer of SA or the NT may carry out a custodial order of the State but is not appointed as an authorised officer of the State.

10. References to office holders

- (1) In this Act, unless the contrary intention appears, a reference to an office holder (however described) of a participating jurisdiction includes a reference to a person who holds an office under the law of the jurisdiction as a secondary office holder.
- (2) In this Act, unless the contrary intention appears, a reference to an office holder (however described) of another participating jurisdiction whose office no longer exists is read as a reference to an office holder of that other jurisdiction who for the time being has the powers of that office.

11. References to written laws of another participating jurisdiction

- (1) In this section —
amended —
 - (a) means replaced, substituted (in whole or in part), added to or varied; and
 - (b) includes any 2 or more of those things done simultaneously or by the same written law.
- (2) A reference in this Act to a written law of another participating jurisdiction, or to a provision of such a law, is read as including a reference to the law or provision as amended from time to time.

12. Use of notes and examples

A note or example set out at the foot of a provision of this Act is provided to assist understanding and does not form part of this Act.

Division 4 — Modifications of other laws of State

13. Appropriate modifications

Appropriate modifications of a law of the State are —

- (a) any modifications of the law that are prescribed by the regulations; and
- (b) any other modifications of the law that are necessary or convenient to give effect to this Act.

14. Effect of modifications

In order to give effect to this Act, a law of the State must be applied with any appropriate modifications as if the law had been altered in that way.

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

- (1) The State's cross-border laws do not authorise an office holder of the State to exercise a power in another participating jurisdiction unless the law of that other jurisdiction allows the office holder to exercise the power in that other jurisdiction.
- (2) The State's cross-border laws do not allow an office holder of another participating jurisdiction to exercise a power in the State unless the law of that other jurisdiction authorises the office holder to exercise the power in the State.
- (3) The State's cross-border laws do not authorise a prescribed court of the State to hear and determine a proceeding, or to otherwise exercise its jurisdiction or a power, in another participating jurisdiction unless the law of that other jurisdiction allows the court to hear and determine the proceeding, or to exercise that jurisdiction or power, in that other jurisdiction.

- (4) The State's cross-border laws do not allow a prescribed court of another participating jurisdiction to hear and determine a proceeding, or to otherwise exercise its jurisdiction or a power, in the State unless the law of that other jurisdiction authorises the court to hear and determine the proceeding, or to exercise that jurisdiction or power, in the State.
- (5) The State's cross-border laws do not authorise a sentence imposed on, or an order made or issued against, a person in respect of an offence or alleged offence under the law of the State to be served or carried out in another participating jurisdiction unless the law of that other jurisdiction allows the sentence or order to be served or carried out in that other jurisdiction.
- (6) The State's cross-border laws do not allow a sentence imposed on, or an order made or issued against, a person in respect of an offence or alleged offence under the law of another participating jurisdiction to be served or carried out in the State unless the law of that other jurisdiction authorises the sentence or order to be served or carried out in the State.

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

- (1) This section applies in relation to a person other than an office holder, court or other person in relation to whom section 15 applies.
- (2) The State's cross-border laws do not authorise a person who is required under the law of the State to do something to do that thing in another participating jurisdiction unless the law of that other jurisdiction allows the person to do the thing in that other jurisdiction.
- (3) The State's cross-border laws do not allow a person who is required under the law of another participating jurisdiction to do something to do that thing in the State unless the law of that

other jurisdiction authorises the person to do the thing in the State.

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

The State's cross-border laws are intended to provide alternative procedures to those under the *Service and Execution of Process Act 1992* (Commonwealth) and do not purport to exclude or limit the operation of that Act.

Note for this section:

If the *Service and Execution of Process Act 1992* (Commonwealth) provides that it does not apply to a matter covered by the State's cross-border laws, an office holder or prescribed court of the State will proceed under those laws instead of under that Act.

Division 6 — Application

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

- (1) The State's cross-border laws apply in relation to an offence under the law of a participating jurisdiction whether the offence is suspected of having been committed, or is alleged or found to have been committed, before or after the commencement of this Act.
- (2) The State's cross-border laws apply in relation to an order made under the law of a participating jurisdiction whether the order was made before or after the commencement of this Act.
- (3) The State's cross-border laws apply in relation to a requirement to do something under the law of a participating jurisdiction whether the requirement arose before or after the commencement of this Act.

Part 2 — Cross-border regions

Division 1 — Prescribing cross-border regions

19. Cross-border regions to be prescribed

A cross-border region is a region that —

- (a) straddles the border between the State and one or both of the other participating jurisdictions; and
- (b) is prescribed by the regulations 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

- (1) This section applies to a person who —
 - (a) is suspected of having committed an offence under the law of a participating jurisdiction; or
 - (b) is alleged to have committed an offence under the law of a participating jurisdiction; or
 - (c) has been found guilty of an offence under the law of a participating jurisdiction.
- (2) The person has a connection with a cross-border region if —
 - (a) the offence is suspected of having been committed, or is alleged or was found to have been committed, in the region; or
 - (b) at the time of the person's arrest for the offence —
 - (i) the person is or was in the region; or
 - (ii) the person ordinarily resides or resided in the region;or
 - (c) at the time at which the offence is suspected of having been committed, or is alleged or was found to have been

committed, the person ordinarily resides or resided in the region.

- (3) For the purposes of a proceeding of a prescribed court of a participating jurisdiction in respect of the offence, the person also has a connection with a cross-border region if —
- (a) at the time at which the proceeding is heard, the person ordinarily resides in the region; or
 - (b) the proceeding is heard with another proceeding of the court that is a cross-border proceeding for the purposes of which the person has a connection with the region.

Note for this section:

For the purpose of deciding whether or not a person has committed an offence under the law of a participating jurisdiction —

- (a) if the jurisdiction is the State — *The Criminal Code* section 12 applies; or
- (b) if the jurisdiction is South Australia — the *Criminal Law Consolidation Act 1935* (South Australia) section 5G applies; or
- (c) if the jurisdiction is the Northern Territory — the *Criminal Code* (Northern Territory) section 15 applies.

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

- (1) This section applies to a person against whom an order made by a prescribed court of a participating jurisdiction is in force.
- (2) Subsections (3) and (4) apply if the person —
 - (a) is suspected of having breached the order; or
 - (b) is alleged to have breached the order; or
 - (c) has been found to have breached the order.
- (3) The person has a connection with a cross-border region if —
 - (a) the breach is suspected of having occurred, or is alleged or was found to have occurred, in the region; or
 - (b) at the time of the person's arrest for the breach —
 - (i) the person is or was in the region; or

- (ii) the person ordinarily resides or resided in the region;
- or
- (c) at the time at which the breach is suspected of having occurred, or is alleged or was found to have occurred, the person ordinarily resides or resided in the region; or
 - (d) at the time at which the order or a previous amendment or variation of the order was made, the person ordinarily resided in the region; or
 - (e) the order or a previous amendment or variation of the order was made in, or another breach of the order has been the subject of, another proceeding of the court that was a cross-border proceeding for the purposes of which the person had a connection with the region.
- (4) For the purposes of a proceeding of the court in respect of the breach, the person also has a connection with a cross-border region if —
- (a) at the time at which the proceeding is heard, the person ordinarily resides in the region; or
 - (b) the proceeding is heard with another proceeding of the court that is a cross-border proceeding for the purposes of which the person has a connection with the region.
- (5) The person has a connection with a cross-border region for the purposes of a proceeding of the court for the amendment, variation or revocation of the order if —
- (a) at the time at which the order or a previous amendment or variation of the order was made, the person ordinarily resided in the region; or
 - (b) the order or a previous amendment or variation of the order was made in, or any breach of the order has been the subject of, another proceeding of the court that was a cross-border proceeding for the purposes of which the person had a connection with the region; or

- (c) at the time at which the proceeding is heard, the person ordinarily resides in the region; or
- (d) the proceeding is heard with another proceeding of the court that is a cross-border proceeding for the purposes of which the person has a connection with the region.

22. Connection for purposes of making restraining orders

- (1) This section applies to a person against whom a restraining order is sought or proposed to be made under a participating jurisdiction's restraining orders laws.
- (2) The person has a connection with a cross-border region, including for the purposes of a proceeding in a prescribed court of the jurisdiction for the making of the order, if —
 - (a) that person ordinarily resides in the region; or
 - (b) the person for whose benefit the order is sought or is proposed to be made ordinarily resides in the region.

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

- (1) This section applies to a person on whom a sentence is imposed, or against whom an order is made or issued, in respect of an offence or alleged offence under the law of a participating jurisdiction.
- (2) The person has a connection with a cross-border region if —
 - (a) the sentence was imposed, or the order was made or issued, in —
 - (i) a cross-border proceeding of a prescribed court of the participating jurisdiction for the purposes of which the person had a connection with the region; or
 - (ii) an appeal from such a proceeding;or

- (b) if the order was made or issued for the purpose of enforcing a fine — the fine was imposed in a proceeding or appeal referred to in paragraph (a); or
- (c) the person ordinarily resides in the region.

24. Other persons required to do things

- (1) This section applies to a person if sections 20 to 23 do not apply to the person.
- (2) A person who is required to do something under the law of a participating jurisdiction has a connection with a cross-border region if —
 - (a) the requirement is made of the person in the region; or
 - (b) the requirement relates to an event, matter or thing in the region; or
 - (c) the person ordinarily resides in the region.

