

Schedule 2—Family Court and Federal Circuit Court

History and context

- 3.1 As stated in the Explanatory Memorandum, this Bill amends the *Family Law Act 1975* and the *Federal Magistrates Act 1999* to facilitate the merger of the administrative functions of the Family Court of Australia and the Federal Magistrates Court of Australia. The Explanatory Memorandum suggests that '[m]erging the administration of the courts will formalise current arrangements and will allow further improvements to the courts' administrative practices and procedures'.¹
- 3.2 Further, the Explanatory Memorandum clarifies the use of nomenclature in relation to the Federal Magistrates Court and Federal Circuit Court as follows:

The amendments contained in this Bill have been drafted on the basis of the amendments contained in the Federal Circuit Court of Australia Legislation Amendment Bill 2012, which was introduced into Parliament on 20 September 2012. That Bill changes the title of the Federal Magistrates Court of Australia to the 'Federal Circuit Court of Australia'.²

1 Explanatory Memorandum, p. 3.

2 Explanatory Memorandum, p. 3.

- 3.3 Since November 2008, the Chief Executive Officer of the Family Court has had the additional role as acting Chief Executive Officer of the Federal Magistrates Court.³ In giving evidence, the Chief Executive Officer (CEO) explained that at the time, facing budget constraints, the two jurisdictional heads thought it would be sensible to agree to this arrangement.⁴
- 3.4 The CEO advised that from January 2009, wherever possible, the administration was then progressively collapsed into one, providing a similar service but at a reduced cost.⁵

Savings

- 3.5 According to the CEO, to date, around \$7.8 million has been saved by removing duplicate management structures and making changes to service delivery, including in the following areas: issue of family reports; marshal's duties; and corporate services such as property, finance and human resources staff. The CEO indicated that the consolidation of administration has meant savings in accommodation whereby staff are now located in 'an ordinary building' in Canberra.⁶
- There were some significant savings – as I said, \$7.8 million, of which \$1.5 million was returned to the courts for operating expenses in the Federal Magistrates Court. Overall we returned \$6.3 million to government in merging administrations.⁷
- 3.6 While achieving significant savings over the last four years, the CEO highlighted the costs of operating as a single administration without a legislative basis. He estimated annual costs of duplicate financial and other government reporting to be 'about half a million dollars'.⁸
- 3.7 However, the CEO stressed his view that there are no further savings that could be taken from the agency. Instead, he considers any money saved

3 The submission of the Hon Diana Bryant AO, Chief Justice, Family Court of Australia to Senate Legal and Constitutional Affairs Committee, Courts and Tribunals Legislation Amendment (Administration) Bill 2012, noted that the Acting CEO of the Federal Magistrates Court commenced in that position on 25 November 2008, not 2009 as stated in paragraph 12 of the Explanatory Memorandum to the Bill.

4 Mr Richard Foster, Chief Executive Officer, Family Court of Australia and acting Chief Executive Officer, Federal Magistrates Court, *Committee Hansard*, Canberra, 20 November 2012, p. 8.

5 Mr Foster, *Committee Hansard*, Canberra, 20 November 2012, p. 8.

6 Mr Foster, *Committee Hansard*, Canberra, 20 November 2012, p. 8.

7 Mr Foster, *Committee Hansard*, Canberra, 20 November 2012, p. 8.

8 Mr Foster, *Committee Hansard*, Canberra, 20 November 2012, p. 8.

through removing duplicate reporting needs to be returned to ‘family reports and other things’.⁹

- 3.8 Responding to the CEO’s concerns, the Attorney-General’s Department confirmed that ‘the savings noted in the Explanatory Memorandum relate only to the incorporation of the NNTT into the Federal Court’.¹⁰

Staffing—changes and organisational structure

- 3.9 When considering the structural changes that have already occurred, the CEO advised that ‘it has been extremely effective’. He proposed that in terms of the view of the courts, their priority concern is availability of resources, rather than the administrative structures.¹¹
- 3.10 Although from a broad perspective this may be the case, there were more specific issues raised relating to the overall structure of the agency, and the inconsistency in the basis of employment for the principal registrars of each court.¹²

Whilst the principal registrar of the family court is an employee under the Public Service Act and is responsible to me for the Public Service Act and Financial Management Act et cetera, he or she is responsible to the Chief Justice. The [Federal Magistrates Court] does not have that. They think – and I agree with them, and so does the Chief Justice – that they need that requirement. They need their principal registrar to be separate from the agency – employed by the agency, but directly responsible to the court, so they are seen as an officer of the court.¹³

- 3.11 Responding to the CEO’s comments by way of submission, the Attorney-General’s Department concluded that no further action be taken on the basis that:
- the Bill is being progressed to clarify and formalise the administrative arrangements of the Family Court and the Federal Magistrates Court, and does not touch on judicial or quasi-judicial functions of the courts;
 - it is important that the amendments contained in this Bill are implemented as soon as possible to allow the commencement of

9 Mr Foster, *Committee Hansard*, Canberra, 20 November 2012, p. 11.

10 Ms Susan Punster, Acting Assistant Secretary, Attorney-General’s Department, *Committee Hansard*, Canberra, 20 November 2012, p. 11.

