

## Courts and Tribunals Legislation Amendment (Administration) Bill 2012

- 1.1 The Courts and Tribunals Legislation Amendment (Administration) Bill 2012 (hereafter referred to as the Bill) was introduced into the House of Representatives on 31 October 2012.
- 1.2 On 1 November 2012 the House of Representatives Selection Committee referred the Bill to the House of Representatives Standing Committee on Social Policy and Legal Affairs for inquiry and report.

### Scope of the Bill

- 1.3 The Bill will amend:
  - the *Native Title Act 1993* (Native Title Act):
    - ⇒ to facilitate the transfer of the National Native Title Tribunal's (NNTT) appropriations, staff and some of its administrative functions to the Federal Court of Australia, and
    - ⇒ to reflect that the NNTT is no longer a statutory agency for the purposes of the *Financial Management and Accountability Act 1997* (FMA Act)
  - 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.<sup>1</sup>
- 1.4 Introducing the Bill to the House of Representatives, the Hon Nicola Roxon MP, the then Attorney-General, advised that in addition to

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<sup>1</sup> Courts and Tribunals Legislation Amendment (Administration) Bill 2012, Explanatory Memorandum, p. 2.

implementing reforms to ‘improve the effectiveness and efficiency’ of the affected courts and tribunals, the Bill was part of the Government’s wider courts reform package.<sup>2</sup>

- 1.5 Attorney-General Roxon highlighted an additional \$38 million of funding across the forward estimates as a means of maintaining services, particularly for regional and disadvantaged parties, and suggested that the proposed amendments to administration would provide savings and better alignment and allocation of functions.<sup>3</sup>

## Previous inquiries and consultation

- 1.6 The Bill implements several recommendations of the *Strategic Review of Small and Medium Agencies in the Attorney-General’s Portfolio*, conducted by Mr Stephen Skehill (the Skehill Review).
- 1.7 The recommendations contained in Chapter 6 of the Skehill Review suggest increased efficiencies through reducing duplication and improving administration between the NNTT and the Federal Court.<sup>4</sup>
- 1.8 The Skehill Review examined ways to improve the value for money for the Government in terms of the discharge of the functions of federal courts, other than the High Court of Australia, including the option to legislatively support a merger of the administration of the Family Court and the Federal Magistrates Court.<sup>5</sup>
- 1.9 On 28 November 2012 the Parliamentary Joint Committee on Human Rights tabled its Seventh Report of 2012 on Bills and other legislative instruments. The report included the Human Rights Committee’s views on the Bill, and a request to the then Attorney-General, the Hon Nicola Roxon MP, to provide advice on whether the proposed changes ‘could reduce the access individuals currently have to the National Native Title Tribunal’.<sup>6</sup>

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2 The Hon Nicola Roxon, Attorney-General, *House of Representatives Hansard*, 31 October 2012, p. 12736.

3 Attorney-General, *House of Representatives Hansard*, 31 October 2012, p. 12736.

4 S. Skehill, *Strategic Review of Small and Medium Agencies in the Attorney-General’s Portfolio*, January 2012, pp. 83-84.

5 S. Skehill, *Strategic Review of Small and Medium Agencies in the Attorney-General’s Portfolio*, January 2012, p. 40.

6 Parliamentary Joint Committee on Human Rights, *Seventh Report of 2012*, <[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Committees?url=humanrights\\_ctte/reports/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=humanrights_ctte/reports/index.htm)> accessed 11 December 2012.

- 1.10 Attorney-General Roxon's response negating the concerns was tabled in the Human Rights Committee's First Report of 2013. The response reiterated that the 'amendments contained in the bill are of a minor and technical nature, impacting on the Court's and Tribunal's internal administrative practices'.<sup>7</sup>

## Concurrent Senate inquiry

- 1.11 On 1 November 2012 the Senate referred the provisions of the Bill to the Senate Standing Committee on Legal and Constitutional Affairs for inquiry and report. The Senate Committee issued a call for submissions by 17 December 2012 and subsequently received 10 submissions from a range of organisations across Australia.
- 1.12 A public hearing was conducted on 31 January 2013. The Senate Committee has indicated it will report on the Bill on 25 February 2013. Relevant documents and additional information can be accessed on the Senate Committee's website.<sup>8</sup>

## Conduct and scope of this inquiry

- 1.13 In referring the Bill, the House of Representatives Selection Committee provided the three reasons for referral/principal issues for consideration. The Selection Committee asked the Social Policy and Legal Affairs Committee to consider:
- 'the means by which the proposed efficiencies will be achieved' through the passage of the Bill. The Explanatory Memorandum for the Bill states that 'the reforms that this Bill implements will achieve \$4.75 million in savings each year from 2012-13 over the four-year forward estimates, for a total saving of \$19 million'.<sup>9</sup> These savings were announced in the 2012-13 Budget measure *National Native Title Tribunal – Increased Efficiencies*.<sup>10</sup>

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7 Parliamentary Joint Committee on Human Rights, *First Report of 2013*, <[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Committees?url=humanrights\\_ctte/reports/1\\_2013/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=humanrights_ctte/reports/1_2013/index.htm)>, accessed 7 February 2013.

8 Senate Standing Committee on Legal and Constitutional Affairs, <[http://www.aph.gov.au/senate\\_legalcon](http://www.aph.gov.au/senate_legalcon)> accessed 28 November 2012.

9 Explanatory Memorandum, p. 4.

10 2012-13 Budget <[http://www.budget.gov.au/2012-13/content/bp2/html/bp2\\_expense-03.htm](http://www.budget.gov.au/2012-13/content/bp2/html/bp2_expense-03.htm)> accessed 20 December 2012.

- possible effects on the administration of the courts
  - whether the proposed amendments will improve access to justice. Improvements to access to justice are not the purpose of this Bill. However, it is important to ensure that the proposed changes do not impede access to justice.
- 1.14 The Committee held a public hearing on 30 November 2012.<sup>11</sup> A list of submissions in relation to the hearing is at Appendix A and a list of witnesses that appeared before the Committee is at Appendix B.
- 1.15 On several occasions, Senate and House committees have been referred concurrent inquiries. As noted above, the provisions of this Bill have been referred to the Senate Standing Committee on Legal and Constitutional Affairs.
- 1.16 As far as possible, this Committee has endeavoured not to duplicate those areas it anticipates the Senate will consider in detail, and not to burden stakeholders with multiple requests for submissions. Therefore, in some instances the Committee refers to the submissions received by the Senate Committee.

## Structure of the report

- 1.17 Chapter 2 of the report examines the proposed changes to the Native Title Act, which transfers the NNTT's native title claims mediation functions and resources to the Federal Court, and consolidates the corporate services of the two agencies.
- 1.18 Chapter 3 of the report examines the proposed changes to the *Family Law Act 1975* and the *Federal Magistrates Act 1999*, which facilitate the merger of the administrative functions of the Family Court of Australia and the Federal Magistrates Court of Australia.
- 1.19 Chapter 4 of the report provides discussion on the common issues across the courts and tribunal affected, summarises the Committee's comments on the Bill and provides recommendations.

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11 House of Representatives Standing Committee on Social Policy and Legal Affairs  
<[http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=spla/bill\\_courts\\_and\\_tribunals/hearings.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=spla/bill_courts_and_tribunals/hearings.htm)>.