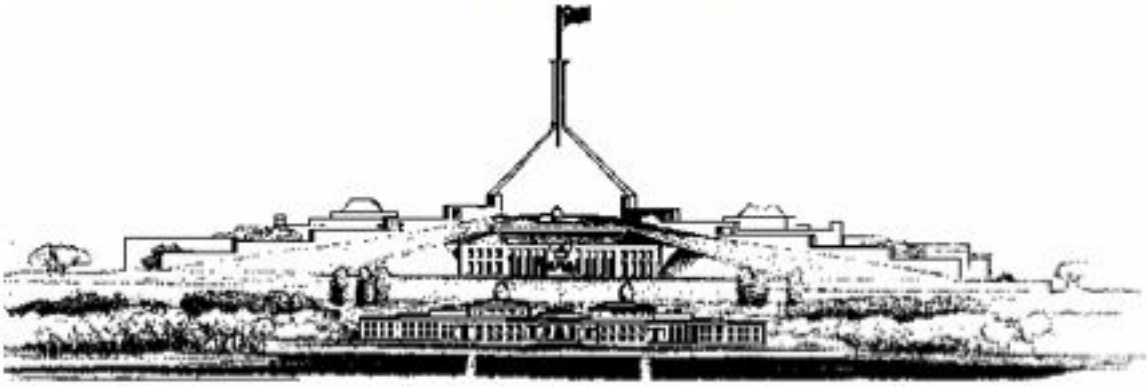
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

BILLS

Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012, Courts and Tribunals Legislation Amendment (Administration) Bill 2012, Federal Circuit Court of Australia (Consequential Amendments) Bill 2013

Second Reading

SPEECH

Monday, 25 February 2013

BY AUTHORITY OF THE SENATE

SPEECH

Date	Monday, 25 February 2013	**Source**	Senate
Page	783	**Proof**	No
Questioner		**Responder**	
Speaker	McLucas, Sen Jan	**Question No.**	

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers and Parliamentary Secretary to the Prime Minister) (20:33): I present a revised explanatory memorandum relating to the Federal Circuit Court of Australia (Consequential Amendments) Bill 2013 and I move:

That these bills be now read a second time.

I seek leave to have the second reading speeches incorporated in *Hansard*.

Leave granted.

The speeches read as follows—

I am pleased to be introducing this Bill today as a clear step forward towards holding a successful referendum to change the Australian Constitution to recognise Aboriginal and Torres Strait Islander peoples.

This Bill will establish an Act of Recognition, acknowledging the unique and special place of Aboriginal and Torres Strait Islander peoples as the first peoples of our nation.

The Gillard Government is committed to recognising Aboriginal and Torres Strait Islander peoples in the Australian Constitution.

We want meaningful reform that reflects the hopes and aspirations of Aboriginal and Torres Strait Islander peoples and unites our nation. We believe the Australian Constitution should:

recognise Aboriginal and Torres Strait Islander peoples and their unique history, culture and connection to this land;

reflect our country's fundamental belief in the importance of equality by removing all references to race; and

acknowledge additional effort is needed to close the gap on Indigenous disadvantage in this country.

And we are committed to achieving this.

We appointed an Expert Panel to develop options for constitutional change and work out how best to recognise Aboriginal and Torres Strait Islander Australians in the Constitution.

The Expert Panel consisted of a range of respected and accomplished individuals, including Indigenous and community leaders, constitutional law experts and parliamentary members.

In bringing forward this Bill, the Government again thanks the Expert Panel, including co-chairs Mr Mark Leibler and Professor Patrick Dodson, for their dedication and tireless work. They have helped build a strong foundation for change.

We also thank the Australian Human Rights Commission, the National Congress of Australia's First Peoples and Reconciliation Australia – and the many organisations and individuals who lodged submissions, participated in consultations or helped the Expert Panel with their research.

Throughout 2011, the Expert Panel led a wide ranging national public consultation and engagement program.

They talked to more than 4,600 people, in more than 250 meetings in 84 locations across the country, and received more than 3,500 submissions.

The panel also sought extensive advice from Aboriginal and Torres Strait Islander leaders and constitutional experts, and gathered data through research and surveys.