11 Mr Foster, *Committee Hansard*, Canberra, 20 November 2012, p. 8.

12 Mr Foster, *Committee Hansard*, Canberra, 20 November 2012, p. 10.

13 Mr Foster, *Committee Hansard*, Canberra, 20 November 2012, p. 10.

the new arrangements at the beginning of the 2013-14 financial year, to ensure certainty for the courts' administration and to allow future savings; and

- consideration of a Principal Registrar position for the Federal Magistrates Court would involve a number of complexities and would require significant consultation with the courts, and any proposed changes to arrangements would most appropriate be the subject matter of a separate Bill.¹⁴

3.12 In a submission to the Senate Legal and Constitutional Affairs Committee inquiry into the Courts and Tribunals Legislation Amendment (Administration) Bill 2012, the Chief Justice, Family Court of Australia also raised concerns in relation to:

- nomenclature and definitions, for example the use of Chief Judge and possible inference of hierarchy in relation to other courts
- differences in certain existing terms and conditions of employment of the CEO of the family Court under the Family Law Act as compared with the existing terms and conditions of employment of the CEO of the Federal Magistrates Court under the Federal Magistrates Act, not acknowledged or addressed by the Explanatory Memorandum, and
- transitional provisions, specifically in relation to the acting arrangements of the CEO.¹⁵

3.13 In terms of change management and transitioning staff, the CEO acknowledged initial cultural differences and the inevitability of issues around this. However, he advised that these have been largely resolved by setting up management structures to deal with issues as they arose, including three key decision-making areas to discuss matters such as resourcing:

- policy advisory committees for each of the jurisdictional heads
- a combined management advisory group, and
- Family Law Courts Advisory Group – a forum to discuss resourcing issues where agreement has not been reached at a different level, consisting of the Chief Justice, the Chief Federal Magistrate, the CEO and a representative from the Attorney-General's Department.¹⁶

14 Attorney-General's Department, *Submission 2*, p.4.

15 The Hon Diana Bryant AO, Chief Justice, Family Court of Australia, *Senate Legal and Constitutional Affairs Committee Submission 1*, pp. 2-9.

16 Mr Foster, *Committee Hansard*, Canberra, 20 November 2012, p. 9.

- 3.14 The CEO added that above these committees there is a heads of jurisdictional committee. He advised that this committee includes the two chief justices, the Chief Federal Magistrate, the CEOs of the courts and the Attorney-General's Department; and discusses issues across all the courts in the Commonwealth system.¹⁷
- 3.15 From a staff perspective, the CEO indicated that the Community and Public Service Union (CPSU) was involved 'from the very beginning'. He explained that the change process was iterative, taking place over a period of time and with union support.¹⁸
- 3.16 Despite these positive reports, in a submission to the Senate Legal and Constitutional Affairs Committee inquiry into the Courts and Tribunals Legislation Amendment (Administration) Bill 2012, the CPSU raised concerns that the courts remain chronically understaffed and underfunded, with resultant impacts on services and excessive stress for the remaining staff.¹⁹
- 3.17 Noting the total FTE is around 600, the CEO advised that the amalgamation did result in a reduction of about 50 staff through both attrition and voluntary redundancies. While acknowledging that not everyone was happy, the CEO surmised that:²⁰
- ... at the end of the day, I think we have a much better structure. We reduced the senior executive service by two or three people as well. We eliminated some of the senior management. The Family Court had an area manager and the Federal Magistrates Court had an area manager. It was the ridiculous situation where you would have two or three people from the two different courts meeting with the one group because they represented different interests ... it is a structure that suits the courts. It retains their independence.²¹
- 3.18 The CEO refuted conjecture that services had been cut. While acknowledging that there have been budget issues, he considered that the supplementation in the order of \$30 million over the next four years helped with retention of services, particularly those in rural and regional areas.²²

17 Mr Foster, *Committee Hansard*, Canberra, 20 November 2012, p. 9.

18 Mr Foster, *Committee Hansard*, Canberra, 20 November 2012, p. 9.

19 Community and Public Sector Union, *Senate Legal and Constitutional Affairs Committee Submission 2*, pp. 1-2.

20 Mr Foster, *Committee Hansard*, Canberra, 20 November 2012, p. 8.

21 Mr Foster, *Committee Hansard*, Canberra, 20 November 2012, p. 9.

22 Mr Foster, *Committee Hansard*, Canberra, 20 November 2012, p. 9.

- 3.19 Using the example of the Federal Magistrates Court where sickness and vacancies have resulted in disposal rates dropping off – meaning waiting lists are growing – the CEO highlighted the benefits of being able to manage the system as whole and move resources around from one registry to another to meet demand or address delays.²³

Committee comment

- 3.20 From the evidence heard, the Committee was satisfied that the integration of the administration of the Family Court of Australia and the Federal Magistrates Court of Australia has been largely successful. As mentioned at the hearing, this view seems to be supported by Legal Aid.²⁴
- 3.21 However, the Committee does note the ongoing budget pressures and the potential for these to impact on staff and ultimately clients. The Committee concurs with the CEO that any savings made through further streamlining should stay within the administrative body.
- 3.22 In regard to the issue raised in relation to the position of principal registrar, the Committee accepts assurances from the Attorney-General's Department that these are being addressed through other channels. Likewise, the Committee anticipates that the Senate Legal and Constitutional Affairs Committee will examine the more technical aspects raised by the Chief Justice of the Family Court.

23 Mr Foster, *Committee Hansard*, Canberra, 20 November 2012, p. 10.

24 Mr Foster, *Committee Hansard*, Canberra, 20 November 2012, p. 9.