25. Connections are not mutually exclusive

A connection with a cross-border region that a person has because of a provision of this Division does not exclude or limit a connection with a cross-border region that the person has because of another provision of this Division.

Division 3 — Proving connection with a cross-border region

26. Term used: proceeding

In this Division —

proceeding means —

- (a) a cross-border proceeding of a prescribed court of the State; or
- (b) a proceeding before a court of the State that relates to an action taken or purportedly taken under this Act by an office holder of a participating jurisdiction.

27. Onus of proving person's whereabouts at time of arrest

- (1) If whether a person was in a cross-border region at the time of the person's arrest is in issue in a proceeding, the person has the onus of proving on the balance of probabilities that the person was not in the region at that time.
- (2) If whether a person ordinarily resided in a cross-border region at the time of the person's arrest is in issue in a proceeding, the person has the onus of proving on the balance of probabilities that the person did not ordinarily reside in the region at that time.

28. Onus of proving person's residency during cross-border proceeding

- (1) Subsection (2) applies if either of the following are in issue in a proceeding —
 - (a) if it is a cross-border proceeding — whether the person who is the subject of the proceeding ordinarily resides or resided in a cross-border region at a particular time during the proceeding;
 - (b) if it is another proceeding — whether the person who is the subject of the proceeding ordinarily resides or resided in a cross-border region at a particular time during a cross-border proceeding.
- (2) The person has the onus of proving on the balance of probabilities that the person does not or did not ordinarily reside in the region at that time.

Division 4 — Multiple cross-border regions

29. Application of this Division

This Division applies if there are 2 or more cross-border regions of which —

- (a) one is partly in all 3 participating jurisdictions; and

- (b) the other or others are partly in only 2 of the 3 participating jurisdictions.

[Section 29 amended: No. 1 of 2010 s. 6.]

30. Office holders, prescribed courts, persons serving sentences

- (1) The State's cross-border laws do not authorise an office holder of the State to exercise a power under the law of the State in another participating jurisdiction unless the power is to be exercised in relation to a person who has a connection with a cross-border region that is partly in that other jurisdiction.
- (2) The State's cross-border laws do not allow an office holder of another participating jurisdiction to exercise a power under the law of that other jurisdiction in the State unless the power is to be exercised in relation to a person who has a connection with a cross-border region that is partly in that other jurisdiction.
- (3) The State's cross-border laws do not authorise a prescribed court of the State to hear and determine a proceeding, or to otherwise exercise its jurisdiction or a power, in another participating jurisdiction unless the person who is the subject of the proceeding to which the exercise of that jurisdiction or power relates has a connection with a cross-border region that is partly in that other jurisdiction for the purposes of that proceeding.
- (4) The State's cross-border laws do not allow a prescribed court of another participating jurisdiction to hear and determine a proceeding, or to otherwise exercise its jurisdiction or a power, in the State unless the person who is the subject of the proceeding to which the exercise of that jurisdiction or power relates has a connection with a cross-border region that is partly in that other jurisdiction for the purposes of that proceeding.
- (5) The State's cross-border laws do not authorise a sentence imposed on, or an order made or issued against, a person in respect of an offence or alleged offence under the law of the State to be served or carried out in another participating

jurisdiction unless the person has a connection with a cross-border region that is partly in that other jurisdiction.

- (6) The State's cross-border laws do not allow a sentence imposed on, or an order made or issued against, a person in respect of an offence or alleged offence under the law of another participating jurisdiction to be served or carried out in the State unless the person has a connection with a cross-border region that is partly in that other jurisdiction.

31. Other persons required to do things

- (1) This section applies in relation to a person other than an office holder, court or other person in relation to whom section 30 applies.
- (2) The State's cross-border laws do not authorise a person who is required under the law of the State to do something to do that thing in another participating jurisdiction unless the person has a connection with a cross-border region that is partly in that other jurisdiction.
- (3) The State's cross-border laws do not allow a person who is required under the law of another participating jurisdiction to do something to do that thing in the State unless the person has a connection with a cross-border region that is partly in that other jurisdiction.

Notes for this Division:

1. The examples in this Act assume the following 3 regions:
 - (a) a region straddling the State's borders with South Australia and the Northern Territory (the **WA/SA/NT region**);
 - (b) a region straddling the State's border with South Australia (the **WA/SA region**);
 - (c) a region straddling the State's border with the Northern Territory (the **WA/NT region**).
2. 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.

Part 3 — Police officers of State exercising powers in another participating jurisdiction

Division 1 — Powers generally

32. Arrest without warrant

- (1) A police officer of the State may arrest a person in another participating jurisdiction without a warrant if —
 - (a) under the law of the State, the police officer would have been able to arrest the person in the State without a warrant; and
 - (b) the person has a connection with a cross-border region.
- (2) The law of the State applies (with any appropriate modifications) in relation to the arrest.

33. Arrest under warrant

- (1) A police officer of the State may arrest a person in another participating jurisdiction under a warrant if —
 - (a) under the law of the State, the police officer would have been able to arrest the person in the State under a warrant; and
 - (b) the person has a connection with a cross-border region.
- (2) A magistrate of the State —
 - (a) may issue in another participating jurisdiction a warrant for the arrest of a person under the law of the State if the person has a connection with a cross-border region; and
 - (b) for that purpose, may exercise in that other jurisdiction any of the powers the magistrate has under the law of the State for the purpose of issuing warrants for the arrest of persons.

Cross-border Justice Act 2008

Part 3 Police officers of State exercising powers in another participating jurisdiction

Division 1 Powers generally

s. 34

- (3) The law of the State applies (with any appropriate modifications) in relation to the arrest and the warrant.

Examples for this section:

1. A person is suspected of committing an offence under WA law in the WA portion of the WA/SA/NT 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.
2. A person who ordinarily resides in the WA/SA 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.
3. A person who ordinarily resides in the WA/NT region is suspected of committing an offence under WA law in the WA portion of the WA/SA 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.

34. Person taken into custody

- (1) Subsection (2) applies if —
- (a) a police officer of the State arrests a person under the law of the State —
 - (i) whether with or without a warrant; and
 - (ii) whether in the State or another participating jurisdiction;
- and
- (b) the person has a connection with a cross-border region.
- (2) A police officer of the State may —
- (a) keep the person in custody in another participating jurisdiction; and
 - (b) while the person is in custody, take the person to a police station, court or other place in another participating jurisdiction for any purpose that is authorised under the law of the State as applied by subsection (3).

- (3) The law of the State applies (with any appropriate modifications) in relation to the custody.

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

- (1) This section applies if —
- (a) a police officer of the State —
 - (i) suspects a person of having committed, or has alleged that a person has committed, an offence under the law of the State; or
 - (ii) suspects a person of having breached, or has alleged that a person has breached, an order made under the law of the State;
- and
- (b) the person has a connection with a cross-border region.
- (2) A police officer of the State may —
- (a) investigate the offence or breach in another participating jurisdiction; and
 - (b) for that purpose, may exercise in that other jurisdiction any of the powers the police officer has under the law of the State for the purpose of investigating the offence or breach.
- (3) Without affecting subsection (2), those powers may include powers in relation to any of the following —
- (a) interviewing people;
 - (b) searching people;
 - (c) taking photographs of people or parts of people's bodies;
 - (d) taking prints of parts of people's bodies (for example, fingerprints, handprints and footprints);
 - (e) taking samples of things, and removing things, from the external and internal parts of people's bodies;
 - (f) entering and searching places and vehicles;

Cross-border Justice Act 2008

Part 3 Police officers of State exercising powers in another participating jurisdiction

Division 1 Powers generally

s. 35

- (g) taking photographs of places and vehicles;
 - (h) inspecting, and taking extracts from or copies of, documents found at places or in vehicles;
 - (i) taking samples of things, and seizing things, from places and vehicles;
 - (j) carrying out warrants or orders authorising the police officer to do any of the things referred to in paragraphs (a) to (i);
 - (k) requiring people to assist the police officer to do any of the things referred to in paragraphs (a) to (j).
- (4) For the purpose of the investigation of the offence or breach by a police officer of the State in the State or another participating jurisdiction, a magistrate of the State —
- (a) may issue in another participating jurisdiction a warrant or order under the law of the State to be carried out in the State or another participating jurisdiction; and
 - (b) for that purpose, may exercise in that other jurisdiction any of the powers the magistrate has under the law of the State for the purpose of issuing warrants or orders for the purpose of the investigation by police officers of the State of offences or breaches of orders.
- (5) The law of the State applies (with any appropriate modifications) in relation to the investigation and the warrant or order.

Examples for this section:

1. A person is suspected of committing an offence under WA law in the WA portion of the WA/SA/NT 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.
2. A person is arrested in the WA/SA 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.

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.

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

- (1) Subsection (2) applies if a person being kept in custody by a police officer of the State in another participating jurisdiction under section 34(2)(a) is released without charge.
- (2) A police officer of the State must take reasonable steps to ensure the person is taken, at the person's election —
 - (a) back to the place where the person was arrested; or
 - (b) to a place reasonably nominated by the person.
- (3) Subsection (2) does not require the person to be taken to a place if to do so is likely to endanger the person's or another person's safety.

[Section 36 amended: No. 1 of 2010 s. 7.]

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

This Part does not affect the operation of the *Criminal Investigation (Extra-territorial Offences) Act 1987*.

