

Chapter 1

Introduction

Referral

1.1 On 2 December 2015 Senator the Hon Nigel Scullion, Minister for Indigenous Affairs and Leader of The Nationals in the Senate, introduced the Courts Administration Legislation Amendment Bill 2015 (the bill) into the Senate.¹

1.2 On 3 December 2015, pursuant to a report of the Senate Standing Committee for Selection of Bills, the Senate referred the bill to the Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 2 February 2016.²

Conduct of the inquiry

1.3 In accordance with usual practice the committee wrote to a number of persons and organisations, inviting submissions to the inquiry by 7 January 2016. Details of the inquiry were also made available through the committee's website at http://www.aph.gov.au/senate_legalcon.

1.4 The committee received four submissions in response to this inquiry. The submissions are listed at Appendix 1 to this report and are available on the committee's webpage. The committee would like to thank all those who submitted to the inquiry.

Background to the bill

1.5 The bill would merge the corporate services functions of the Federal Court of Australia (Federal Court) with those of the Family Court of Australia (Family Court) and the Federal Circuit Court of Australia (Federal Circuit Court), and bring the courts together as a single administrative entity.³ The performance, funding and operation of the federal courts has been considered in several recent reports and reviews in the context of a smaller more rational government.⁴

1.6 The 2012 Skehill *Strategic Review of Small and Medium Agencies in the Attorney-General's Portfolio* considered that there would be merit in shared administrative arrangements between the federal courts.⁵ More recently, amalgamation of the courts was recommended by the 2014 National Commission of Audit Report, *Towards Responsible Government*, and a 2014 KPMG review into the

1 *Journals of the Senate*, No. 133, 2 December 2015, p. 3585.

2 *Journals of the Senate*, No. 134, 3 December 2015, p. 3624.

3 Senator the Hon Nigel Scullion, *Senate Hansard*, 2 December 2015, p. 75.

4 Explanatory Memorandum, p. 7.

5 Explanatory Memorandum, p. 7.

performance and funding of the federal courts.⁶ Further, independent analysis conducted by Ernst & Young in 2015 identified potential savings and efficiencies to be gained from a merger model.⁷

1.7 The need for efficiencies to be generated by the amalgamation of the courts has increased with the significant budgetary pressures and ongoing deficits being faced by the family courts in particular.⁸ According to the 2013–14 Annual Reports of the Federal Court, Family Court and Federal Circuit Court, the combined projected deficit of the courts was estimated to be \$44.2 million over the forward estimates. This would result in the family courts being unable to maintain current service levels.⁹

1.8 The amalgamation of the courts' corporate services function was central to the package of measures announced by the government as part of its 2015–16 Budget measure *Streamlining and Improving the Sustainability of Courts*.¹⁰

1.9 The Attorney-General's Department (department) advised the committee that the bill and overall design of the reforms had been developed at all stages in formal and informal consultation with the heads of jurisdiction and senior officers of the Federal Court, Family Court and Federal Circuit Court, including the Chief Executive Officers (CEO).¹¹ The Attorney-General has also consulted directly with the heads of jurisdiction of the three courts.¹²

Purpose of the bill

1.10 The bill seeks to merge the Federal Court, the Family Court and Federal Circuit Court into a single administrative entity and make legislative provision for the courts to share corporate services. The entity would also include the National Native Title Tribunal which is currently within the Federal Court entity.¹³

1.11 The bill is directed to the organisation and administration of the courts, while maintaining the judicial and functional independence of the courts in accordance with the Constitution, and seeks to promote their effective management.¹⁴

1.12 The financial impact of merging the courts' corporate functions is expected to deliver efficiencies to the courts of \$9.4 million over the six financial years to 2020–21 and result in ongoing annual efficiencies of \$5.4 million from this time.¹⁵

6 Senator the Hon Nigel Scullion, *Senate Hansard*, 2 December 2015, p. 76.

7 Senator the Hon Nigel Scullion, *Senate Hansard*, 2 December 2015, p. 76.

8 Explanatory Memorandum, p. 7.

9 Explanatory Memorandum, p. 7.

10 Senator the Hon Nigel Scullion, *Senate Hansard*, 2 December 2015, p. 75.

11 Attorney-General's Department, *Submission 3*, p. 9.

12 Attorney-General's Department, *Submission 3*, p. 10.

13 Explanatory Memorandum, p. 2.

14 Senator the Hon Nigel Scullion, *Senate Hansard*, 2 December 2015, p. 76.

15 Explanatory Memorandum, p. 3.

The government has undertaken that the savings gained would be reinvested to support the core functions of the courts, placing the courts on a sustainable funding footing into the future and better placed to deliver services to litigants.¹⁶ By reducing the administrative burden on each court, the bill would generate efficiencies and reduce unnecessary duplication.¹⁷

1.13 As the bill solely deals with the administration of the courts, it would have no impact on the judicial and functional independence of each court and would not affect the substantive rights of court users.¹⁸ Each court would maintain its separate and distinct judiciary and there would be no changes to the courts' respective jurisdictions. This would ensure little change to the front end services of the courts. Heads of jurisdiction would continue to have full control over the management of their courts' judicial business.¹⁹

