

General issues

Review

- 4.1 This Bill provides legislative amendments to complete the implementation of the Skehill Review reforms, and formalises administrative structures that have developed over the last few years.¹
- 4.2 In responding to the Committee's interest in the evaluation of the ramifications of the initiatives and whether a further review had been considered, the Federal Court Registrar indicated that a review of the implementation of the merger of administration after 18 months of operation would be prudent. However, he also stressed the importance of determining the scope prior to commencing any review.²
- 4.3 When the question of a review was put to the CEO of the Family Court and Federal Magistrates Court, he advised that a review of the effectiveness of the legislation could be done any time as the changes are largely embedded. As mentioned in evidence given by the CEO, the amalgamation has taken place; the legislation will 'tidy up some loose ends'. However, he did suggest that there were some 'concerns in the court about how the agency was set up', specifically in relation to the decision to amend the Family Law Act rather than as a separate agency under its own Act.³
- 4.4 The Australian National Audit Office (ANAO) *Audit Work Program July 2011* included a 'potential audit' titled 'Management of the Family Court of Australia, the Federal Court of Australia and the Federal Magistrates

1 Attorney-General, *House of Representatives Hansard*, 31 October 2012, pp. 12736-38.

2 Mr Soden OAM, *Committee Hansard*, Canberra, 20 November 2012, p. 5.

3 Mr Foster, *Committee Hansard*, Canberra, 20 November 2012, pp. 9-10.

Court'. However, the *ANAO Audit Work Program July 2012* no longer indicates a possible audit of the courts.⁴

- 4.5 An extensive program of reform has taken place within the courts and tribunals over the last few years, with changes in structure and amalgamation of many administrative services, along with ongoing budget constraints. The Skehill Review provided a thorough analysis of the current state of play, as well as a range of options for potential improvements. The Bill will allow the finalisation of aspects of the reform and a number of arrangements that have been in place for quite some time.
- 4.6 With this in mind, the Committee considers that it may be timely for the ANAO, as the peak review body for the Australian Public Service, to undertake a performance audit, similar to that suggested in the *ANAO Audit Work Program 2011*.⁵

Independence

- 4.7 While the Committee heard that all parties are working together effectively and readily negotiating the use of shared resources, it also acknowledges concerns that a change in circumstance or staff may render less harmonious outcomes. The Committee is not convinced that there are adequate safeguards to ensure the continuing independence of each court and the tribunal.
- 4.8 Certainly one method is the use of sub-programs, outlined in the Skehill Review as follows:
- ... the Portfolio Budget Statements could provide individual "sub-program" splits of the combined total amounts, providing an "order-of-significance" indication of the amounts which the Government and the Parliament expected would likely be spent on each of the individual Courts.⁶
- 4.9 This method was suggested in a submission by the National Native Title Council to the Senate Legal and Constitutional Affairs Committee inquiry

4 See <<http://www.anao.gov.au/About-Us/Audit-Work-Program>>.

5 Section 8 (1) of the *Public Accounts and Audit Act 1951* provides that the duties of the committee include: to determine the audit priorities of the Parliament and to advise the Auditor-General of those priorities.

6 S. Skehill, *Strategic Review of Small and Medium Agencies in the Attorney-General's Portfolio*, January 2012, pp. 40-41 and pp. 81-82.

into this Bill as a method of ensuring the integrity of the funding for the NNTT.⁷

