

CHAPTER 1

INTRODUCTION

Background

1.1 On 4 December 2008, the Senate referred the Federal Justice System Amendment (Efficiency Measures) Bill (No. 1) 2008 (Bill) to the Senate Standing Committee on Legal and Constitutional Affairs (committee) for inquiry and report by 17 February 2009.

1.1 The primary purpose of the Bill is to improve the conduct of business in the federal courts through several measures. It also aims to clarify and expand the jurisdiction of the Federal Court of Australia under the *International Arbitration Act 1974* (International Arbitration Act). Finally, it seeks to respond to the decision of the Full Court of the Family Court of Australia in *Black v Black [2008] FamCAFC 7* (Black v Black), where the Court applied a strict compliance test in relation to certain technical requirements for binding financial agreements made under the *Family Law Act 1975* (Family Law Act).

1.2 Key aspects of the Bill include proposed amendments to several Acts, including:

- the *Federal Court of Australia Act 1976* (FCA Act), to allow the Federal Court to refer a proceeding, or one or more questions arising in a proceeding, to a referee for report. The Bill would also amend the FCA Act to allow a single Federal Court judge to make an interlocutory order in the original or appellate jurisdiction of the Court in a matter otherwise required to be heard and determined by a Full Court.
- the International Arbitration Act to give the Federal Court concurrent jurisdiction with state and territory supreme courts for matters arising under Parts III and IV of the Act, which deal with the *UNCITRAL Model Law on International Commercial Arbitration* (the UNCITRAL Model Law), and the *Convention on the Settlement of Investment Disputes Between States and Nationals of other States 1965* (ICSID Convention). The amendments also seek to clarify the Federal Court's existing jurisdiction for matters arising under Part II of the Act (giving effect to the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958*).
- the FCA Act, Family Law Act, *Native Title Act 1993* and *Administrative Appeals Tribunal Act 1975*, to remove the current restrictions on Chief Justices and Presidents acquiring an interest in land for the purposes of the *Lands Acquisition Act 1989*.
- the *Public Order (Protection of Persons and Property) Act 1971* to allow an authorised, non-judicial officer of the Federal Court to make an order specifying

that certain premises are ‘court premises’ for the purposes of the Act. The purpose is to ensure that the areas in which authorised officers are able to exercise powers under the Act in the interests of security are readily identifiable to authorised officers and the public.

- the Family Law Act, to relax certain technical requirements that must be strictly satisfied for financial agreements and termination of financial agreements to be binding. These amendments respond to the concerns about the binding financial agreement provisions of the Act that have arisen following the decision of the Full Family Court in *Black v Black*. The Family Law Council has confirmed that amendments are required to restore confidence in the binding nature of these agreements.¹

Conduct of the inquiry

1.2 The committee advertised the inquiry in *The Australian* newspaper on 17 December 2008, and invited submissions by Monday 12 January 2009. Details of the inquiry, the Bill and associated documents were placed on the committee's website. The committee also wrote to 50 organisations and individuals.

1.3 One submission, from the Family Law Section of the Law Council of Australia, was received.

1.4 The committee then wrote to and received a response from the Attorney-General, the Hon Robert McClelland MP, in relation to issues raised in the Law Council's submission.

1.5 No public hearings were held.

Acknowledgements

1.6 The committee thanks the Law Council of Australia for their submission and officers of the Attorney-General's Department for their assistance.

1 A copy of this advice from the Family Law Council was provided to the committee by the Attorney-General's Department.