Courts and Tribunals Legislation Amendment (Administration) Bill 2012

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Law and Bills Digest Section

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Courts and Tribunals Legislation Amendment (Administration) Bill 2012

Date introduced: 31 October 2012

House: House of Representatives

Portfolio: Attorney-General

Commencement: Sections 1 to 3 and Schedule 1 commence on the day of Royal Assent. Schedule 2 commences on the later of: 1 July 2013; and immediately after the commencement of Schedule 2 of the Federal Circuit Court of Australia (Consequential Amendments) Bill 2012. However, the provisions do not commence at all if Schedule 2 of the Federal Circuit Court of Australia (Consequential Amendments) Bill does not commence.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose

The purpose of the Courts and Tribunals Legislation Amendment (Administration) Bill 2012 (the Bill) is to make changes to the administrative structures and processes of the National Native Title Tribunal (NNTT), the Federal Court of Australia, the Family Court of Australia and the Federal Magistrates Court of Australia through amendments to the following Commonwealth Acts:

- Native Title Act 1993
- Family Law Act 1975
- Federal Circuit Court of Australia Act 1999 and

The Bill facilitates the transfer of appropriations, staff and some administrative functions of the NNTT to the Federal Court. The Bill will also enable the merging of the administrative functions of the Federal Magistrates Court\(^1\) with those of the Family Court.

Background

Restructure of the Federal Courts

In May 2009, the then Attorney-General, Robert McClelland, announced a restructure of the Federal Courts ‘to more effectively deliver legal and justice services to the community’.\(^2\) This was based on

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1. The Federal Magistrates Court will become the Federal Circuit Court when the Federal Circuit Court of Australia Legislation Amendment Act 2012 comes into force. The Act was assented to on 28 November 2012 and will come into force on a date fixed by proclamation or six months after the assent date.

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the findings of a report prepared by the Attorney-General’s Department in conjunction with Mr Des Semple. The report contended that:

Current arrangements are financially unsustainable and have led to confusion among litigants, conflict over resources and inefficiencies in administration. This is impeding the delivery of family law services to Australians.

The Rudd Government in 2009 planned to reform the courts system by:

- merging the Federal Magistrates Court into the Family Court and Federal Court
- consolidating all family law matters under the Family Court and
- consolidating all general federal law matters under the Federal Court.

It was envisaged that the reforms would create a one-stop-shop in family and federal law matters that is integrated, accessible and focussed on dispute resolution. See the Bills Digest on the Federal Circuit Court of Australia Legislation Amendment Bill 2012 for detailed background information around the issues of federal courts reform.
Strategic Review of Small and Medium Agencies in the Attorney-General’s Portfolio (Skehill Review)

The Courts

The Skehill Review\(^8\) was undertaken as part of a ‘suite of strategic reviews for Cabinet consideration which assess the performance of Government programs and services against the Government’s current policy environment’. \(^9\) As stated in the terms of reference, the review assessed:

... small and medium agencies in the Attorney-General’s portfolio with reference to the expenditure review principles (appropriateness, effectiveness, efficiency, integration, performance assessment and strategic alignment) and advice on a range of options for improving their value for money for the Government, in terms of the discharge of their functions and decision-making, including with respect to:

- a. operational and administrative structures
- b. monitoring and evaluation of performance of their programs, including underlying policy settings
- c. opportunities for shared services or administration arrangements; and
- d. financial viability in their current form.\(^10\)

The Skehill Review predicted deficits\(^11\) for the Federal Court, the Family Court and the Federal Magistrates Court which indicated a persistent upwards trend.\(^12\) The Review noted:

[The Courts] predict increasing deficits over the Forward Estimates period with the combined annual projected deficit reaching $19.5m or around 8% of combined Forward Estimate appropriations in 2014-15...

As a result, the data provided to the Review by the Courts suggests, on the face of it, that there are questions to be addressed in relation to the ongoing financial viability of the Courts at current activity levels and on the basis of current spending levels and practices.\(^13\)

The Government announced in its response to the Skehill Review that it would accept the recommendation not to proceed with the previously announced merger of the Family Court and the Federal Magistrates Court, given the efficiencies already implemented within those Courts.\(^14\) The Courts would instead ‘administratively foster greater cooperation between the separate

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10. Ibid., p. vii.
11. Ibid., p. 25. The following deficits were predicted: 2011–12 $6.6m; 2012–13 $13.1m; 2013–14 $16.5m; 2014–15 $19.5m.
12. Ibid., p. 25.
13. Ibid., p. 27.

