

Expression of interest for inclusion on the Federal Court of Australia's national list of mediators

1. *Currency of List: 12 months*

To ensure the currency of the names on the list it will be reviewed every twelve months and updated having regard to the persons' availability, interest in the area, skills and capacity.

2. *Brief Description of Dispute Resolution Processes*

The Federal Court of Australia is looking to form a list of individuals and organisations that are suitably qualified to provide dispute resolution services in respect of the resolution of native title cases.

The dispute resolution services may be required in a number of processes including

- Mediation
- Negotiation
- Conferencing
- Or other specialised conflict management or dispute resolution processes.

3. *Inclusion on the List*

The purpose of the invitation for expressions of interest is to allow the Court to compile a list of suitably qualified mediators for its various requirements within the native title jurisdiction. 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.

If it is likely that a mediator will be called upon to assist in a number of matters an intermittent contract may be entered into which allows the Court to call upon that person from time to time within a given period. In these circumstances remuneration will only be provided for the specific periods of activity.

Importantly inclusion on the list does not necessarily mean that the mediator will be appointed to a matter, nor can the mediator rely on their inclusion for the purpose of self promotion.

All expressions of interests will be acknowledged but not all will necessarily be included on the list.

The information provided in the letter expressing interest will be kept in-confidence, however the names on the list will be public and curriculum vitae may be provided to the parties to a case and their legal representatives if a referral to mediation is being considered.

4. *Capabilities and Experience*

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

- mediation and/ or Dispute Resolution; and
- Aboriginal or Torres Strait Islander societies; or
- land management; or
- any other class of matters considered by the Chief Justice to have substantial relevance to the nature of the referral.

A curriculum vitae is to accompany an individual's expression of interest outlining:

- relevant experience;
- relevant specialised training,
- any limitations on the mediator's availability.

Where an expression of interest is from an organisation the organisational profile (if applicable) should describe:

- the nature of the organisation;
- the history of the organisation; and
- its most significant involvement in relevant matters.

5. Referral process

If a matter or part of a matter is to be referred to a mediator other than a member of the Tribunal or a Registrar of the Court careful consideration will be given to the views of the parties as it is preferable for the parties to agree that a particular person is an appropriate person to be able to assist them resolve their dispute. In a situation where the parties cannot agree on a person to be appointed as the mediator the Court may nominate three mediators from who the parties could select. Alternatively the Court may decide which person from amongst the nominations is to be appointed.

6. Fees

Fee rates will be contained in the written contract entered into between the Court and Mediator.

In general the approach to the question fees will be 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 via an intermittent contract;

where the Court orders that a mediator be appointed for a particular issue or event – for example the resolution of an intra Indigenous dispute or a particular factual issue that if resolved will enliven the mediation proper, then the Court will generally appoint the mediator and pay them at a rate referable to the per diem rate of a member of the National Native Title Tribunal; and

where the Court wishes to appoint a prominent person for the purpose of, for example, an evaluation of a claim or a particular legal or factual issue, the Court will generally appoint the person and pay them at a fee no more than the daily fee of an acting Supreme Court Judge, as set by the NSW Statutory and other Offices Remuneration Tribunal.

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