The Government was pleased to receive the Expert Panel's findings in January this year.

For the first time, we now have specific proposals on how to recognise Aboriginal and Torres Strait Islander peoples in the Constitution.

The Government agrees with the Expert Panel on the importance of holding a referendum at a time when it has the most chance of success.

We do not underestimate the challenge of achieving nation-wide consensus. Change will not happen without support from across the political spectrum and the support of the majority of Australians.

And we are working with local organisations to build a movement for change.

The Government is investing $10 million to help build public awareness and community support for change. This important work is being led by Reconciliation Australia, supported by a reference group of business and community leaders.

This funding is supporting community groups and activities across the country, giving Australians the opportunity to learn more about constitutional recognition.

We do recognise that there is not yet enough community awareness or support for change to hold a successful referendum at or before the next federal election.

The Act of Recognition that will be established by this Bill will continue to help build the momentum we need for successful constitutional change.

The Act of Recognition will largely reflect the introduction to recommendation 3 of the Expert Panel on Constitutional Recognition of Indigenous Australians.

The Act makes a clear statement of recognition of Aboriginal and Torres Strait Islander peoples as the first inhabitants of Australia, and acknowledges their unique history, culture and connection to their traditional lands and waters.

To allow all of us here in this Parliament to show our support for these truths.

And through our support, to build awareness and support in the wider community.

To maintain momentum towards a referendum, a sunset provision in the Bill limits the effect of the Act to two years. The sunset date ensures that legislative recognition does not become entrenched at the expense of continued progress towards constitutional change.

The sunset provision will provide an impetus for a future Parliament to reassess how the campaign for change is travelling, and the appropriate timing for a successful referendum.

The Bill also provides for a review to consider and advise a future Parliament on proposals to submit to a referendum, based on the work already done by the Expert Panel. The review will identify which of those proposals are likely to receive the support of the Australian people, including Aboriginal and Torres Strait Islander peoples.

A report from the review will be given to the Minister by six months before the sunset date of the Bill and be tabled in Parliament.

The report will also set out a process for Parliament to consider the next steps towards the ultimate goal of constitutional recognition.

It is important to recognise that this Bill is not a substitute for constitutional recognition. Legislation is not the appropriate forum to address all of the recommendations of the Expert Panel for constitutional change.

We are pleased that there is a strong commitment across the Parliament to supporting this Bill.

We know how crucial cross-party support is to the success of a referendum. We all share the determination to make sure that we continue to build momentum towards a successful referendum that unites and strengthens our community.

It is in this spirit that the Government has agreed to establish a Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples.

The Committee has been asked to consider this Bill as its first order of business.

The Committee will then work to build a secure, strong multi partisan parliamentary consensus around the timing and specific content of referendum proposals for constitutional recognition of Aboriginal and Torres Strait Islander peoples.

The Committee will also engage with Aboriginal and Torres Strait Islander people and the broader community to secure their support for specific referendum proposals for constitutional recognition.

The Government believes a successful referendum will help create strong, respectful relations between Indigenous and non Indigenous Australians.

The National Apology to Indigenous Australians, the Stolen Generations in particular, helped build a bridge of respect between Indigenous and non-Indigenous people. It generated trust, so we could work together to tackle Indigenous disadvantage.

The recognition of Aboriginal and Torres Strait Islander peoples in the Constitution is another step in that journey, and one that is critical to our efforts to close the gap.

The Australian Constitution is the foundation document for our laws and our government, but it is silent on the special place of our first Australians.

The Government is pleased that today this Parliament is taking an important step towards changing that situation.

Towards a successful referendum that unites and strengthens our nation.

I am pleased to introduce legislation to implement important reforms to improve the effectiveness and efficiency of the Family Court, the Federal Magistrates Court, the Federal Court and the National Native Title Tribunal.

The Bill is also an important component of the Gillard Government's wider federal courts reform package, which includes the recent announcement of injecting an additional $38 million in funding across the forward estimates for the federal courts to maintain their services, particularly for regional residents and disadvantaged parties.

This legislation will:

facilitate the transfer of the National Native Title Tribunal's administrative functions, staff and appropriation to the Federal Court, and

provide for the merger of the administration of the Family Court and the Federal Magistrates Court.