Division 2 — Road traffic powers

Subdivision 1 — Vehicle or driver licensing laws

38. Powers in relation to offences

- (1) Subsection (2) applies if —
 - (a) a police officer of the State suspects a person of having committed, or has alleged that a person has committed,

Cross-border Justice Act 2008

Part 3 Police officers of State exercising powers in another participating jurisdiction

Division 2 Road traffic powers

s. 39

an offence under the State's vehicle or driver licensing laws; and

(b) the person has a connection with a cross-border region.

- (2) A police officer of the State may exercise in another participating jurisdiction any of the powers the police officer has under the law of the State in relation to the offence.

39. Other powers

- (1) In this section —

licensing powers, of a police officer of the State, means any of the powers the police officer has under the State's vehicle or driver licensing laws other than a power to which section 38(2) applies.

- (2) A police officer of the State may exercise in another participating jurisdiction any of the police officer's licensing powers in relation to a person who ordinarily resides in a part of the State that is in a cross-border region.

Subdivision 2 — Drink or drug-driving laws

40. Terms used

In this Subdivision, unless the contrary intention appears —
sample means a sample of a person's breath, oral fluid, blood or urine;

test means to provide or take, and test or analyse, a sample;

testing procedures, under a participating jurisdiction's drink or drug-driving laws, means the requirements for providing or taking, and testing or analysing, a sample under the jurisdiction's drink or drug-driving laws.

41. Conduct of preliminary alcohol or drug test in cross-border region

- (1) This section applies if a police officer of the State requires a person in a part of the State that is in a cross-border region to

provide a sample of breath or oral fluid for a preliminary alcohol or drug test under the State's drink or drug-driving laws.

(2) If —

- (a) the person is required to provide the sample in accordance with the testing procedures under another participating jurisdiction's drink or drug-driving laws; and
- (b) the region is partly in that other jurisdiction,

the person is taken to be required to provide the sample in accordance with the testing procedures under the State's drink or drug-driving laws.

(3) If —

- (a) the sample is tested in accordance with the testing procedures for a preliminary alcohol or drug test under another participating jurisdiction's drink or drug-driving laws; and
- (b) the region is partly in that other jurisdiction,

the sample is taken to have been tested in accordance with the testing procedures for a preliminary alcohol or drug test under the State's drink or drug-driving laws.

42. Powers that may be exercised in another participating jurisdiction

- (1) Subsection (3) applies if a police officer of the State has required a person in a part of the State that is in a cross-border region to provide a sample of breath or oral fluid for a preliminary alcohol or drug test under the State's drink or drug-driving laws.
- (2) Subsection (3) applies if —
 - (a) a police officer of the State suspects a person of having committed, or has alleged that a person has committed, a drink or drug-driving offence under the law of the State; and

(b) the person has a connection with a cross-border region.

- (3) Subject to section 44, a police officer of the State may exercise in another participating jurisdiction any of the powers the police officer has under the State's drink or drug-driving laws in relation to the person.

43. Providing or taking sample in another participating jurisdiction

- (1) This section applies if a police officer of the State acting under section 42(3) requires a person to provide or allow to be taken a sample under the State's drink or drug-driving laws in another participating jurisdiction.
- (2) If the person is required to provide the sample or allow the sample to be taken in accordance with the testing procedures under that other jurisdiction's drink or drug-driving laws, the person is taken to be required to provide the sample or allow the sample to be taken in accordance with the testing procedures under the State's drink or drug-driving laws.
- (3) If the sample is tested in accordance with the testing procedures under that other jurisdiction's drink or drug-driving laws, the following provisions apply —
- (a) the sample is taken to have been tested in accordance with the testing procedures under the State's drink or drug-driving laws;
 - (b) a certificate relating to the testing procedures under that other jurisdiction's drink or drug-driving laws that would be prima facie evidence of a matter stated in the certificate in a proceeding for an offence under the law of that other jurisdiction is prima facie evidence of the matter in a proceeding referred to in the *Road Traffic Act 1974* section 70(1) or (3a);
 - (c) if a sample of breath or blood is tested, the analysis result is taken to be the analysis result for the purposes

of the *Road Traffic Act 1974* section 68(4)(a) or 69(2) (as the case requires) and section 71 of that Act.

- (4) This section does not prevent the sample from being required to be provided or allowed to be taken, or from being tested, in accordance with the testing procedures under the State's drink or drug-driving laws.

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

This Subdivision does not authorise a police officer of the State to require a person in another participating jurisdiction to provide a sample of breath or oral fluid for a preliminary alcohol or drug test under the State's drink or drug-driving laws.

Subdivision 3 — Vehicle impounding laws

45. Powers

- (1) In this section —
person, connected with a vehicle, means the person who —
- (a) is suspected of having committed; or
 - (b) is alleged to have committed; or
 - (c) has been found guilty of,
- the offence for which the vehicle may or is required to be impounded or confiscated.
- (2) A police officer of the State may exercise in relation to a vehicle in another participating jurisdiction any of the powers the police officer has under the State's vehicle impounding laws in relation to a vehicle if —
- (a) the person connected with the vehicle has a connection with a cross-border region; and
 - (b) if the exercise of the power is for the purpose of giving effect to a court order — the order was made by a prescribed court of the State.

Cross-border Justice Act 2008

Part 3 Police officers of State exercising powers in another participating jurisdiction

Division 3 Restraining orders laws

s. 46

Subdivision 4 — Miscellaneous matters

46. Law of State applies

The law of the State applies (with any appropriate modifications) in relation to the powers in respect of which this Division applies.

47. Relationship with Division 1

The powers that a police officer of the State is authorised under this Division to exercise in another participating jurisdiction are in addition to, and do not exclude or limit, any of the powers the police officer is authorised under Division 1 to exercise in that other jurisdiction.

Division 3 — Restraining orders laws

48. Term used: WA police order

In this Division —

WA police order means an order made by a police officer of the State under the *Restraining Orders Act 1997* Part 2 Division 3A.

49. Making of WA police orders

- (1) A police officer of the State may make a WA police order in another participating jurisdiction if the person against whom the order is sought or proposed to be made has a connection with a cross-border region.
- (2) The law of the State applies (with any appropriate modifications) in relation to the making of the order.

Note for this section:

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, section 22 and Part 2 Division 4 apply.

50. Enforcement of WA police orders

- (1) This section applies if —
 - (a) a person in another participating jurisdiction is a person against whom a WA police order is in force; and
 - (b) the person against whom, or for whose benefit, the order is made ordinarily resides in a cross-border region.
- (2) A police officer of the State may exercise the police officer's powers in relation to the person against whom the order is made.
- (3) In relation to the exercise of those powers, the *Restraining Orders Act 1997* Part 6 Division 3 has effect for all purposes in respect of any breach of the order in that other jurisdiction.
- (4) The law of the State applies (with any appropriate modifications) in relation to those powers.

Division 4 — Offence

51. Offence to interfere with exercise of power

- (1) Subsection (2) applies if a person in another participating jurisdiction takes action in relation to the exercise of a power under this Part that would, if the action were to be taken in relation to the exercise of the power in the State, constitute an offence under the law of the State (a *State offence*).
- (2) The person commits an offence under this Act punishable by the same penalty as is prescribed for the State offence.
- (3) If the State offence is an indictable offence, the offence under subsection (2) is also an indictable offence.

Example for this section:

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

Division 1 — Powers generally

52. Arrest without warrant

- (1) A police officer of another participating jurisdiction may arrest a person in the State without a warrant if —
 - (a) under the law of that other jurisdiction, the police officer would have been able to arrest the person in that other jurisdiction without a warrant; and
 - (b) the person has a connection with a cross-border region.
- (2) The law of the State does not apply in relation to the arrest.

53. Arrest under warrant

- (1) A police officer of another participating jurisdiction may arrest a person in the State under a warrant if —
 - (a) under the law of that other jurisdiction, the police officer would have been able to arrest the person in that other jurisdiction under a warrant; and
 - (b) the person has a connection with a cross-border region.
- (2) A magistrate of another participating jurisdiction —
 - (a) may issue in the State a warrant for the arrest of a person under the law of that other jurisdiction if the person has a connection with a cross-border region; and
 - (b) for that purpose, may exercise in the State any of the powers the magistrate has under the law of that other jurisdiction for the purpose of issuing warrants for the arrest of persons.

- (3) The law of the State does not apply in relation to the arrest or the warrant.

Examples for this section:

1. A person is suspected of committing an offence under SA law in the SA portion of the WA/SA/NT region. An SA magistrate anywhere in WA may issue a warrant for the person's arrest. An SA police officer may arrest the person under the warrant anywhere in WA.
2. A person who ordinarily resides in the WA/NT region is suspected of committing an offence under NT law in Katherine. An NT magistrate anywhere in WA may issue a warrant for the person's arrest. An NT police officer may arrest the person under the warrant anywhere in WA.
3. A person who ordinarily resides in the WA/SA region is suspected of committing an offence under SA law in Port Augusta. An SA magistrate anywhere in WA may issue a warrant for the person's arrest. An SA police officer may arrest the person under the warrant anywhere in WA.

54. Person taken into custody

- (1) Subsection (2) applies if —
- (a) a police officer of another participating jurisdiction (the *arresting jurisdiction*) arrests a person under the law of the arresting jurisdiction —
 - (i) whether with or without a warrant; and
 - (ii) whether in the State or another participating jurisdiction;
 and
 - (b) the person has a connection with a cross-border region.
- (2) A police officer of the arresting jurisdiction may —
- (a) keep the person in custody in the State; and
 - (b) while the person is in custody, take the person to a police station, court or other place in the State for any purpose that is authorised under the law of the arresting jurisdiction as applied by its cross-border laws.
- (3) The law of the State does not apply in relation to the custody.

