INFORMATION ABOUT THE ROLE OF NATIVE TITLE CLAIMANTS

This document explains the role of persons who are named on the court record for a native title claim. The *Native Title Act 1993* (**Native Title Act**) gives the persons named on the native title claim application powers and responsibility for business relating to the *claim*. **Once the claim is finished and native title is determined, the Applicant no longer has these powers and responsibilities**.

A native title claim is made by making an application under section 61 of the Native Title Act. This is called an "application for a determination of native title". The application is filed in court by the person (or persons) who have been *authorised* by the claim group to make the application. The persons who file the claim are called the "Applicant" (sometimes also called *claimants*). Once the claim is filed in the court, the persons named as the Applicant have responsibility for the claim – but important decisions about the claim must still be made by the claim group.

Named applicants and authorisation under the Native Title Act

A person can only make a claim if they are authorised by the claim group.[1] The persons named as the Applicant act on behalf of all the persons who hold the native title rights and interests that are being claimed.[2]

The Applicant (the claimants) for a native title claim have power to deal with all business relating to the claim that *arises* under the Native Title Act *in relation to the application*.[3] The Native Title Act gives the persons named as the Applicant the power and responsibility to make decisions about how the claim is managed. This power has limits. Important decisions, like making an Indigenous Land Use Agreement or approving the terms of a consent determination, must be made by the claim group.[4] The claim group can limit the authority of the Applicant by requiring that important decisions come back to the group.[5]

Role of the persons named as the applicant after native title is determined

The Native Title Act gives powers to the persons named as the Applicant so that they can make decisions about the claim. The Applicant is responsible for giving instructions to the lawyers about legal processes that need to be followed for the claim. Once the court makes a determination that native title exists, the claim is complete. Once native title is determined there is no longer an "Applicant" for the claim. This means that the persons named as the Applicant no longer have powers or responsibilities because there is no longer a claim for native title before the court.

After native title is determined, the persons who were the Applicant have rights and interests as a common law holder of native title. These rights and interests that they hold are determined by traditional law and custom. The persons who were named as the Applicant or "claimants" do not have any special authority or power under the Native Title Act to make decisions about native title business once native title is determined.

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[1] The claim group are the group of persons who claim to native title rights in interests in the land and waters of the claim area. The persons authorised to make the application may be removed by order of the court in circumstances where the applicant consents, or has died, or is no longer authorised or has acted outside of their authority: see s 66B *Native Title Act 1993* (Cth) ('*Native Title Act*').

[2] *Native Title Act* s 66(1).

[3] *Native Title Act* s 62A; *Gomeroi People v Attorney-General of New South Wales* [2016] FCAFC 75 [77] ('*Gomeroi v New South Wales*'.

The phrase "matters arising under" the Native Title Act is broad and includes asking the court for permission to change the application, changing lawyers or discontinuing the claim: see *Anderson v Western Australia* [2003] FCA 1423 (2003)

[48]; *Anderson on behalf of the Wulli Wulli People v Queensland* (2011) 197 FCR 404, [49]; *Ankamuthi People v Queensland* [2002] FCA 897 (2002) [7]–[8]; *Levinge on behalf of the Gold Coast Native Title Group v Queensland* [2012] FCA 1321 (23 November 2012) [39]–[42].

[4] The Applicant is not authorised to make an Indigenous Land Use Agreement (**ILUA**) of the kind to which subdivisions B, C, D or E of Division 3 of Part 2 of the *Native Title Act* apply to. These kind of ILUAs need to be approved by the claim group, although in practice the Applicant may negotiate the terms of the ILUA.

[5] *Gomeroi v New South Wales* at [81] – [82].