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Commonwealth Courts as sought by the Heads of Jurisdiction.\textsuperscript{15} The Attorney-General stated in accepting the recommendations relating to the courts that:

The key focus of the work on the federal courts is the efficiency and effectiveness of court administration. The Government has agreed to the key recommendation to improve court administration and collaboration, and identify efficiencies, through a new consultative committee comprising heads of jurisdiction, heads of administration and other relevant officers, including an observer from the Attorney-General’s Department. Similarly, the courts and the Government will work more closely on strategic planning for utilisation of court buildings.

In considering the efficiency and effectiveness of court administration, Mr Skehill found the recent move to shared administration for the Federal Magistrates Court and the Family Court of Australia has been a genuine success. This finding was crucial to Mr Skehill’s recommendation that the family law structure should not proceed. Instead, Mr Skehill recommended, and Government agreed, that the shared administration arrangement be formalised, together with a formal process to encourage closer cooperation between the federal courts. This will promote clarity and the ongoing role of the Federal Magistrates Court and provide certainty for the future.\textsuperscript{16}

**National Native Title Tribunal**

The Skehill Review commented that the continuing existence of the NNTT would be seen by stakeholders as being very important and ‘abolishing it without being able to demonstrate a better substantive outcome could jeopardise the functioning of the native title system as a whole’.\textsuperscript{17} Therefore the report recommended that the NNTT remain as a separate entity, although its mediation function and resources should be transferred to the Federal Court.\textsuperscript{18} The Review report concluded:

... that there is a continuing need to provide most of the functions performed by the NNTT, and that, with the exception of mediation of claims, the NNTT remains the appropriate body to perform those functions. However, that does not mean that the corporate support services necessary for the performance of ongoing NNTT functions should necessarily be provided by the NNTT itself.\textsuperscript{19}

In response to the Review, the Government stated that:

The government will implement Mr Skehill’s recommendations to strengthen and streamline the native title system by transferring native title claims mediation functions from the National Native Title Tribunal to the Federal Court of Australia. The National Native Title Tribunal will continue to perform its other current functions as a distinct organisational unit of the Federal Court of Australia. This initiative builds on the Government’s 2009 reforms, which gave the Federal Court greater case management powers and increased the rate of consent determinations by five times.\textsuperscript{20}

\textsuperscript{15} Recommendation 5.1, Skehill report, op. cit. p. xvii. The ‘Heads of Jurisdiction’ are the Chief Justices of the Family Court of Australia and the Federal Court of Australia and the Chief Magistrate of the Federal Magistrates Court.

\textsuperscript{16} N Roxon, op. cit.

\textsuperscript{17} S Skehill, op. cit., p. 77.

\textsuperscript{18} Ibid.

\textsuperscript{19} Ibid., p. 79.

\textsuperscript{20} N Roxon, op. cit.
The amendments to the Native Title Act in 2009 by the *Native Title Amendment Act 2009* ‘centralised the case management of native title claims, including allocating claims for mediation, with the Federal Court’.  

The Skehill Review further noted:

> The Federal Court is legislatively responsible for case managing all native title claims. Despite this, no resourcing for the claim mediation function was provided to the Federal Court when the legislation was amended to confer that responsibility on it. Instead, the Federal Court has undertaken its current level of claim mediation within its existing budget and, to the extent that it is unable to do more, refers the balance of claim mediation to the NNTT (which has traditionally been appropriated funds for this purpose) or to private mediators (which happens only rarely)...

If the Federal Court is responsible for the mediation function, it (rather than the NNTT) should be resourced for that purpose. Only then can it be held properly accountable for its performance of the function.  

President of the NNTT, Graham Neate is reported as saying recently that the Tribunal, which has several indigenous staff members, has built up extensive experience in resolving native title claims and he hoped that this knowledge would not be lost.

**Committee consideration**

**House of Representatives Selection Committee**

At its meeting on 31 October 2012, the House of Representatives Selection Committee decided to refer the Bill to the Standing Committee on Social Policy and Legal Affairs.