[Section 54 amended: No. 1 of 2010 s. 8.]

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

- (1) This section applies if —
- (a) a police officer of another participating jurisdiction (the *investigating jurisdiction*) —
 - (i) suspects a person of having committed, or has alleged that a person has committed, an offence under the law of the investigating jurisdiction; or
 - (ii) suspects a person of having breached, or has alleged that a person has breached, an order made under the law of the investigating jurisdiction;
- and
- (b) the person has a connection with a cross-border region.
- (2) A police officer of the investigating jurisdiction may —
- (a) investigate the offence or breach in the State; and
 - (b) for that purpose, may exercise in the State any of the powers the police officer has under the law of the investigating jurisdiction for the purpose of investigating the offence or breach.
- (3) Without affecting subsection (2), those powers may include powers the police officer has in relation to any of the following —
- (a) interviewing people;
 - (b) searching people;
 - (c) taking photographs of people or parts of people's bodies;
 - (d) taking prints of parts of people's bodies (for example, fingerprints, handprints and footprints);
 - (e) taking samples of things, and removing things, from the external and internal parts of people's bodies;
 - (f) entering and searching places and vehicles;

- (g) taking photographs of places and vehicles;
 - (h) inspecting, and taking extracts from or copies of, documents found at places or in vehicles;
 - (i) taking samples of things, and seizing things, from places and vehicles;
 - (j) carrying out warrants or orders authorising the police officer to do any of the things referred to in paragraphs (a) to (i);
 - (k) requiring people to assist the police officer to do any of the things referred to in paragraphs (a) to (j).
- (4) For the purpose of the investigation of the offence or breach by a police officer of the investigating jurisdiction in the State or another participating jurisdiction, a magistrate of the investigating jurisdiction —
- (a) may issue in the State a warrant or order under the law of the investigating jurisdiction to be carried out in the State or another participating jurisdiction; and
 - (b) for that purpose, may exercise in the State any of the powers the magistrate has under the law of the investigating jurisdiction for the purpose of issuing warrants or orders for the purpose of the investigation by police officers of that jurisdiction of offences or breaches of orders.
- (5) The law of the State does not apply in relation to the investigation or the warrant or order.

Examples for this section:

1. A person is suspected of committing an offence under SA law in the SA portion of the WA/SA/NT region. An SA police officer may investigate the alleged offence anywhere in WA. For the purpose of the investigation of the alleged offence, an SA magistrate anywhere in WA may issue a warrant to search premises anywhere in WA, SA or the NT.
2. A person is arrested in the WA/NT region for an offence under NT law alleged to have been committed in Katherine. An NT police officer may investigate the alleged offence anywhere in WA. For the purpose of the investigation of the alleged offence, an NT magistrate anywhere in WA

Cross-border Justice Act 2008

Part 4 Police officers of another participating jurisdiction exercising powers in State

Division 2 Road traffic powers

s. 56

may issue a warrant to search premises anywhere in WA or the NT but not in SA.

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

[Section 55 amended: No. 1 of 2010 s. 9.]

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

This Division does not exclude or limit the operation of the *Criminal Investigation (Identifying People) Act 2002 Part 12*.

Note for this section:

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 the State, elect to use the powers the police officer has under this Division or to proceed under the *Criminal Investigation (Identifying People) Act 2002 Part 12*.

Division 2 — Road traffic powers

Subdivision 1 — Vehicle or driver licensing laws

57. Powers in relation to offences

- (1) Subsection (2) applies if —
 - (a) a police officer of another participating jurisdiction suspects a person of having committed, or has alleged that a person has committed, an offence under that other jurisdiction's vehicle or driver licensing laws; and
 - (b) the person has a connection with a cross-border region.
- (2) A police officer of that other jurisdiction may exercise in the State any of the powers the police officer has under the law of that other jurisdiction in relation to the offence.

58. Other powers

- (1) In this section —
licensing powers, of a police officer of another participating jurisdiction, means any of the powers the police officer has under that other jurisdiction's vehicle or driver licensing laws other than a power to which section 57(2) applies.
- (2) A police officer of another participating jurisdiction may exercise in the State any of the police officer's licensing powers in relation to a person who ordinarily resides in a part of that other jurisdiction that is in a cross-border region.

Subdivision 2 — Drink or drug-driving laws

59. Powers that may be exercised in State

- (1) Subsection (3) applies if a police officer of another participating jurisdiction has required a person in a part of that other jurisdiction that is in a cross-border region to provide a sample of the person's breath or oral fluid for a preliminary alcohol or drug test under that other jurisdiction's drink or drug-driving laws.
- (2) Subsection (3) applies if —
 - (a) a police officer of another participating jurisdiction suspects a person of having committed, or has alleged that a person has committed, a drink or drug-driving offence under the law of that other jurisdiction; and
 - (b) the person has a connection with a cross-border region.
- (3) Subject to section 60, a police officer of that other jurisdiction may exercise in the State any of the powers the police officer has under that other jurisdiction's drink or drug-driving laws in relation to the person.

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

Section 59 does not authorise a police officer of another participating jurisdiction to require a person in the State to provide a sample of breath or oral fluid for a preliminary alcohol or drug test under that other jurisdiction's drink or drug-driving laws.

Subdivision 3 — Vehicle impounding laws

61. Powers

(1) In this section —

person, connected with a vehicle, means the person who —

- (a) is suspected of having committed; or
- (b) is alleged to have committed; or
- (c) has been found guilty of,

the offence for which the vehicle may or is required to be impounded or confiscated.

(2) A police officer or other office holder of another participating jurisdiction may exercise in relation to a vehicle in the State any of the powers the police officer or office holder has under that other jurisdiction's vehicle impounding laws in relation to a vehicle if —

- (a) the person connected with the vehicle has a connection with a cross-border region; and
- (b) if the exercise of the power is for the purpose of giving effect to a court order — the order was made by a prescribed court of that other jurisdiction.

Subdivision 4 — Miscellaneous matters

62. Law of State does not apply

The law of the State does not apply in relation to the powers in respect of which this Division applies.

63. Relationship with Division 1

The powers that a police officer of another participating jurisdiction is authorised under this Division to exercise in the State are in addition to, and do not exclude or limit, any of the powers the police officer is authorised under Division 1 to exercise in the State.

Division 3 — Restraining orders laws

64. Term used: NT police order

In this Division —

NT police order means an order made by a police officer of the Northern Territory under the Northern Territory's restraining orders laws.

65. Making NT police orders

- (1) A police officer of the Northern Territory may make an NT police order in the State if the person against whom the order is sought or proposed to be made has a connection with a cross-border region.
- (2) The law of the State does not apply in relation to the making of the order.

Note for this section:

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, section 22 and Part 2 Division 4 apply.

66. Enforcement of NT police orders

- (1) This section applies if —
 - (a) a person in the State is a person against whom an NT police order is in force; and
 - (b) the person against whom, or for whose benefit, the order is made ordinarily resides in a cross-border region.

Cross-border Justice Act 2008

Part 4 Police officers of another participating jurisdiction exercising powers in State

Division 3 Restraining orders laws

s. 66

- (2) A police officer of the Northern Territory may exercise the police officer's powers in relation to the person against whom the order is made.
- (3) The law of the State does not apply in relation to those powers.

Part 5 — Prescribed courts of State exercising cross-border jurisdiction

Division 1 — Preliminary matters

67. Operation of courts outside State not limited

This Part does not limit, and applies subject to, the following —

- (a) the *Magistrates Court Act 2004* section 8;
- (b) the *Children's Court of Western Australia Act 1988* section 13.

Division 2 — Jurisdiction and powers of courts

68. Proceedings that may be heard in another participating jurisdiction

- (1) A prescribed court of the State may hear and determine a proceeding referred to in subsection (2) in another participating jurisdiction if the person who is the subject of the proceeding has a connection with a cross-border region for the purposes of the proceeding.
- (2) Any of the following proceedings of a prescribed court of the State may be heard and determined in another participating jurisdiction under subsection (1) —
 - (a) in the criminal jurisdiction of the Magistrates Court under the *Magistrates Court Act 2004* section 11;
 - (b) in the criminal jurisdiction of the Children's Court under the *Children's Court of Western Australia Act 1988* section 19;
 - (c) under the *Bail Act 1982*;
 - (d) under the *Sentencing Act 1995*;
 - (e) under the *Young Offenders Act 1994*;
 - (f) under the *Restraining Orders Act 1997*;

- (g) under the *Firearms Act 1973* in respect of an order that may be made under section 27A or 28 of that Act;
 - (h) under any enactment referred to in paragraph (a) of the definition of **road traffic laws** in section 138(1) in respect of any of the following —
 - (i) the imposition or removal of a disqualification from holding or obtaining a driver's licence;
 - (ii) an order for the issue of, for a change in the limitations and conditions of, or for the cancellation of, an extraordinary licence;
 - (iii) the impounding or confiscation of a vehicle;
 - (iv) the sale or disposal of an impounded or confiscated vehicle;
 - (i) prescribed by the regulations.
- (3) To avoid doubt, a prescribed court of the State can only hear and determine in another participating jurisdiction a proceeding that the court can hear and determine in the State.

Examples for this section:

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 region. The charge may be heard by a WA magistrate sitting anywhere in WA, SA or the NT.
2. A person who ordinarily resides in the WA/SA 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.
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 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.

