

Native Title Mediator List – Expression of Interest

The Federal Court of Australia is currently conducting a review and update of its list of suitably qualified and experienced people for inclusion on the Federal Court of Australia's national list of mediators.

The call for expressions of interest closes 20 March 2017 and it is hoped that the list can be updated during April 2017.

Overview of Role

The list is reviewed periodically to ensure the currency of the people included in the list having regard to the persons' continuing availability, interest in the area, skills and capacity and to allow for new inclusions. Generally, a review will be conducted on a bi-annual basis however a person on the list may advise the Court at any time if they are no longer available.

Brief Description of Dispute Resolution Processes

The Federal Court of Australia maintains a list of individuals suitably qualified to provide dispute resolution services in respect of the resolution of native title applications. Resolution of native title matters by agreement is consistent with the s37M of the *Federal Court Act 1976* which provides that the overarching purpose of civil practice and to procedure is to facilitate the just resolution of disputes according to the law and as quickly, inexpensively and efficiently as possible.

Further, Part 4 Division 1B of the *Native Title Act 1993* sets out the processes and parameters for referral of a native title matter or part of a matter to mediation.

The form of dispute resolution under a referral may take a number of forms including

- mediation of whole matter or discrete issues only;
- co-mediation
- conducted in a registry in person, by remote conference or on-country

as specified by the referral.

Inclusion on the list

The selection of a mediator for inclusion on the list does not create a contract between the mediator and the Court, and no contract will exist until the Court refers a matter to that mediator and a formal written contract is entered into for the specific event.

All expressions of interests will be acknowledged but not all applicants will necessarily be included on the list. Assessment and selection of appropriately qualified people for inclusion is entirely at the discretion of the Court.

The information provided in your application will be kept in-confidence; however if included on the list, your name and curriculum vitae will be published on the Court's website or provided to the parties to a case and their legal representatives if a referral to mediation is being considered.

Capabilities and Experience

The Court is most interested in expressions of interest from mediators who hold special knowledge or have demonstrated experience in relation to:

- Native Title;
- Aboriginal or Torres Strait Islander societies: or
- land management.

Applicants should ensure that they highlight any such experience in completing the **EOI Form** and are advised to nominate a referee who can speak to the work of the applicant in these content areas.

In selecting an appropriate mediator for a particular matter, the Court will have regard will to the nature of the referral, availability, cost efficiency, any issues of conflict, the parties' views and relevant expertise of the mediator.

Fees

Fee rates will be contained in the written contract entered into between the Court and Mediator. Fees will be remunerated as follows:

- where the Court orders that a mediator be appointed for the management and resolution of a matter that will require an ongoing and long term commitment then the mediator will generally be appointed as an acting Registrar of the Court and paid at that rate by the Court on fixed term contract;
- where the Court orders that a mediator be appointed by referral for a particular issue or event then the Court will appoint the mediator and remunerate them at a rate referable to either:-
 - the per diem rate of an ordinary member of the National Native Title Tribunal (solicitor, junior counsel or other mediation professional); or
 - the daily fee of an acting Supreme Court Judge, as set by the NSW Statutory and other Offices Remuneration Tribunal (senior counsel,

prior or current tribunal member or judge or other prominent person at the discretion of the Chief Executive of the Court).

- The remuneration rate is exclusive of GST where the mediator conducts business using an ABN and the Court will cover reasonable travel and accommodation costs, however travel allowance is not payable except where the mediator is engaged as a Court employee on a fixed term basis. Except where a part time employment contract is entered into, the mediator is required to invoice the Court at the completion of the mediation event.
- Mediators remunerated at the higher level are entitled to business class flights and those at the lower level are entitled to economy class flights.

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