Key provisions of the bill

1.14 The bill would amend the following Commonwealth Acts:

- *Federal Court of Australia Act 1976* (Federal Court Act);
- *Family Law Act 1975*;
- *Federal Circuit Court of Australia Act 1999*; and
- *Native Title Act 1993*.²⁰

1.15 Schedules 1 to 3 of the bill would establish the courts as a single administrative entity under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), and a single statutory agency under the *Public Service Act 1999* (Public Service Act) from 1 July 2016.²¹ The Federal Court CEO would hold the role of accountable authority under the PGPA Act and agency head under the Public Service Act.²²

1.16 Proposed new subsection 18A(1B) of the Federal Court Act would set out what is within corporate services:

- communications;
- finance;
- human resources;
- information technology;

16 Senator the Hon Nigel Scullion, *Senate Hansard*, 2 December 2015, p. 75.

17 Explanatory Memorandum, p. 2.

18 Senator the Hon Nigel Scullion, *Senate Hansard*, 2 December 2015, p. 75.

19 Attorney-General's Department, *Submission 3*, p. 5.

20 Explanatory Memorandum, p. 2.

21 Senator the Hon Nigel Scullion, *Senate Hansard*, 2 December 2015, p. 77.

22 Senator the Hon Nigel Scullion, *Senate Hansard*, 2 December 2015, p. 77.

- library services;
- procurement and contract management;
- property;
- risk oversight and management;
- statistics; and
- any other matter prescribed by a determination under subsection (5).²³

1.17 New subsection 18A(5) would provide for the Attorney-General to determine other matters to be within the scope of corporate services by legislative instrument.²⁴

1.18 The shared corporate services would be managed by the Federal Court CEO and Principal Registrar appointed under the Federal Court Act.²⁵

1.19 The bill's governance structure is designed to preserve the autonomy of the heads of jurisdiction (the existing Chief Justices and Chief Judge) of the three courts in relation to their own courts.²⁶ Heads of jurisdiction would retain responsibility for managing the administrative affairs of their respective courts, excluding corporate services.²⁷ Each court would retain its own budget allocation.²⁸

1.20 Heads of jurisdiction would be supported in the management of administrative affairs by a CEO appointed by the Governor-General on their nomination.²⁹ The Family Court Chief Justice and Federal Circuit Court Chief Judge would no longer be required to share a CEO, with the bill replacing the present position of joint CEO. This would ensure each head of jurisdiction had a dedicated CEO to assist in managing the administrative affairs of their respective court.³⁰

1.21 The Federal Court CEO would have four key roles within the entity:

- assisting the Federal Court Chief Justice with the management of the administrative affairs of the Federal Court and holding the role of most senior registrar in the Federal Court;
- continuing to assist the National Native Title Tribunal President with the management of the administrative affairs of the Tribunal;

23 Schedule 1, 18A(1B)

24 Attorney-General's Department, *Submission 3*, p. 8.

25 Law Council of Australia, *Submission 4*, p. 2.

26 Law Council of Australia, *Submission 4*, p. 2.

27 Senator the Hon Nigel Scullion, *Senate Hansard*, 2 December 2015, p. 77.

28 Attorney-General's Department, *Submission 3*, p. 6.

29 Explanatory Memorandum, p. 8.

30 Attorney-General's Department, *Submission 3*, p. 6.

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- assuming ultimate responsibility for the management of the courts' joint corporate services and delivering the projected efficiencies from corporate services; and
 - taking overall responsibility for the courts entity as the administrative head for the purposes of the PGPA Act and Public Service Act.³¹

1.22 The bill contains provisions to ensure the Federal Court CEO makes relevant delegations to the Family Court CEO and Federal Circuit Court CEO in relation to the administrative affairs of their respective courts.³² The Federal Court CEO would be under a general statutory duty to ensure the other two CEOs had the necessary functions and powers to fulfil their roles.³³

1.23 Schedule 4 of the bill would amend the Native Title Act 1993 to update references to position titles and reflect the amalgamation.³⁴

1.24 The bill would make consequential and other amendments to a number of Acts to update and change relevant titles and references. The bill provides for transitional arrangements to ensure the courts can continue their administrative and corporate services functions without disruption at the date of the merger, 1 July 2016.³⁵ The bill would also provide a rule making power in the form of a legislative instrument to respond to further areas where clarity in transitional arrangements was required.³⁶

Human rights implications

1.25 According to the explanatory memorandum, the bill is compatible with human rights. As the amendments primarily relate to the courts' administrative and corporate operations, the bill does not alter the substantive powers of the judiciary or the rights of parties to have a matter heard by the courts. The bill therefore maintains and promotes the right to a fair trial or hearing.³⁷

31 Attorney-General's Department, *Submission 3*, pp 6–7.

32 Senator the Hon Nigel Scullion, *Senate Hansard*, 2 December 2015, p. 77.

33 Senator the Hon Nigel Scullion, *Senate Hansard*, 2 December 2015, p. 77.

34 Senator the Hon Nigel Scullion, *Senate Hansard*, 2 December 2015, p. 78.

35 Senator the Hon Nigel Scullion, *Senate Hansard*, 2 December 2015, p. 78.

36 Senator the Hon Nigel Scullion, *Senate Hansard*, 2 December 2015, p. 78.

37 Explanatory Memorandum, p. 6.