[Section 68 amended: No. 8 of 2012 s. 84.]

69. Exercise of jurisdiction and powers

- (1) A prescribed court of the State may —
 - (a) exercise its cross-border jurisdiction in the State or another participating jurisdiction; and
 - (b) for that purpose, have registries in and sit in another participating jurisdiction.
- (2) For the purpose of exercising its cross-border jurisdiction, a prescribed court of the State may exercise in another participating jurisdiction any of the powers the court may exercise in the State, including powers in relation to the following —
 - (a) compelling witnesses;
 - (b) administering oaths;
 - (c) punishing for contempt;
 - (d) issuing warrants, summonses and other process.
- (3) For subsection (2), the powers of a prescribed court of the State include the powers of the court that may be exercised by a magistrate or registrar of the court.
- (4) To avoid doubt, a prescribed court of the State may exercise in another participating jurisdiction its cross-border jurisdiction in relation to a cross-border proceeding whether or not the proceeding is heard and determined in that other jurisdiction.

70. Practice and procedure

The practice and procedure of a prescribed court of the State apply (with any appropriate modifications) when the court is exercising its cross-border jurisdiction.

71. Rules of evidence

The rules of evidence applied by a prescribed court of the State apply (with any appropriate modifications) when the court is exercising its cross-border jurisdiction.

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

- (1) Subsection (2) applies if —
- (a) in the exercise of its cross-border jurisdiction, a prescribed court of the State issues an order, judgment, warrant or summons; and
 - (b) a person in another participating jurisdiction fails to comply with the order, judgment, warrant or summons; and
 - (c) the failure would, if it were to occur in the State, constitute an offence under the law of the State.
- (2) The person commits an offence under this Act punishable by the same penalty as is prescribed for the offence referred to in subsection (1)(c).
- (3) If the offence referred to in subsection (1)(c) is an indictable offence, the offence under subsection (2) is also an indictable offence.

Division 3 — Miscellaneous matters relating to cross-border proceedings

73. Legal practitioners of another participating jurisdiction entitled to appear etc.

A person who is entitled to engage in legal practice under the law of another participating jurisdiction is entitled —

- (a) to appear for a person in a cross-border proceeding of a prescribed court of the State; and
- (b) to provide advice and other services to a person in relation to such a proceeding,

if the person who is the subject of the proceeding has a connection with a cross-border region that is partly in that other jurisdiction for the purposes of the proceeding.

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

A court document of a prescribed court of the State may be lodged, served or issued in another participating jurisdiction.

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

- (1) This section applies if —
 - (a) a document lodged, served or issued in a cross-border proceeding of a prescribed court of the State (the *State court*) is in the form of a court document of a prescribed court of another participating jurisdiction (the *interstate court*); and
 - (b) the person who is the subject of the proceeding has a connection with a cross-border region that is partly in that other jurisdiction for the purposes of the proceeding.
- (2) The proceeding or a decision in the proceeding cannot be challenged, appealed against, quashed or called into question on the ground that the document is in the form of a court document of the interstate court.
- (3) The State court may, on an application made by a party to the proceeding or on its own initiative, order that a document in the form of a court document of the State court be lodged, served or issued (as the case requires) instead of the document referred to in subsection (1)(a).
- (4) A document lodged, served or issued under subsection (3) is taken to have been lodged, served or issued on the day on which, and at the time at which, the document referred to in subsection (1)(a) was lodged, served or issued.

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

The *Court Security and Custodial Services Act 1999* does not apply in relation to any premises or other place in another

participating jurisdiction used for the purposes of a cross-border proceeding of a prescribed court of the State.

77. Law of State applies

Except to the extent this Act provides differently, the law of the State applies (with any appropriate modifications) in relation to the exercise by a prescribed court of the State of its cross-border jurisdiction.

Division 4 — Registration of interstate restraining orders

78. Part 2 Divisions 2 and 4 do not apply

Part 2 Divisions 2 and 4 do not apply in relation to a power in respect of which this Division applies.

79. Terms used

In this Division —

NT restraining order means a restraining order of the Northern Territory;

register means to register under the *Restraining Orders Act 1997* Part 7;

SA restraining order means a restraining order of South Australia.

80. Registration of SA restraining orders under WA law

A registrar of the Magistrates Court may register an SA restraining order in another participating jurisdiction if —

- (a) the order was made, amended or varied in a cross-border proceeding of a prescribed court of South Australia for the purposes of which the person against whom the order was made had a connection with a cross-border region that is partly in that other jurisdiction; or

- (b) the person against whom, or for whose benefit, the order was made ordinarily resides in that other jurisdiction.

Examples for this section:

1. An 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 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.
2. An 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

A registrar of the Magistrates Court may register an NT restraining order in another participating jurisdiction if —

- (a) the order was made, amended or varied in a cross-border proceeding of a prescribed court of the Northern Territory for the purposes of which the person against whom the order was made had a connection with a cross-border region that is partly in that other jurisdiction; or
- (b) the person against whom, or for whose benefit, the order was made ordinarily resides in that other jurisdiction.

Examples for this section:

1. An 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 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.
2. An 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

Cross-border Justice Act 2008

Part 5 Prescribed courts of State exercising cross-border jurisdiction

Division 4 Registration of interstate restraining orders

s. 81

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

A prescribed court of another participating jurisdiction may hear and determine a cross-border proceeding of the court in the State if the person who is the subject of the proceeding has a connection with a cross-border region for the purposes of the proceeding.

Examples for this section:

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 region. The charge may be heard by an NT magistrate sitting anywhere in WA.
2. A person who ordinarily resides in the WA/SA region is charged with an offence under SA law alleged to have been committed in Port Augusta. The charge may be heard by an SA magistrate sitting anywhere in WA.
3. A person is arrested in the WA/SA/NT 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 region. Both charges may be heard by an NT magistrate sitting anywhere in WA.

83. Exercise of jurisdiction and powers

- (1) A prescribed court of another participating jurisdiction may —
 - (a) exercise its cross-border jurisdiction in the State; and
 - (b) for that purpose, have registries in and sit in the State.
- (2) For the purpose of exercising its cross-border jurisdiction, a prescribed court of another participating jurisdiction may exercise in the State any of the powers the court may exercise in that other jurisdiction, including powers in relation to the following —
 - (a) compelling witnesses;
 - (b) administering oaths;

Cross-border Justice Act 2008

Part 6 Prescribed courts of another participating jurisdiction exercising cross-border jurisdiction

Division 2 Miscellaneous matters relating to cross-border proceedings

s. 84

- (c) punishing for contempt;
 - (d) issuing warrants, summonses and other process.
- (3) For subsection (2), the powers of a prescribed court of another participating jurisdiction include the powers of the court that may be exercised by a magistrate or registrar of the court.
- (4) To avoid doubt, a prescribed court of another participating jurisdiction may exercise in the State its cross-border jurisdiction in relation to a cross-border proceeding whether or not the proceeding is heard and determined in the State.

Division 2 — Miscellaneous matters relating to cross-border proceedings

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

Despite the *Criminal Code Act 1913* section 4, a person may be tried and punished in the State for an offence under the law of another participating jurisdiction by a prescribed court of that other jurisdiction in a cross-border proceeding of that court.

Note for this section:

The *Criminal Code Act 1913* appears as Appendix B to the *Criminal Code Act Compilation Act 1913*.

85. Privileges, protection and immunity of participants in proceedings

- (1) A magistrate of a prescribed court of another participating jurisdiction —
- (a) hearing or determining in the State a cross-border proceeding of that other jurisdiction; or
 - (b) exercising in the State the cross-border jurisdiction of the court or a power of the court for the purposes of that jurisdiction,
- has the same privileges, protection and immunity as a judge of the Supreme Court has in the performance of his or her duties as a judge.

- (2) A person appearing in the State as a legal practitioner in a cross-border proceeding of a prescribed court of another participating jurisdiction has the same protection and immunity as counsel appearing in a proceeding in the Supreme Court.
- (3) A person appearing in the State as a witness in a cross-border proceeding of a prescribed court of another participating jurisdiction has the same protection as a witness appearing in a proceeding in the Supreme Court.

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

A court document of a prescribed court of another participating jurisdiction may be lodged, served or issued in the State.

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

The *Court Security and Custodial Services Act 1999* applies in relation to any premises or other place in the State used for the purposes of a cross-border proceeding of a prescribed court of another participating jurisdiction as if the premises or place were used for the purposes of a proceeding of a court of the State.

88. Law of State does not apply

Except to the extent this Act provides differently, the law of the State does not apply in relation to the exercise by a prescribed court of another participating jurisdiction of its cross-border jurisdiction in the State.

Division 3 — Registration of interstate restraining orders

89. Part 2 Divisions 2 and 4 do not apply

Part 2 Divisions 2 and 4 do not apply in relation to a power in respect of which this Division applies.

Cross-border Justice Act 2008

Part 6 Prescribed courts of another participating jurisdiction exercising cross-border jurisdiction

Division 3 Registration of interstate restraining orders

s. 90

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

(1) In this section —

interstate restraining order means —

- (a) a restraining order of the State; or
- (b) a restraining order of the Northern Territory;

register means to register under the restraining orders laws of South Australia.

