





Cover image

The Commonwealth Law Courts in Melbourne was the first manifestation of a progressive vision for the court buildings of Australia developed by the then Chief Justice of the Federal Court of Australia, The Honourable Michael Black AC, QC.

The building was completed in 1998 after a decade of planning. It was designed by the Melbourne branch of the architectural firm Hassell, with Paul Katsieris as the design architect on the project. It has won a number of awards, including the Marion Mahony Award and a Commendation Award from the Royal Australian Institute of Architects.

The architects were asked to create a dignified but not intimidating building that reflected the importance, transparency and accessibility of the justice system.

The L-shaped building is 17 storeys high and covers more than 35,000 sq m. It was designed to resemble two buildings, with a courts section and a 'tower' section for offices. These are divided by a north-south gallery that serves as a light well, and are linked by footbridges.

The building design, with its focus on geometric forms and the choice of materials used in its construction, was influenced by modernism. The exterior is composed of layers of differently sized windows and projections that produce a stacked effect.

In an attempt to mitigate anxiety or a sense of intimidation in members of the public entering the courts, access to the body of the building is through a series of smaller spaces that open out to 'reveal' the interior.

The building is named after Sir Owen Dixon OM PC GCMG KCMG KC.

Federal Court of Australia annual report 2022–23

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Alternative format

This annual report is available electronically at <https://www.transparency.gov.au/>

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CHAMBERS OF CHIEF JUSTICE MORTIMER
FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
305 William Street Melbourne VIC 3000

19 September 2023

The Hon Mark Dreyfus KC MP
Attorney-General of the Commonwealth of Australia
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Attorney-General

We have pleasure in submitting the annual report on the operations of the Federal Court of Australia for the financial year ending 30 June 2023.

The report is submitted in accordance with:

- section 18S of the *Federal Court of Australia Act 1976* (Cth)
- section 17A1 of the *Public Governance, Performance and Accountability Rule 2014*, and
- section 46 of the *Public Governance, Performance and Accountability Act 2013* (Cth).

This report has been prepared in accordance with the Department of Finance's *Resource Management Guide No. 135: annual reports for non-corporate Commonwealth entities* (May 2023).

This is the Court's 34th annual report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'DM', written over a horizontal line.

The Honourable Debra Mortimer
Chief Justice

A handwritten signature in black ink, appearing to read 'Alison Legge', written over a horizontal line.

Alison Legge
Acting Chief Executive Officer and Principal Registrar

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Acronyms and abbreviations

AAL	Australian Academy of Law
AASB	Australian Accounting Standards Board
AAT	Administrative Appeals Tribunal
ACCC	Australian Competition and Consumer Commission
ACICA	Australian Centre for International Commercial Arbitration
ADR	assisted dispute resolution
AIJA	Australasian Institute of Judicial Administration
AM	Member of the Order of Australia
ANAO	Australian National Audit Office
AO	Officer of the Order of Australia
APP	Australian Privacy Principles
APS	Australian Public Service
ARIPO	African Regional Intellectual Property Organization
AustLI	Australasian Legal Information Institute
CC	Creative Commons
CEO	Chief Executive Officer
CIArb	Chartered Institute of Arbitrators Australia
CoA	cause of action
CPN	Central Practice Note
DPI	Director Public Information
EV	Electric vehicle
FCA	Federal Court of Australia
FCFCOA	Federal Circuit and Family Court of Australia
FCMAS	Federal Court Mediator Accreditation Scheme
FIPA	Fellow Institute of Public Accountants
FOI	freedom of information
GPN	General Practice Note
ILUA	Indigenous Land Use Agreement
IP	intellectual property
IPS	Information Publication Scheme
IT	information technology
J	Justice
JJ	Justices
MLAANZ	Maritime Law Association of Australia and New Zealand
MOU	Memorandum of Understanding
NPA	National Practice Area
NRS	National Relay Service
OAM	Medal of the Order of Australia
PNG	Papua New Guinea
PGP Act	Public Governance, Performance and Accountability Act
PJSI	Pacific Judicial Strengthening Initiative
QC	Queen's Counsel
QUT	Queensland University of Technology
RAP	Reconciliation Action Plan
RFD	Reserve Force Decoration
RNTBC	Registered Native Title Bodies Corporate
SC	Senior Counsel
SES	Senior Executive Service
SME	small and medium enterprise
SRL	self-represented litigant
UNCCA	UNCITRAL National Coordination Committee for Australia
WIPO	World Intellectual Property Organization

Glossary

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 and Family Court (Division 2) 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

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.

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).

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* (Cth) section 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. 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 (section 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 1993* (Cth). 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 claimant application/claim

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

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 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* (Cth). These functions include assisting and facilitating native title holders to access and exercise their rights under the *Native Title Act 1993* (Cth), 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 1993* (Cth) 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 *Native Title Act 1993* (Cth) 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

Practice notes are issued by the Chief Justice on advice of the judges of the Court.

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* (Cth) 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* (Cth)).

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.