**Senate Selection of Bills Committee**

At its meeting on 31 October 2012, the Senate Selection of Bills Committee referred the provisions of this Bill to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by the first sitting day of 2013.

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proposed efficiencies will be achieved, effects on the administration of the courts and whether the proposed amendments will improve access to justice.\(^{26}\)

**Senate Standing Committee on Legal and Constitutional Affairs**

The inquiry is currently before the Committee and the proposed reporting date is 25 February 2013. At the time of writing this Digest, a number of the submissions to the Senate inquiry have been published on the Committee’s website.\(^{27}\) Some of the comments and concerns of stakeholders are discussed below.

**Policy position of non-government parties/independents**

It has been reported that the Opposition considers the transfer of the Tribunal's mediation role to the Federal Court as short-sighted and has warned that it could further delay resolution of native title claims. Senator Brandis considered that the potential savings were meagre, with the possibility of driving costs up for parties.\(^{28}\) He is reported as saying:

> The relatively small sum that will be saved, the dangers of confusion and delay and additional cost in the system following the movement to the Federal Court with its primarily litigious model will mean that those savings will be lost.\(^{29}\)

However, the transfer of the mediation role to the Federal Court took place in 2009. See the discussion above.

**Position of major interest groups**

**Law Council of Australia**

The Law Council of Australia has commented in relation to the Family Court and the Federal Magistrates Court and has expressed a number of concerns with the Bill. Primarily it considers that the Government’s decision to maintain two separate courts exercising family law jurisdiction is fundamentally flawed. The Council maintains that the Family Court of Australia, the Federal Magistrates Court and the Family Court of Western Australia ‘all remain significantly under-resourced and no administrative changes or savings will adequately address this issue’.\(^{30}\)

\(^{26}\) Ibid.


\(^{28}\) N Berkovic, ‘Gillard strips Native Title Tribunal of dispute mediation role’, *The Australian*, 22 June 2012, op. cit., p. 34.

\(^{29}\) Ibid.

The Law Council states:

There is general support in the profession for the lower cost/expeditious procedures that the Federal Circuit court is intended to offer in general federal matters and for it having a place as a lower level trial court.

However, it will not attract the work necessary to generate the jurisprudential experience and the jurisprudential reputation necessary to support it as a preferred forum for such matters unless it is adequately resourced by the appointment of judges with appropriate general federal law background and experience. 31

The Council further notes:

that the Bill appears simply to be designed to give a legislative basis to the joinder of administrative functions informally put in place by the two Courts, without thought being given to the long term sustainability of those structures. 32

Federal Court of Australia

The Federal Court comments that the Bill will remove legal risk by ‘consolidating the Tribunal and Federal Court agencies for the purposes of the Public Service Act and clarifying the agency’s administrative and governance framework’. 33

The National Native Title Council generally is supportive of the Bill, but has some concerns which include the following:

• savings will be redirected away from the native title system
• the Federal Court Registrar may not have substantial experience in relation to Aboriginal and Torres Strait Islander matters and
• NNTT will no longer receive a direct appropriation and funding will be reduced with the reduction in administrative responsibilities. As it is proposed that the Registrar of the Federal Court will have power to delegate any or all of his or her powers to staff assisting the NNTT, there may be a possibility of administrative powers being handed back to the NNTT without resources. 34

31. Ibid.
32. Ibid., p. 4.

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Financial implications

The Explanatory Memorandum states that ‘the reforms that this Bill implements will achieve $4.75 million in savings each year from 2012–13 over the four-year forward estimates, for a total saving of $19 million. The Government will reinvest these savings in the Stronger Futures in the Northern Territory initiative’. The Government foreshadowed in the Budget for 2012–13 that these savings would result from certain functions of the NNTT being transferred to the Federal Court of Australia. Another saving is that the NNTT is no longer a prescribed agency under the Financial Management and Accountability Act 1997 and duplicated compliance costs will no longer apply. It will operate as part of the Federal Court’s structure.

Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011, the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that:

the Bill does not engage any of the rights and freedoms outlined in the Human Rights (Parliamentary Scrutiny) Act.

However, the Parliamentary Joint Committee on Human Rights 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 International Covenant on Civil and Political Rights and whether these changes could reduce the access individuals have to the National Native Title Tribunal.