(2) The Principal Registrar of the Magistrates Court of South Australia may register an interstate restraining order in the State if —

- (a) the order was made, amended or varied in a cross-border proceeding of a prescribed court of the State or the Northern Territory for the purposes of which the person against whom the order was made had a connection with a cross-border region that is partly in South Australia; or
- (b) the person against whom, or for whose benefit, the order was made ordinarily resides in South Australia.

Examples for this section:

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 had a connection with the WA/SA 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.
2. An 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

(1) In this section —

interstate restraining order means —

- (a) a restraining order of the State; or

(b) a restraining order of South Australia;

register means to register under the Northern Territory's restraining orders laws.

- (2) The Registrar of the Local Court of the Northern Territory may register an interstate restraining order in the State if —
- (a) the order was made, amended or varied in a cross-border proceeding of a prescribed court of the State or South Australia for the purposes of which the person against whom the order was made had a connection with a cross-border region that is partly in the Northern Territory; or
 - (b) the person against whom, or for whose benefit, the order was made ordinarily resides in the Northern Territory.

Examples for this section:

1. A WA magistrate sitting in Perth makes a restraining order under 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.
2. An 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 had a connection with the WA/SA/NT 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.

Part 7 — Bail of persons in custody under law of State

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

- (1) Subsection (2) applies if a person is in the custody of a police officer of the State in another participating jurisdiction under section 34(2)(a).
- (2) The *Bail Act 1982* applies (with any appropriate modifications) in relation to the person.

93. Offence to fail to comply with bail undertaking

- (1) Subsection (2) applies if —
 - (a) a person in another participating jurisdiction fails to comply with a bail undertaking entered into by the person under the *Bail Act 1982*; and
 - (b) the failure would, if it were to occur in the State, constitute an offence under the law of the State.
- (2) The person commits an offence under this Act punishable by the same penalty as is prescribed for the offence referred to in subsection (1)(b).
- (3) If the offence referred to in subsection (1)(b) is an indictable offence, the offence under subsection (2) is also an indictable offence.

**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**

- (1) Subsection (2) applies if a person is in the custody of a police officer of another participating jurisdiction in the State under section 54(2)(a).
- (2) A police officer of that other jurisdiction may exercise in relation to the person any of the powers the police officer has under the law of that other jurisdiction in relation to the bail of a person in custody in that other jurisdiction.
- (3) The *Bail Act 1982* does not apply in relation to the person.

Part 9 — Mentally impaired accused

95. Terms used

In this Part —

NT proceeding means —

- (a) a cross-border proceeding of a prescribed court of the Northern Territory for the purposes of which the person who is the subject of the proceeding has a connection with a cross-border region; or
- (b) an appeal from such a proceeding;

SA proceeding means —

- (a) a cross-border proceeding of a prescribed court of South Australia for the purposes of which the person who is the subject of the proceeding has a connection with a cross-border region; or
- (b) an appeal from such a proceeding;

State authorised hospital means an authorised hospital as defined in the *Mental Health Act 2014* section 4;

State prison means a prison in the State.

[Section 95 amended: No. 25 of 2014 s. 54.]

96. Persons committed to detention or custody under SA law

(1) If —

- (a) in an SA proceeding, the person who is the subject of the proceeding is committed to detention under the *Criminal Law Consolidation Act 1935* (South Australia) Part 8A; and
- (b) the person is required by a direction made under section 269V of that Act to be kept in custody in a State authorised hospital or State prison,

the person may be kept in custody in the hospital or prison in accordance with the direction.

- (2) If, in an SA proceeding, the person who is the subject of the proceeding is committed under the *Criminal Law Consolidation Act 1935* (South Australia) section 269X to custody in a State authorised hospital or State prison, the person may be kept in custody in the hospital or prison in accordance with the committal.

97. Persons detained under NT law

If, in an NT proceeding, the person who is the subject of the proceeding is required by an order made under —

- (a) the *Mental Health and Related Services Act* (Northern Territory) section 74 or 75; or
- (b) the *Sentencing Act* (Northern Territory) section 79 or 80,

to be detained in a State authorised hospital, the person may be detained in the hospital in accordance with the order.

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

- (1) A person who is sentenced to a term of imprisonment or period of detention in respect of an offence under the law of the State is liable to serve the sentence in a prison or detention centre in the State or another participating jurisdiction if the person has a connection with a cross-border region.
- (2) A person may be kept in custody in a prison or detention centre of another participating jurisdiction under subsection (1) for the period necessary to serve the sentence.
- (3) While a person is kept in custody in a prison or detention centre of another participating jurisdiction under subsection (1), the person is taken to be serving the sentence.

99. Warrant of commitment

A judicial officer or registrar of the court sentencing a person to whom section 98 applies may issue a warrant of commitment directed to all authorised officers and ordering them to take the person to a prison or detention centre in the State or another participating jurisdiction.

Subdivision 2 — Remand

100. Remanded in custody in State or another participating jurisdiction

A person who is remanded in custody in respect of an alleged offence under the law of the State may be kept in custody in a remand facility in the State or another participating jurisdiction

in accordance with the order remanding the person if the person has a connection with a cross-border region.

101. Remand warrant

A judicial officer or registrar of the court remanding a person to whom section 100 applies may issue a remand warrant directed to all authorised officers and ordering them to take the person to a remand facility in the State or another participating jurisdiction.

102. Law of State applies

Except to the extent this Act provides differently, the law of the State applies (with any appropriate modifications) in relation to the remand of a person in another participating jurisdiction under a remand warrant issued under section 101.

Subdivision 3 — Bring up orders

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

(1) In this section —

judicial body, of the State, means a court, tribunal or other body or person that under the law of the State has judicial or quasi-judicial functions or otherwise acts judicially, and includes —

- (a) a Royal Commission under the *Royal Commissions Act 1968*; and
- (b) the Corruption and Crime Commission established under the *Corruption, Crime and Misconduct Act 2003*;

proceedings, of a judicial body of the State, includes anything done in the performance of the functions of the judicial body.

(2) This section applies in relation to a person in custody in a prison or detention centre in another participating jurisdiction under the law of a participating jurisdiction.

- (3) If the person is required or entitled to be present at proceedings of a judicial body of the State —
- (a) the judicial body or a person constituting it for the proceedings; or
 - (b) an officer of the judicial body authorised in accordance with its procedures; or
 - (c) the person in charge of the prison or detention centre,
- may, by written order, direct that the person be brought up to the place named in the order.
- (4) The order can only be made if the person has a connection with a cross-border region that is partly in the participating jurisdiction in which the person is in custody.
- (5) If 2 or more people constitute the judicial body for the proceedings, subsection (3)(a) applies to each of them.

Note for this section:

The *Prisons Act 1981* applies for the purpose of bringing up a person who is in custody in a prison in the State under the law of a participating jurisdiction.

[Section 103 amended: No. 35 of 2014 s. 39.]

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

If an order is made under section 103 in relation to a person —

- (a) the person in charge of the prison or detention centre in which the person is in custody may charge an authorised officer with carrying out the order; and
- (b) the person must —
 - (i) while absent from the prison or detention centre for the purpose specified in the order, be kept in the charge of an authorised officer; and
 - (ii) in due course and subject to any lawful order to the contrary, be returned to the custody from which the person was brought up without any

prejudice to any cause or matter under the law of the State for which the person was in that custody;

and

- (c) if the proceeding that the person is required to attend is adjourned, the person may during the adjournment —
 - (i) be taken to and confined in a prison or detention centre in a participating jurisdiction or be kept at a place in a participating jurisdiction in the charge of an authorised officer; or
 - (ii) be brought up from time to time and day-to-day to the place where the person's attendance is required.

Subdivision 4 — Miscellaneous matters

105. Carrying out custodial orders

An authorised officer of a participating jurisdiction may carry out a custodial order of the State in the State or another participating jurisdiction.

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

The *Court Security and Custodial Services Act 1999* does not apply in relation to a person in custody in another participating jurisdiction under this Part.

107. Application of *Prisons Act 1981*

The *Prisons Act 1981* does not apply in relation to a person in custody in a prison in another participating jurisdiction under this Part.

108. Application of *Young Offenders Act 1994*

- (1) The prescribed provisions of the *Young Offenders Act 1994* do not apply in relation to a person in custody in a detention centre in another participating jurisdiction under this Part.

- (2) For subsection (1), the prescribed provisions are —
- (a) Part 9, except section 178; and
 - (b) sections 188, 191 and 193.

Division 2 — Non-custodial sentences and orders

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

- (1) A non-custodial order of the State may be carried out (wholly or partly) in another participating jurisdiction if the person against whom the order is made or issued has a connection with a cross-border region.
- (2) A community corrections officer or juvenile justice officer of the State may exercise in another participating jurisdiction any of the powers the officer has under the law of the State in relation to a non-custodial order of the State if the person against whom the order was made or issued has a connection with a cross-border region.
- (3) The law of the State applies (with any appropriate modifications) in relation to the order and those powers.

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

- (1) A police officer, juvenile justice officer or other office holder of the State may exercise in another participating jurisdiction any of the powers the office holder has under the *Young Offenders Act 1994* Part 5 in relation to an alleged offender who has a connection with a cross-border region.
- (2) The law of the State applies (with any appropriate modifications) in relation to those powers.

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

- (1) A person who is sentenced to a term of imprisonment or period of detention in respect of an offence under the law of another participating jurisdiction may serve the sentence in a prison or detention centre in the State if the person has a connection with a cross-border region.
- (2) A person may be kept in custody in a prison or detention centre of the State under subsection (1) for the period necessary to serve the sentence.
- (3) A person being kept in custody in a prison or detention centre under subsection (1) may be released from custody in accordance with the law of that other jurisdiction.