The Bill implements recommendations of the *Review of Small and Medium Agencies in the Attorney-General ' s Portfolio*, completed by Mr Stephen Skehill and released in June 2012, which recommended changes to the operation, structure and administration of agencies in the Attorney-General's portfolio.

While the amendments in this Bill are largely of a technical and administrative nature, they will allow the Courts to increase the efficiency and effectiveness of their administrative structures, and allow Court resources to be directed where they matter most: providing services to court users, particularly regional and disadvantaged parties.

This Bill implements several Skehill Review's recommendations relating to the National Native Title Tribunal.

The Review recommended both transferring native title mediation functions from the Tribunal to the Federal Court and creating corporate efficiencies by removing the Tribunal's classification as an *Financial Management and Accountability Act 1997* agency and providing for its financing and staffing through the Federal Court.

The reforms will not only generate savings, but also result in a closer relationship between the agencies and promote more cohesive and timely operation of the native title system.

A preliminary transfer of functions has already allowed the Tribunal to focus on its core area of strength – its crucial future acts functions – while the Federal Court, with strong results in the area, has been given control of native title mediation.

This better alignment and allocation of functions builds on the Government's 2009 reforms, which first gave the Federal Court greater involvement in mediation. Those reforms have generated a four-fold increase in the rate of consent determinations – this means less waiting for claimants and faster certainty for all affected parties.

This Bill completes implementation of these reforms by clarifying the agencies' administrative framework and ensuring that they can work together efficiently.

For example, the Bill consolidates the Tribunal and Federal Court as a single Statutory Agency under the *Public Service Act 1999.* This aligns the staffing and financial responsibilities of the Registrar of the Federal Court, who will now be the Head of the consolidated agency for the purposes of both the FMA Act and Public Service Act. The Registrar's powers are also better defined. These measures provide clarity for agencies and stakeholders.

These reforms also allow the Tribunal and Federal Court to work more efficiently. The agencies will now share corporate services related to human resources, finances and information technology. Where possible, staff will work from the same buildings and share the same facilities. The compliance burdens under legislation such as the FMA Act will now also be shared.

The resulting efficiencies of these reforms are expected to generate $19 million in savings over the next four years.

In enabling the Tribunal and the Court to both operate more efficiently and to achieve better results, these reforms will support the Government's ongoing success in tackling the backlog of outstanding native title claims for the benefit of all stakeholders.

This is why the changes a widely supported by stakeholders, and why we have organised a staged and ordered transition to make sure no matters currently underway will experience any delays.

As noted by Mr Skehill, the effective merging of the administration of the Family Court and the Federal Magistrates Court from November 2008 has been a significant achievement in cooperation between the two Courts.

Since 2009, the Family Court and the Federal Magistrates Court have operated with a single Chief Executive Officer. The Chief Executive Officer of the Family Court has also been the acting Chief Executive Officer of the Federal Magistrates Court. The Family Court and the Federal Magistrates Court already share many resources, including staff and facilities.

The amendments for the Family Court and the Federal Magistrates Court in this Bill will clarify and formalise existing administrative structures, rather than fundamentally changing the way the Courts operate. This is appropriate, as the two Courts have cooperated effectively for several years.

I emphasise that the Courts will retain their separate and distinct identities, with the Federal Magistrates Court in the process of changing its name to the Federal Circuit Court of Australia, to reflect the growth in its scope, workload and regional work over the past decade.

However, formalising the shared administrative arrangements for the Courts will allow them to achieve savings and operate more efficiently.

For example, establishing the Courts as a single agency for the purposes of the FMA Act with a single budget appropriationwill mean that funds can be shared between the Courts as necessary.

This measure will also allow the Courts to produce a single set of financial statements for the purpose of satisfying the requirements of the FMA Act, which will eliminate significant duplication of the Courts' work.

A range of provisions in the Courts' current legislation are not compatible with the Courts having a single Chief Executive Officer and operating as a single agency for the purposes of the FMA Act

This Bill amends these provisions and ensures that the Courts will be able to work effectively and efficiently under shared administration, unhindered by unnecessary procedural formalities. As such, it's appropriate to conduct this change as efficiently as possible, without creating new and separate legislation to add to the statute book.