- 4.10 The Committee acknowledges that in terms of reporting to Parliament, FMA Act agencies are required to produce annual reports in accordance with the requirements endorsed by the Joint Committee of Public Accounts and Audit. Once tabled in Parliament, these reports stand referred to the allocated parliamentary House and Senate Committees. These Committees are able to inquire into any matters raised in annual reports.
- 4.11 Further, FMA Act agencies are all subject to the Senate Estimates process whereby Senate Committees examine the proposed expenditure contained in agency appropriation bills and then directly question public servants in regard to any matter of concern.
- 4.12 Both annual reports and the Senate Estimates process provide for parliamentary review of Australian Government agency operations and expenditure. However, in the case of the National Native Title Tribunal, the Committee did consider that additional safeguards would protect the tribunal's ability to meet its broader mandate as prescribed under the Native Title Act.
- 4.13 In terms of additional oversight, the Committee notes that the Aboriginal and Torres Strait Islander Social Justice Commissioner is required to 'prepare and submit a report to the Commonwealth Minister' (currently the Attorney-General) each year on the operation of the Native Title Act and its effect on the exercise and enjoyment of human rights by Aboriginal and Torres Strait Islander people.⁸
- 4.14 In the *Native Title Report 2012* the Commissioner notes that he will 'closely monitor the effects of these reforms'.⁹
- 4.15 With the extensive operational changes, explicit reporting on the operational outcomes, particularly the adequacy of the tribunal's resources to fulfil its functions, would be a prudent addition to future Native Title Reports. It is the view of the Committee that the Attorney-General should request such reporting, as provided for under section 209(2) of the Native Title Act.

7 National Native Title Council, *Senate Legal and Constitutional Affairs Committee Submission 4*, p. 5.

8 *Native Title Act 1993* section 209

9 Australian Human Rights Commission, *Native Title Report 2012*, p. 38.

Efficiencies

- 4.16 The 2012-13 Budget indicated that the Government would 'achieve savings of \$19.0 million over four years through efficiencies in the operation of the native title system'.¹⁰
- 4.17 One of the reasons given for referral of this Bill was for the Committee to consider the means by which the proposed efficiencies would be achieved. The Committee heard evidence related to the operations of each of the affected bodies and has reported findings within this report.
- 4.18 However, on this occasion, the Committee would like to take the opportunity to remind members that the Parliamentary Budget Office (PBO) is the most appropriate body to provide advice on the potential financial implications of a Bill, including whether proposed efficiencies are realistically achievable. It is not the role of this Committee, nor an efficient use of the Committee's time, to be the conduit between the PBO and members.
- 4.19 The Committee continues to support opportunities to scrutinise Bills, with these comments aimed only at improving the process of referral and opportunities for all committees to add value to Bill scrutiny.

Committee conclusion

- 4.20 Overall, the Committee notes that this Bill is predominantly finalising and providing the legislative authority for a number of arrangements either already in place or well-advanced. While the Committee has made a number of comments, none are intended to preclude the passing of the Bill. Rather, these are matters for future consideration and/or action.
- 4.21 However, the Committee reiterates its view that a performance audit undertaken by the ANAO at an appropriate point in time would provide reassurance that the anticipated benefits in terms of efficiency and effectiveness of the affected courts and tribunal have been achieved.
- 4.22 On this basis, the Committee has written to the Chair of the Joint Committee of Public Accounts and Audit, to suggest that such a request be included in advice to the Auditor-General regarding the audit priorities of Parliament.

10 2012-13 Budget, Budget Paper No.2, Expense measures, Attorney-General's Department <http://www.budget.gov.au/2012-13/content/bp2/html/bp2_expense-03.htm> viewed 17 December 2012.

- 4.23 In terms of ensuring independence of each of the affected courts and tribunal, the Committee is satisfied that agency annual reporting and Senate Estimates processes will continue to provide ex-ante and ex-post financial scrutiny.
- 4.24 Nevertheless, to ensure safeguards for the resourcing of the National Native Title Tribunal, the Committee recommends that consideration of the adequacy of the services provided by the National Native Title Tribunal is explicitly included in the yearly report of the Aboriginal and Torres Strait Islander Social Justice Commissioner.

Recommendation 1

- 4.25 **The Committee recommends the House of Representatives pass the Courts and Tribunals Legislation Amendment (Administration) Bill 2012.**

Recommendation 2

- 4.26 **The Committee recommends that the Attorney-General, in accordance with section 209(2) of the *Native Title Act 1993*, direct the Aboriginal and Torres Strait Islander Social Justice Commissioner to include in the yearly reports on the operation of the *Native Title Act 1993* consideration of the functioning of the National Native Title Tribunal, and in particular:**
- **the adequacy of tribunal resourcing to effectively fulfil its functions, and**
 - **its effect on the exercise of the human rights of the Aboriginal and Torres Strait Islander peoples.**

Graham Perrett MP
Chair