

# Glossary

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## **Administrative notices**

See practice notes.

## **Alternative procedure agreement**

A type of Indigenous land use agreement.

## **Appeal**

An application to a higher court to review a decision of a lower court or tribunal. For example, an appeal from a decision of a Federal Circuit Court judge may be made to the Federal Court, and a decision of a single judge of the Federal Court may be the subject of an appeal to the Full Court of the Federal Court.

## **Appellate jurisdiction**

The power given to a court to hear appeals in certain matters.

## **Applicant**

The individual, organisation or corporation who/which applies to the Court to start legal proceedings against another person or persons. Also known as 'plaintiff' in admiralty and corporations matters and in some other courts. In the National Native Title Tribunal, the applicant is the person or persons who make an application for a determination of native title or a future act determination.

## **Application**

The document that starts most proceedings in the Federal Court.

## **Area agreement**

A type of Indigenous land use agreement.

## **Body corporate agreement**

A type of Indigenous land use agreement.

## **Cause of action**

A term used in the Federal Court's case management system to classify proceedings commenced with the Court.

## **Compensation application**

An application made by Indigenous Australians seeking compensation for loss or impairment of their native title.

## **Cross appeal**

An application by a respondent in an appeal also seeking a review of the lower court or tribunal decision and made in response to the appeal. A cross appeal is not required if the respondent is simply seeking that the decision of the lower court or tribunal be upheld.

## **Cross claim**

A claim made in a proceeding by one party against a co-party, such as the first respondent (or defendant) against the second respondent (or defendant). However, if the claim in the proceeding is by one party against an opposing party, such as the respondent (or defendant) against the applicant (plaintiff), it is called a counter claim. A cross claim has to be closely connected to what is in dispute in the original claim or a counter claim.

## **Directions**

Orders made by the Court or a judge in relation to the conduct of a proceeding. Before the trial or hearing of a matter a judge may give directions so that the parties involved will be properly ready. The directions usually set down a list of steps to be taken by the parties and the deadline for those steps. The steps usually involve filing of material and defining the issues that require a decision by the Court.

## **Discovery**

A process by which the parties involved in a legal proceeding must inform each other of documents they have in their possession and which relate to the matters in dispute between the parties.

## **Docket system**

A system by which each case is allocated to a particular judge who will then *see* the case through to completion. In the Federal Court the system is called the Individual Docket System.

## **Electronic court file**

An electronic court file is a digital version of the Court file including all documents filed with the Court or created by the Court.

## **Exhibit**

A document or item produced in court for the purpose of becoming part of the evidence in a proceeding.

**Filing of documents**

The process of the Court accepting a document or documents lodged by a party to a proceeding.

**First instance**

A proceeding heard in the Court's original jurisdiction.

**Full Court**

Three or more judges sitting together to hear a proceeding.

**Future act**

A proposed activity on land and/or waters that may affect native title.

**Future act determination application**

An application requesting the National Native Title Tribunal to determine whether a future act can be done (with or without conditions).

**Future act determination**

A decision by the National Native Title Tribunal either that a future act cannot be done, or can be done with or without conditions. In making the determination, the Tribunal takes into account (among other things) the effect of the future act on the enjoyment by the native title party of their registered rights and interests and the economic or other significant impacts of the future act and any public interest in the act being done.

**Good faith negotiations (native title)**

All negotiation parties must negotiate in good faith in relation to the doing of future acts to which the right to negotiate applies (*Native Title Act 1993* s 31(1) (b)). See the list of indicia put forward by the National Native Title Tribunal of what may constitute good faith in its guide to future act decisions made under the right to negotiate scheme at [www.nntt.gov.au](http://www.nntt.gov.au). Each party and each person representing a party must act in good faith in relation to the conduct of the mediation of a native title application (s 136B(4)).

**Hearing**

That part of a proceeding where the parties present evidence and submissions to the Court.

**Indigenous Land Use Agreement (ILUA)**

A voluntary, legally binding agreement about the use and management of land or waters, made between one or more native title groups and others (such as miners, pastoralists, governments).

**Interlocutory application**

Interlocutory proceedings are for dealing with a specific issue in a matter – usually between the filing of the application and the giving of the final hearing and decision. An interlocutory application may be for interim relief (such as an injunction) or in relation to a procedural step (such as discovery).

**Judgment**

The final order or set of orders made by the Court after a hearing, often accompanied by reasons, which set out the facts and law applied in the case. A judgment is said to be 'reserved' when the Court postpones the delivery of the judgment to a later date to allow time to consider the evidence and submissions. A judgment is said to be 'ex tempore' when the Court gives the judgment orally at the hearing or soon after.