At the time of writing this Digest, a response from the Attorney-General has not been published by the Committee.

37. Explanatory Memorandum, op. cit., p. 5.

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Key provisions

Schedule 1—National Native Title Tribunal

Administration of the Tribunal

Native Title Act 1993

Existing section 96 of the Native Title Act deals with the powers of the Native Title Registrar in assisting the President of the NNTT. Currently, the Registrar can do all things necessary or convenient for the purpose of assisting the President under section 129, including by acting for the President in relation to the administrative affairs of the Tribunal. Item 1 of Schedule 1 of the Bill repeals and replaces existing section 96. Proposed section 96 provides that the President may give the Registrar directions regarding the exercise of the Registrar’s powers under Part 5 of the Native Title Act, which relates to the Native Title Registrar. As a result of the amendments proposed in the Bill, the ‘the Registrar’ referred to in proposed section 96 will be the Registrar of the Federal Court.

Item 2 repeals existing Subdivision A of Division 4 of Part 6 of the Native Title Act. Part 6 deals with the National Native Title Tribunal generally, while Division 4 deals more specifically with the management of the Tribunal and Subdivision A with the management responsibilities of the President and the Registrar. Item 2, inserts proposed Subdivision A, which will deal with the management responsibilities of the President of the Tribunal and the Registrar of the Federal Court in proposed sections 128, 129 and 129A.

As with the current arrangements, proposed subsection 128(1) of the Native Title Act provides that the President is responsible for managing the administrative affairs of the Tribunal. However, proposed subsection 128(2) provides that the President is no longer responsible for matters falling under the Financial Management and Accountability Act 1997 (FMA Act) or the Public Service Act 1999, relating to the Tribunal. These matters are now the responsibility of the Registrar of the Federal Court.

Registrar of the Federal Court

Proposed section 129 of the Native Title Act sets out the powers of the Registrar of the Federal Court in relation to the Tribunal. The Federal Court Registrar will have the powers in relation to the Tribunal that the Registrar of the Tribunal currently has. Proposed subsection 129(1) provides that the Registrar of the Federal Court will assist the President in the management of the administrative affairs of the Tribunal in accordance with proposed section 128, and may do anything that is

40. Current section 129 of the Native Title Act states: ‘In the management of the administrative affairs of the Tribunal, the President is to be assisted by the Native Title Registrar’.

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necessary or convenient to assist in performing this function (proposed subsection 129(2)). In particular, the Registrar may act for the President in matters of administration relating to the Tribunal (proposed subsection 129(3)). Proposed subsection 129(4) provides that the President may direct the Registrar in relation to exercising powers under subsections 129(2) or (3). Proposed section 129A provides that the Registrar of the Federal Court may delegate all or any powers under Division 4 (management of the Tribunal) to the Native Title Registrar, a Deputy Registrar of the Tribunal, or a member of staff assisting the Tribunal.

Section 130 of the Native Title Act relates to the appointment and powers of the Deputy Registrars of the NNTT. Under the current provisions, the Deputy Registrars are appointed by the Registrar of the Tribunal and engaged under the Public Service Act. The powers of Deputy Registrars are those duties, powers and functions given by the Act or by the President of the NNTT. Items 5–7 amend section 130 of the Native Title Act to reflect the new staffing arrangements, whereby the Tribunal will no longer employ its own staff but instead be assisted by staff who form part of the Federal Court of Australia Statutory Agency. The amendments include removing references to the Registrar of the Tribunal and replacing them with references to the Registrar of the Federal Court. Proposed subsection 130(3A) provides that for the purposes of the Public Service Act, the Statutory Agency declared under section 18Q of the Federal Court of Australia Act 1976 includes the Deputy Registrars and staff assisting the Tribunal. 41

Current section 131A of the Native Title Act allows the President of the NNTT to engage consultants. To reflect that the President will no longer have responsibility for matters under the FMA Act or the Public Service Act, which include entering into contracts and staffing, item 10 of the Schedule 1 amends subsection 131A(1) of the Native Title Act to provide that the President may arrange with the Registrar of the Federal Court to engage consultants. As is the case under current subsection 131A(2), a person can only be engaged if the President considers the person to have particular skills or knowledge in matters of substantial relevance to the Tribunal and if the person has special knowledge in relation to Aboriginal and Torres Strait Islanders. Item 14 repeals and substitutes subsection 132(1) to empower the Registrar of the Federal Court to engage consultants with appropriate qualifications and experience. Under current section 132, this power is exercisable by the Registrar of the NNTT.

