

Introduction

- 1.1 It is important to note at the outset that the Committee draws a distinction between legal harmonisation and coordination or cooperation. Legal harmonisation involves utilising legislative or other formal instrument-based mechanisms to achieve parity between legal systems, whereas coordination or cooperation can involve a wide range of mechanisms and activities that do not necessarily seek to resolve a lack of harmonisation among legal systems. The different emphasis on methods was noted by the New Zealand Government in its submission to the inquiry:

...discussions of “harmonisation” tend to focus on substantive laws, rather than on the full range of forms of cooperation in making and administering business laws. Coordination more clearly embraces cooperation at the institutional level (between Governments and regulators), and in participation in regional and multilateral fora.¹

- 1.2 While formal legal harmonisation was the focus of the inquiry of the Committee, and is, accordingly, the focus of this report, coordination and cooperation are also taken into account where relevant.

¹ New Zealand Government, *Submission No. 23*, p. 4. See also Department of the Treasury, *Submission No. 21.2*, p. 1.

The inquiry and report

Referral of the inquiry

- 1.3 On 7 February 2005, the Attorney-General, the Hon Philip Ruddock MP, asked the Committee to inquire and report on lack of harmonisation within Australia's legal system, and between the legal systems of Australia and New Zealand, with particular reference to those differences that have an impact on trade and commerce. The full terms of reference for the inquiry are set out above.

Conduct of the inquiry

- 1.4 The inquiry was advertised in *The Australian* newspaper on 28 February 2005 and 9 March 2005, the *Australian Financial Review* newspaper on 28 February 2005, and *Business Review Weekly* magazine on 10 March 2005.
- 1.5 Work on the inquiry was suspended from late June 2005 to early March 2006 due to the conduct by the Committee of two other urgent inquiries during this period.²
- 1.6 The Committee received 33 submissions, 13 supplementary submissions, and 34 exhibits. Details of submissions and exhibits are at Appendices A and C to this report respectively.
- 1.7 Public hearings were held in Melbourne (7 March 2006), Canberra (21 March 2006), and Sydney (6 April 2006). Details of witnesses who appeared at the public hearings are at Appendix B to this report.

The report

- 1.8 Chapter 2 considers the basis for the harmonisation of legal systems and provides an overview of the main mechanisms and fora for harmonisation.
- 1.9 Chapter 3 examines the current level of legal harmonisation between Australia and New Zealand in particular areas as raised in the evidence and identifies some possible initiatives for further harmonisation between the two countries.

2 The inquiry into the Exposure Draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005 (report tabled 18 August 2005) and the inquiry into technological protection measures exceptions (report tabled 1 March 2006).

- 1.10 Chapter 4 considers current levels of legal harmonisation within Australia in particular areas as raised in the evidence and identifies some possible initiatives for further harmonisation. A further aspect of legal harmonisation between Australia and New Zealand is also considered in this Chapter.