**Jurisdiction**

The extent of legal authority or power of the Court to apply the law.

**Litigants**

Individuals, organisations or companies who/ which are the parties to a proceeding before the Court.

**Mediation (or Assisted Dispute Resolution)**

A process in which an impartial third party (the mediator) assists the parties in an attempt to bring about an agreed settlement or compromise, without requiring a decision of the Court.

**Milestone agreement**

An agreement on issues, such as a process or framework agreement, that leads towards the resolution of a native title matter but does not fully resolve it.

**National Court Framework**

The National Court Framework is a number of reforms to the Court's case management approach.

**National Native Title Register**

The record of native title determinations.

### **National Native Title Tribunal Member**

A person who has been appointed by the Governor-General as a member of the Tribunal under the Native Title Act. Members are classified as presidential and non-presidential. Some members are full-time and others are part-time appointees.

### **National Practice Area**

Subject matter areas in which the Court's work is organised and managed.

### **Native title determination**

A decision by an Australian court or other recognised body that native title does or does not exist. A determination is made either when parties have reached an agreement after mediation (consent determination) or following a trial process (litigated determination).

### **Native title claimant application/claim**

An application made for the legal recognition of native title rights and interests held by Indigenous Australians.

### **Native title representative body**

Representative Aboriginal/Torres Strait Islander Body also known as native title representative bodies are recognised and funded by the Australian Government to provide a variety of functions under the *Native Title Act 1993*. These functions include assisting and facilitating native title holders to access and exercise their rights under the Act, certifying applications for determinations of native title and area agreements, resolving intra-Indigenous disputes, agreement-making and ensuring that notices given under the Native Title Act are brought to the attention of the relevant people.

### **Non-claimant application**

An application made by a person who does not claim to have native title but who seeks a determination that native title does or does not exist.

### **Notification**

The process by which people, organisations and/or the general public are advised by the relevant government of their intention to do certain acts or by the National Native Title Tribunal that certain applications under the Act have been made.

### **On-country**

Description applied to activities that take place on the relevant area of land, for example mediation conferences or Federal Court hearings taking place on or near the area covered by a native title application.

### **Original jurisdiction**

The authority or legal power of the Court to hear a case in the first instance.

### **Parties**

People involved in a court case. Applicants, appellants, respondents and defendants are generally called 'parties'.

### **Practice notes and administrative notices**

The Court publishes practice notes and administrative notices. Practice notes are issued by the Chief Justice on advice of the judges of the Court. Administrative notices are issued by each District Registrar at the request, or with the agreement, of the judges in the District Registry to which the notice relates.

### **Prescribed body corporate**

Prescribed body corporate, a body nominated by native title holders which will represent them and manage their native title rights and interests once a determination that native title exists has been made.

### **Proceeding**

The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the judgment.

### **Register of Indigenous Land Use Agreements**

A record of all Indigenous land use agreements that have been registered. An ILUA can only be registered when there are no obstacles to registration or when those obstacles have been resolved.

### **Register of Native Title Claims**

The record of native title claimant applications that have been filed with the Federal Court, referred to the Native Title Registrar and generally have met the requirements of the registration test.

**Registered native title claimant**

A person or persons whose names(s) appear as 'the applicant' in relation to a claim that has met the conditions of the registration test and is on the Register of Native Title Claims.

**Registration test**

A set of conditions under the *Native Title Act 1993* that is applied to native title claimant applications. If an application meets all the conditions, it is included in the Register of Native Title Claims, and the claimants then gain the right to negotiate, together with certain other rights, while their application is under way.

**Regulations**

The Federal Court of Australia Regulations 2004 which prescribe the filing and other fees that must be paid in relation to proceedings in the Federal Court.

**Respondent**

The individual, organisation or corporation against whom/which legal proceedings are commenced. Also known as a 'defendant' in admiralty and corporations matters and in some courts. In an appeal it is the party who/which did not commence the appeal.

**Rules**

Rules made by the judges which set out the procedures for conducting a proceeding. The current rules of the Federal Court are the Federal Court Rules 2011, Federal Court (Corporations) Rules 2000 (for proceedings under the *Corporations Act 2001*) and Federal Court (Bankruptcy) Rules 2016 (for proceedings under the *Bankruptcy Act 1966*).

**Self-represented litigant**

A party to a proceeding who does not have legal representation and who is conducting the proceeding on his or her own behalf.

**Setting down fee**

A fee that must be paid when a date is set for hearing a matter. It includes the first day's hearing fee and, usually, has to be paid at least 28 days before the hearing.