

Courts and Tribunals Legislation Amendment (Administration) Bill 2012

Introduced into the House of Representatives on 31 October 2012

Portfolio: Attorney-General

Committee view

1.2 The committee has written to the Attorney-General to seek further information on whether the bill gives rise to any concerns about the enjoyment of the right of access to courts and tribunals guaranteed by article 14(1) of the ICCPR and whether these changes could reduce the access individuals currently have to the National Native Title Tribunal.

Purpose of the bill

1.3 This bill makes amendments to the administrative structures and processes of the National Native Title Tribunal, the Federal Court of Australia, the Family Court of Australia and the Federal Magistrates Court of Australia. The changed administrative structures and processes are intended to allow these agencies to achieve savings and operate more efficiently and effectively into the future. In particular, the bill will:

- amend the *Native Title Act 1993* to facilitate the transfer of the National Native Title Tribunal's appropriations, staff and some of its administrative functions to the Federal Court of Australia;
- amend the *Native Title Act* to reflect that the National Native Title Tribunal is no longer a statutory agency for the purposes of the *Financial Management and Accountability Act 1997*; and
- amend 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, including by recognising a single Chief Executive Officer position for the two courts.

Compatibility with human rights

1.4 The statement of compatibility (which comprises paragraphs 16-21 of the explanatory memorandum) states that the amendments proposed by the bill are largely of a technical nature affecting the internal administrative practices of the courts and tribunals concerned without broader impacts on the wider community, and do not engage any of the rights or freedoms outlined in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

1.5 Nevertheless, as noted by the explanatory memorandum, one effect of the institutional changes proposed is that those staff presently employed by the National

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

Native Title Tribunal will no longer be employed as staff of that tribunal. Accordingly, the rights of those employees in relation to employment (articles 7 and 8 of the ICESCR) is potentially engaged. However, the notes on clauses (para 43 of the explanatory memorandum) state that it is intended that staff of the National Native Title Tribunal will be transferred to the Statutory Agency declared under section 18Q of the *Federal Court of Australia Act 1976* for the purposes of the *Public Service Act 1999*. The applicable transfer will ensure 'certain protections (for example, with regard to remuneration and other conditions of employment) for transferring staff' The statement of compatibility states (para 20) that the bill 'does not have any known negative implications for the rights of staff employed by any of these agencies.'

1.6 One issue which is not directly addressed by either the statement of compatibility or the explanatory memorandum is whether the institutional changes will have any impact on access to justice, in particular whether the rights of potential users in practice to access the courts and tribunals will be limited by the changes. Article 14(1) of the ICCPR guarantees the right of a person to have access without discrimination to an independent court or tribunal for the determination of the person's rights and obligations in a suit at law (that is, civil rights and obligations).