112. Remanded in custody in State

- (1) A person who is remanded in custody in respect of an alleged offence under the law of another participating jurisdiction may be kept in custody in a remand facility in the State in accordance with the order remanding the person if the person has a connection with a cross-border region.
- (2) Except to the extent this Act provides differently, the law of the State does not apply in relation to the remand of a person in a remand facility of the State under subsection (1).

113. Carrying out custodial orders

- (1) An authorised officer of a participating jurisdiction may carry out a custodial order of another participating jurisdiction in the State.

Cross-border Justice Act 2008

Part 11 Sentences and orders under law of another participating jurisdiction

Division 1 Custodial sentences and orders

s. 114

- (2) An authorised officer of the State may carry out a custodial order of another participating jurisdiction in another participating jurisdiction.

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

- (1) This section applies in relation to a person in custody in a prison or detention centre in a participating jurisdiction under the law of the State.
- (2) If the person is taken from and returned to the prison or detention centre under a bring up order of another participating jurisdiction, subject to any lawful order to the contrary, the person's absence from the prison or detention centre for the purpose specified in the order does not prejudice any cause or matter under the law of the State for which the person was in that custody.

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

The *Court Security and Custodial Services Act 1999* applies in relation to a person in custody in the State under this Division.

116. Application of *Prisons Act 1981*

The *Prisons Act 1981* applies in relation to a person in custody in a prison in the State under this Division.

117. Application of *Young Offenders Act 1994*

- (1) The prescribed provisions of the *Young Offenders Act 1994* apply in relation to a person in custody in a detention centre in the State under this Division.
- (2) For subsection (1), the prescribed provisions are —
- (a) Part 9, except section 178; and
 - (b) sections 188, 191 and 193.

Division 2 — Non-custodial sentences and orders

118. Carrying out non-custodial orders in State

- (1) A non-custodial order of another participating jurisdiction may be carried out (wholly or partly) in the State if the person against whom the order is made has a connection with a cross-border region.
- (2) A community corrections officer or juvenile justice officer of another participating jurisdiction may exercise in the State any of the powers the officer has under the law of that other jurisdiction in relation to a non-custodial order of that other jurisdiction if the person against whom the order is made has a connection with a cross-border region.
- (3) The law of the State does not apply in relation to the order or those powers.

119. Conducting diversionary programs for young offenders in State

- (1) A police officer, juvenile justice officer or other office holder of South Australia may exercise in the State any of the powers the office holder has under the *Young Offenders Act 1993* (South Australia) Part 2 in relation to an alleged offender who has a connection with a cross-border region.
- (2) A police officer, juvenile justice officer or other office holder of the Northern Territory may exercise in the State any of the powers the office holder has under the *Youth Justice Act* (Northern Territory) Part 3 in relation to an alleged offender who has a connection with a cross-border region.
- (3) The law of the State does not apply in relation to those powers.

Part 12 — Enforcement of fines

Division 1 — Preliminary matters

120. Terms used

In this Part —

Director General has the meaning given in the Fines Enforcement Act section 3(1);

fine includes a pecuniary penalty, pecuniary forfeiture, pecuniary compensation and fees, charges and costs payable under a conviction or order —

- (a) of a prescribed court of a participating jurisdiction; or
- (b) in an appeal from such a proceeding;

Fines Enforcement Act means the *Fines, Penalties and Infringement Notices Enforcement Act 1994*;

finest enforcement agency, of another participating jurisdiction, means —

- (a) if the jurisdiction is South Australia — the Manager, Penalty Management as defined in the *Criminal Law (Sentencing) Act 1988* (South Australia) section 3(1); or
- (b) if the jurisdiction is the Northern Territory — the Fines Recovery Unit as defined in the *Fines and Penalties (Recovery) Act* (Northern Territory) section 5;

Fines Registrar means the person who holds the office of Registrar of the Fines Enforcement Registry under the Fines Enforcement Act section 7(1).

Division 2 — Fines under law of State

121. Request to enforce fine in another participating jurisdiction

- (1) The Fines Registrar may request the finest enforcement agency of another participating jurisdiction (the **reciprocating agency**) to enforce a fine that is registered under the Fines Enforcement Act section 41(1) if the offender on whom the fine has been imposed has a connection with a cross-border region.

- (2) The request must be in writing and accompanied by —
- (a) a certified copy of the order imposing the fine; and
 - (b) a certificate signed by the Fines Registrar certifying the amount of the fine outstanding; and
 - (c) written advice about the offender's connection with the region.

122. Effect of making request

On making the request, the Fines Registrar must —

- (a) cancel any order or unexecuted warrant in force in relation to the fine under the Fines Enforcement Act Part 4 Division 3; and
- (b) if the Fines Registrar cancels a licence suspension order under paragraph (a) — advise the Director General of the cancellation; and
- (c) not take any action or further action to enforce the fine under the Fines Enforcement Act unless section 125 applies.

123. Receipt of money by Fines Registrar

If, subsequent to making the request, the Fines Registrar receives from the offender any money in whole or part satisfaction of the fine, the Fines Registrar must notify the reciprocating agency in writing of the payment.

124. Receipt of money from reciprocating agency

If, subsequent to making the request, the Fines Registrar receives from the reciprocating agency any money in whole or part satisfaction of the fine, the Fines Registrar must apply the money as if it had been received from the offender in whole or part satisfaction of the fine.

125. Resumption of enforcement by Fines Registrar

Subsequent to making the request, the Fines Registrar may take action or further action to enforce the fine under the Fines Enforcement Act only if the Fines Registrar —

- (a) requests the reciprocating agency in writing to cease enforcing the fine; or
- (b) receives from that agency written advice that the agency will not take any action or further action to enforce the fine.

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

126. Request to enforce fine in State

- (1) If the Fines Registrar receives a request in accordance with subsection (2) from the fines enforcement agency of another participating jurisdiction (the *reciprocating agency*) to enforce a fine imposed on an offender who has a connection with a cross-border region, the Fines Registrar must register the fine.
- (2) The request must be in writing and accompanied by —
 - (a) a certified copy of the order imposing the fine; and
 - (b) a certificate signed by or on behalf of the reciprocating agency certifying the amount of the fine outstanding; and
 - (c) written advice about the offender's connection with the region.

127. Effect of registration

- (1) On registration of the fine under section 126(1), subject to subsection (2), the Fines Registrar may enforce the fine under the Fines Enforcement Act as if it were registered under section 41(1) of that Act.

- (2) The Fines Registrar cannot issue a warrant of commitment under the Fines Enforcement Act section 53(1) for the purpose of enforcing the fine.

128. Receipt of money by reciprocating agency

If, subsequent to registration of the fine under section 126(1), the Fines Registrar receives written notice from the reciprocating agency that the offender has paid an amount in whole or part satisfaction of the fine, the Fines Registrar —

- (a) must record the payment; and
- (b) may take action or further action under the Fines Enforcement Act to enforce only the amount of the fine outstanding.

129. Receipt of money by Fines Registrar

If, subsequent to registration of the fine under section 126(1), the Fines Registrar receives any money in whole or part satisfaction of the fine —

- (a) from the offender; or
- (b) as a result of any action taken by the Fines Registrar to enforce the fine under the Fines Enforcement Act,

the Fines Registrar must remit the money received to the reciprocating agency.

130. Request to cease enforcement of fine

- (1) This section applies if, subsequent to registration of the fine under section 126(1), the Fines Registrar —
- (a) receives a written request from the reciprocating agency to cease enforcing the fine; or
 - (b) advises the reciprocating agency in writing that the Fines Registrar will not take any action or further action to enforce the fine.

- (2) The Fines Registrar must —
- (a) cancel any order or unexecuted warrant in force in relation to the fine under the Fines Enforcement Act Part 4 Division 3; and
 - (b) if the Fines Registrar cancels a licence suspension order under paragraph (a) — advise the Director General of the cancellation; and
 - (c) advise the reciprocating agency of the amount of the fine outstanding, taking into account —
 - (i) any money received from the offender in whole or part satisfaction of the fine, including any payment recorded under section 128(a); and
 - (ii) any money received by the Fines Registrar in whole or part satisfaction of the fine as a result of any action taken by the Fines Registrar to enforce the fine under the Fines Enforcement Act; and
 - (iii) any reduction (calculated in accordance with the regulations) of the amount of the fine as a consequence of any action taken by the Fines Registrar to enforce the fine under the Fines Enforcement Act;
- and
- (d) remit to the reciprocating agency any money received by the Fines Registrar in whole or part satisfaction of the fine that has not already been remitted under section 129; and
 - (e) not take any action or further action to enforce the fine under the Fines Enforcement Act.
- (3) On receiving or making a request under this section, the fine ceases to be registered under section 126(1).

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

- (1) A secondary office holder is an office holder of a participating jurisdiction who holds office (whether under an appointment or otherwise) because the office holder is an office holder of one of the other participating jurisdictions.
- (2) A secondary office is an office held under the law of a participating jurisdiction by a secondary office holder.

Examples for this section:

1. SA and NT police officers who are appointed as WA police officers under the *Police Act 1892* will be secondary office holders of WA.
2. SA and NT community corrections officers will be taken to be WA community corrections officers under the *Sentence Administration Act 2003* 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

An office holder of the State may hold a secondary office under the law of another participating jurisdiction, and exercise the powers of that office, for the purposes of that other participating jurisdiction's cross-border laws.