**Reporting and financial matters**

**Annual report**

Existing section 133 of the Native Title Act relates to procedures concerning the production of the annual report. Item 17 repeals subsection 133(2) with the effect of removing the requirement that the NNTT annual report include the financial statements and audit report required by the FMA Act. The Tribunal is no longer an FMA agency and therefore is not required to produce its own financial statements or audit report. The financial statements and audit report prepared under section 18S of https://www.comlaw.gov.au/Details/C2013C00052

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the Federal Court of Australia Act will cover the Tribunal. Item 18 repeals and replaces subsection 133(3), which currently requires the Attorney-General to table the NNTT annual report in both Houses of Parliament as soon as practicable after it is received. Proposed subsection 133(3) provides that the President must give the report to the Chief Justice of the Federal Court for inclusion in the annual report for the Federal Court. The Federal Court’s annual report is required to be tabled in Parliament under subsection 18S(3) of the Federal Court of Australia Act. An explanatory note to this subsection indicates that the financial statements and audit report of the Federal Court will also cover the Tribunal.

Saving and transitional provisions

Item 26 is a transitional provision relating to Deputy Registrars of the NNTT. A person who is a Deputy Registrar immediately before the commencement of Schedule 1 continues as a Deputy Registrar after commencement as if the person had been appointed by the Registrar of the Federal Court.

Item 27 is a transitional provision relating to consultants. If a person was engaged as a consultant to the NNTT and that engagement was effective before the commencement of Schedule 1, the person is taken as having been engaged on the same terms and conditions after commencement as before.

Item 29 is a transitional provision which provides that the Governor-General may make regulations concerning matters of a transitional nature relating to the amendments made by Schedule 1.

Schedule 2—Family Court and Federal Circuit Court

Family Law Act 1975

Current section 38C of the Family Law Act provides that the Chief Executive Officer of the Family Court is appointed by the Governor-General on the nomination of the Chief Judge of the Family Court. Item 8 of Schedule 2 of the Bill repeals existing section 38C of the Family Law Act and substitutes proposed section 38C. This proposed section provides that there will be a single position of Chief Executive Officer (CEO) of the Family Court and the Federal Circuit Court (formerly the Federal Magistrates Court of Australia). The CEO will be responsible for the administrative affairs of both courts. The CEO is to be appointed by the Governor-General on the joint nomination of the Chief Judge of the Family Court and the Chief Judge of the Federal Circuit Court.

Current section 38M of the Family Law Act allows the Chief Judge of the Family Court to appoint a person to act as the CEO of the Family Court. Item 14 amends section 38M so that the Chief Judge of

43. The name of the Federal Magistrates Court will change when the provisions of the Federal Circuit Court of Australia Legislation Amendment Act 2012 come into force on a date fixed by proclamation or the day after the six month period from Royal Assent has expired. No commencement date has yet been proclaimed. As the Act received assent on 28 November 2012, it will commence no later than 28 May 2013. The Federal Circuit Court of Australia Legislation Amendment Act is available at: http://www.comlaw.gov.au/Details/C2012A000165
the Family Court and the Chief Judge of the Federal Circuit Court will be jointly able to appoint a person to act in the new office of CEO of the Family Court and the Federal Circuit Court.

Section 38S of the Family Law Act deals with the Family Court’s annual report. Existing subsection 38S(2) states that the annual report must include the financial statements and audit report required under the FMA Act. Item 16 repeals existing subsection 38S(2). The reason for repeal of this subsection is set out in the Explanatory Memorandum:

The requirements as to financial statements and audit reports set out in the FMA Act will apply to the Family Court and the Federal Circuit Court as a single FMA Act agency as a consequence of amendments to the Financial Management and Accountability Regulations 1997 that will commence at the same time as this legislation. The requirements for preparation and publication of these statements are included in the FMA Act and do not need to also be included in the courts’ legislation.44

Federal Circuit Court of Australia Act 1999

Item 17 of Schedule 2 of the Bill amends the definition of Chief Executive Officer in section 5 of the Federal Magistrates Act 1999.45 That definition currently provides that, in the Federal Magistrates Act, ‘Chief Executive Officer’ is the CEO of the Federal Magistrates Court. As set out above, this Bill proposes that one CEO, with responsibility for both the Family Court and the Federal Circuit Court, will be appointed under section 38C of the Family Law Act.46

Items 18, 19 and 23 repeal provisions of the Federal Magistrates Act that relate to the CEO of the Federal Magistrates Court, as such a position will no longer exist.