We are also in ongoing discussions with both Courts to ensure their internal structures meet the needs of both the judiciary and court users.

This Bill forms one part of this Government's wider federal courts reform package.

As noted earlier, the Gillard Government is also putting the courts back on a firmer financial footing, by directing an additional $38 million over four years to the courts.This injection of new funds, derived from a change to fee structures, will ensure our courts can continue to deliver key services, including regional circuit work, which are vital for disadvantaged litigants and small businesses.

Other important aspects of this package of reforms include:

establishing a transparent complaints process against judicial officers – the legislative framework for which was passed by the House earlier this sitting period;

As noted earlier, renaming the Federal Magistrates Court as the Federal Circuit Court of Australia, and federal magistrates as 'judges';

expanding the diversity judicial appointments, to better reflect the Australian community; and

establishing the Military Court of Australia, so that independent justice is available to Australian Defence Force members.

It is important that our federal courts and tribunals operate efficiently, are accessible to all parties, and provide effective forums for the resolution of disputes.

The Bill enables the National Native Title Tribunal and the Federal Court of Australia to work more closely to achieve better native title outcomes.

And it will formalise the administrative structure that has proved successful for the Family Court and the Federal Magistrates Court since 2009, and will drive further efficiencies for these Courts.

The Federal Circuit Court of Australia (Consequential Amendments) Bill makes consequential amendments to the Commonwealth statute book to reflect changes to the name of the Federal Magistrates Court and the title of Federal Magistrate to 'Judge'.

It operates together with the Federal Circuit Court of Australia Legislation Amendment Bill 2012, to more accurately reflect the Court's modern role and highlight the valuable service it provides to regional Australians through its program of regular court circuits.

The Federal Circuit Court of Australia Legislation Amendment Bill, which has passed the Parliament, amends the *Federal Magistrates Act 1999* and other legislation to rename the Court and change the title of Federal Magistrate to 'Judge', while ensuring that existing arrangements and entitlements continue.

This Bill makes the necessary amendments to update references to the Federal Magistrates Court and Federal Magistrates across other Commonwealth legislation. The number and breadth of these necessary amendments clearly demonstrates the Court's broad jurisdiction and the functions of its judicial officers across areas as diverse as water efficiency, national measurements and telecommunications interception and access.

Some of the legislation undergoing slight amendment enables Federal Magistrates to undertake functions in their personal capacity, such as issuing search and seizure warrants. The sensitive nature of many of these functions requires that there be no doubt about continuity of arrangements. The Bill includes specific provisions to preserve existing arrangements after the name changes commence, and clarifies the operation of the *Acts Interpretation Act 1901*.

The Bill also includes contingent amendments to update Bills currently before the Parliament that refer to the Federal Magistrates Court or Federal Magistrates.

This Bill, while containing only consequential amendments, nevertheless forms an important part of this Government's wider court reforms, which will ensure that the federal judicial system provides accessible, equitable and understandable justice for the community.

This Government has put the federal courts on a much firmer budget footing by recently allocating an additional $38 million to maintain and improve court services.

We have developed and passed a judicial complaints framework, to provide a more transparent and understandable way to raise complaints about judicial conduct, while fully respecting the constitutional boundaries between the arms of government.

And new court fee levels will better reflect the capacity of different litigants to pay – such as higher fees for large corporations and Government departments, balanced by the reintroduction of fee waivers and exemptions for disadvantaged litigants.

The Government has demonstrated good faith with the Court and Federal Magistrates by progressing this name and title change with all possible speed, while ensuring proper consultation with Heads of Jurisdiction.

These changes to commence the Federal Circuit Court and title of 'Judge' will be smoothly implemented across the Commonwealth statute book without any disruption to existing arrangements.

It is envisaged that this Bill will commence at the same time as the Federal Circuit Court of Australia Legislation Amendment Bill 2012.

I commend the Federal Magistrates Court and its judicial officers for their hard work over the past 12 years providing affordable, accessible and streamlined justice for people all over Australia. This new name will open a new chapter for the Court and help its Judges continue to serve the Australian community.

Debate adjourned.

Ordered that the bills be listed on the *Notice Paper* as separate orders of the day.