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

An office holder of another participating jurisdiction may hold a secondary office under the law of the State, and exercise the powers of that office, for the purposes of the State's cross-border laws.

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

(1) In this section —

prescribed prohibition, in relation to an office holder of the State, means a prohibition against the office holder —

- (a) holding another public office concurrently with the office holder's State office; or
- (b) exercising the powers of another public office concurrently with the powers of the office holder's State office;

State office, of an office holder of the State, means the office under the law of the State held by the office holder.

(2) Subsection (3) applies subject to the *Magistrates Court Act 2004* sections 6(3) and 26(8a) but despite any other law of the State.

(3) An office holder of the State does not breach a prescribed prohibition by holding a secondary office under the law of another participating jurisdiction, or exercising a power of that office, if the office is held or the power is exercised for the purposes of that other jurisdiction's cross-border laws.

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

(1) In this section —

remuneration includes salary, allowances, fees, emoluments and benefits (whether in money or not).

(2) Subsections (3) and (4) apply in relation to an office holder of another participating jurisdiction who holds a secondary office under the law of the State for the purposes of the State's cross-border laws.

(3) The conditions of service (including as to remuneration) of the secondary office holder are those that the office holder is entitled to under the law of that other jurisdiction.

- (4) The secondary office holder ceases to hold the secondary office if the office holder ceases to hold the office under the law of that other jurisdiction.

Division 2 — Appointment of magistrates of another participating jurisdiction to be magistrates of State

136. Appointment as magistrates of Magistrates Court

The *Magistrates Court Act 2004* applies (with any appropriate modifications) in relation to the appointment of magistrates of another participating jurisdiction to be magistrates of the Magistrates Court.

137. Appointment as magistrates of Children’s Court

The *Children’s Court of Western Australia Act 1988* applies (with any appropriate modifications) in relation to the appointment of magistrates of another participating jurisdiction to be magistrates of the Children’s Court.

Part 14 — Miscellaneous matters

138. Reporting accidents, producing driver's licences etc. at police stations etc.

(1) In this section —

road traffic laws, of a participating jurisdiction, means —

(a) if the jurisdiction is the State, any of the following enactments —

(i) the *Road Traffic Act 1974*;

(ii) the *Road Traffic (Administration) Act 2008*;

(iii) the *Road Traffic (Authorisation to Drive) Act 2008*;

(iv) the *Road Traffic (Vehicles) Act 2012*;

or

(b) if the jurisdiction is another participating jurisdiction — the road traffic laws of that other jurisdiction under its cross-border laws.

(2) Subsections (3) and (4) apply in relation to a requirement under the law of the State to do something if no other provision of the State's cross-border laws authorises the thing to be done in another participating jurisdiction.

(3) A person who is required under the State's road traffic laws to do something at a police station or other place may do that thing at a police station or other place in another participating jurisdiction if the person has a connection with a cross-border region.

(4) A person who is required under any other law of the State to do something at a police station may do that thing at a police station in another participating jurisdiction if the person has a connection with a cross-border region.

(5) Subsections (6) and (7) apply in relation to a requirement under the law of another participating jurisdiction to do something if

no other provision of the State's cross-border laws allows the thing to be done in the State.

- (6) A person who is required under another participating jurisdiction's road traffic laws to do something at a police station or other place may do that thing at a police station or other place in the State if the person has a connection with a cross-border region.
- (7) A person who is required under any other law of another participating jurisdiction to do something at a police station may do that thing at a police station in the State if the person has a connection with a cross-border region.

Note for this section:

For the purpose of deciding whether or not a person to whom section 138 applies has a connection with a cross-border region, section 24 and Part 2 Division 4 apply.

[Section 138 amended: No. 8 of 2012 s. 85.]

139A. Operation of *Coroners Act 1996* not affected

This Act does not affect the operation of the *Coroners Act 1996* in relation to the investigation of the death of a person.

[Section 139A inserted: No. 1 of 2010 s. 10.]

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

- (1) The *Inspector of Custodial Services Act 2003* does not apply in relation to a person who is in custody in another participating jurisdiction under the law of the State.
- (2) That Act applies in relation to a person who is in custody in the State under the law of another participating jurisdiction.

140. Power of Minister to enter agreements

- (1) In this section —
Minister, of a participating jurisdiction, includes a person acting on behalf of a Minister of the jurisdiction.

s. 141

- (2) The Minister may make an agreement with a Minister of another participating jurisdiction in respect of any matter that is necessary or convenient to give effect to this Act.
- (3) Subsection (2) does not limit the power of the Minister to enter into agreements relating to the administration of justice in a cross-border region.

141. Inconsistency between Act and agreement

If there is an inconsistency between this Act and an agreement referred to in section 140(2), this Act prevails to the extent of the inconsistency.

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

An office holder of the State has the same protections and immunities, and is subject to the same liabilities, under the law of the State in respect of any action the office holder takes under the State's cross-border laws in another participating jurisdiction as the office holder would have, and be subject to, if the office holder were to take the action in the State.

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

An office holder of another participating jurisdiction has the same protections and immunities, and is subject to the same liabilities, under the law of the State in respect of any action the office holder takes under that other jurisdiction's cross-border laws in the State as the office holder would have, and be subject to, under the law of that other jurisdiction if the office holder were to take the action in that other jurisdiction.

144. Disclosure of information to authorities in another participating jurisdiction

- (1) A person or body in the State who is authorised under a law of the State to disclose information to another person or body in

the State (a *State authority*) may disclose that information to a person or body in another participating jurisdiction (an *interstate authority*) if —

- (a) the interstate authority exercises powers that correspond with the powers exercised by the State authority; and
 - (b) the information is relevant to the administration of the cross-border laws of the State or of that other jurisdiction.
- (2) The CEO (corrections) may authorise the disclosure of information about persons who are being or have been dealt with under the State's cross-border laws to a person or body (whether in the State or elsewhere) for use in research.
 - (3) The CEO (corrections) may establish procedures for the disclosure of information under this section.

145. Delegation by CEO (corrections)

- (1) The CEO (corrections) may delegate to a person any power the CEO has under another provision of this Act.
- (2) The delegation must be in writing signed by the CEO.
- (3) A person to whom a power is delegated under this section cannot delegate that power.
- (4) A person exercising a power that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) This section does not limit the ability of the CEO to exercise a power through an officer or agent.

146. Regulations

The Governor may make regulations prescribing matters —

- (a) required or permitted to be prescribed by this Act; or
- (b) necessary or convenient to be prescribed for giving effect to this Act.

147. Review of this Act

- (1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as practicable after the expiry of 3 years from the commencement of this Act.
- (2) The Minister must —
 - (a) prepare a report on the outcome of the review; and
 - (b) cause a copy of the report to be laid before each House of Parliament within 4 years after the commencement of this Act.

[Part 15 omitted under the Reprints Act 1984 s. 7(4)(e).]

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Notes

[†] This is a compilation of the *Cross-border Justice Act 2008* and includes the amendments made by the other written laws referred to in the following table. The table also contains, for provisions that have come into operation, and for information about any reprint reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Cross-border Justice Act 2008</i>	7 of 2008	31 Mar 2008	s. 1 and 2: 31 Mar 2008 (see s. 2(a)); Act other than s. 1, 2, 67(b), 68(2)(b) and (e), 108, 110, 117, 119, 137 and Pt. 15 Div. 1: 1 Nov 2009 (see s. 2(b) and <i>Gazette</i> 9 Oct 2009 p. 3991); s. 67(b), 68(2)(b) and (e), 108, 110, 117, 119, 137 and Pt. 15 Div. 1: 1 Dec 2009 (see s. 2(b) and <i>Gazette</i> 9 Oct 2009 p. 3991)
<i>Police Amendment Act 2009</i> s. 17	42 of 2009	3 Dec 2009	13 Mar 2010 (see s. 2(b) and <i>Gazette</i> 12 Mar 2010 p. 941)
<i>Cross-border Justice Amendment Act 2010</i>	1 of 2010	9 Mar 2010	s. 1 and 2: 9 Mar 2010 (see s. 2(a)); Act other than s. 1 and 2: 9 Mar 2010 (see s. 2(b)(ii))
<i>Road Traffic Legislation Amendment Act 2012</i> Pt. 4 Div. 16	8 of 2012	21 May 2012	27 Apr 2015 (see s. 2(d) and <i>Gazette</i> 17 Apr 2015 p. 1371)
<i>Mental Health Legislation Amendment Act 2014</i> Pt. 4 Div. 4 Subdiv. 9	25 of 2014	3 Nov 2014	30 Nov 2015 (see s. 2(b) and <i>Gazette</i> 13 Nov 2015 p. 4632)
<i>Corruption and Crime Commission Amendment (Misconduct) Act 2014</i> s. 39	35 of 2014	9 Dec 2014	1 Jul 2015 (see s. 2(b) and <i>Gazette</i> 26 Jun 2015 p. 2235)
Reprint 1: The Cross-border Justice Act 2008 as at 1 Dec 2015 (includes amendments listed above)			

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the [WA Legislation website](#).

<u>Short title</u>	<u>Number and year</u>	<u>Assent</u>	<u>Commencement</u>
<i>Fines, Penalties and Infringement Notices Enforcement Amendment Act 2020 Pt. 3 Div. 3</i>	25 of 2020	19 Jun 2020	To be proclaimed (see s. 2(1)(c))