The Family Court and the Federal Circuit Court will be a single agency under the FMA Act. Item 21 inserts proposed section 112A into the Federal Magistrates Act. Existing section 112 relates to the staff of the Federal Circuit Court and provides, at subsection 112(2), that such staff are to consist of persons appointed or employed under the Public Service Act. Proposed section 112A provides that the following APS employees of the Federal Circuit Court are members of the Statutory Agency declared by section 38Q of the Family Law Act:

- Registrars — section 101 of the Federal Magistrates Act
- Sheriff — subsection 106(1) of the Federal Magistrates Act
- Marshal — subsection 109(1) of the Federal Magistrates Act
- Family consultants — section 111A of the Federal Magistrates Act and
- Staff — section 112 of the Federal Magistrates Act.

The Explanatory Memorandum notes:

44. Explanatory Memorandum, Courts and Tribunals Legislation Amendment (Administration) Bill 2012, p. 16.
46. See item 8 of Schedule 2 to the Bill, discussed above.

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it is necessary that they [the Family Court and Federal Circuit Court] are also established as a single statutory agency for the purposes of the Public Service Act. This amendment ensures that all APS officers and staff members of the Federal Circuit Court are included in the statutory agency declared under section 38Q of the Family Law Act, which is the provision that declares the statutory agency for the Family Court and the Federal Circuit Court.47

Ombudsman Act 1976

Paragraphs (c) and (ca) of the definition of chief executive officer of a court or tribunal in subsection 3(1) of the Ombudsman Act refer, respectively, to the CEO of the Family Court and the Federal Magistrates Court.48 Item 24 of Schedule 2 to the Bill repeals and replaces these paragraphs to insert references to the new definition of ‘Chief Executive Officer’ of the Family Court and Federal Circuit Court, inserted into the Family Law Act by item 2 of this Schedule and into the Federal Magistrates Act by item 17 of this Schedule.

Concluding comments

In terms of making savings, the merging of the administrative and corporate components of the NNTT and the Federal Court, and in turn the Family Court and the Federal Circuit Court, makes sense by eliminating duplication of costs in these areas - particularly compliance costs in relation to the FMA Act. Although the NNTT will be a part of the Federal Court and appears not to be as independent as previously, the Government emphasises that it will be a ‘distinct organisational unit of the Federal Court’.49 However, it may be regarded to have lost some of its stature and importance by the partial merger with the Federal Court.

Funding for the NNTT’s mediation function has been transferred to the Federal Court to accord with amendments made to the NTA in 2009.50 The Skehill review noted:

Under the NTA as originally enacted, the NNTT made determinations about the existence of native title and those determinations could then be registered as if they were orders of the Federal Court. As a result of the subsequent High Court decision in Brandy v Human Rights and Equal Opportunity Commission in 1995, it became apparent that the original distribution of native title functions between the NNTT and the Federal Court would likely be held to be unconstitutional if challenged. Accordingly, significant change was made to the role and function of the NNTT, so that all applications for declaration of native title were made to the Federal Court and all determinations that native title existed were made by the Federal Court and not by the NNTT.

Generally the stakeholders involved are supportive of the proposals contained in the Bill, however, the Law Council of Australia has serious reservations about the existence of two separate courts

47. Explanatory Memorandum, op. cit., p. 18.
50. Amendments made by the Native Title Amendment Act 2009, which centralised the case management of native title claims including allocating claims for mediation. That Act is available at: http://www.comlaw.gov.au/Details/C2009A00083

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exercising family law jurisdiction. The Law Council is concerned that having two courts under a single administration could impact upon the future of the Federal Circuit Court as an independent court.