

Native title list of mediators

Tabled Document 4

By: Federal Court of Australia

Date: 18/10/10

Introduction

During the first half of 2010 the Court wrote to a number of people and organisations to advise them of the Court's intention to compile a list of mediators to be available to parties in the proceedings and the Court, to assist in the management of native title work.

By way of background, in September 2009 the Parliament's amendments to the *Native Title Act 1993* placed with the Court a clear responsibility for managing all aspects of native title proceedings, including the opportunity to refer a matter to mediation before a person or body other than the National Native Title Tribunal (the Tribunal) or a Registrar of the Court.

The Court welcomed this opportunity and has given careful consideration to the practicalities of the process to be used to identify, select and appoint an appropriate mediator.

The list of mediators

In this context the Court called for expressions of interest from people who asserted suitable qualifications and experience as a mediator so that a list of names could be compiled and made available by the Court for reference when considering the referral of a matter or part of a matter to a mediator (other than a member of the Tribunal or a Registrar). This list might also be supplemented by the Court's or the parties' own consultation to identify other persons suitable for appointment.

Potentially interested people were provided with an Expression of Interest document which set out the process for inclusion on the list.

Amongst other things the expression of interest document provided that:

- the selection of a mediator for inclusion on the list does not create a contract between the mediator and the Court; and
- 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.

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.

Referral process

The referral and appointment process in any matter will be ultimately a matter for the Court. A matter or part of a matter may be referred by order of the Court to a mediator other than a member of the Tribunal or a Registrar the Court following the request of a party to a proceeding or at the Court's own initiative. The Court will invite the parties to view the list and nominate a preferred mediator. 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 the appropriate person to assist them to 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.

Fees

In general the approach to payment of fees will be as follows:

- fee rates will be contained in the written contract entered into between the Court and Mediator;
- 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, 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, 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 fixed by the Federal Remuneration 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.

Native title list of mediators

Title ↕	First Name ↕	Last name ↕	State ↕	Expertise in:			
				Mediation / ADR ↕	Aboriginal & Torres Strait Islander Societies ↕	Land Management ↕	Accreditation ↕
Mr	Warwick	<u>Baird</u>	NSW	Yes	Yes	Yes	
Ms	Toni	<u>Bauman</u>	ACT	Yes	Yes		
Mr	Dominic	<u>Beckett</u>	NSW		Yes		
Ms	Sarah	<u>Blake</u>	NT	Yes	Yes		Yes
Mr	Robert	<u>Blowes SC</u>	ACT	Yes	Yes	Yes	Yes
Mr	Greg	<u>Booth</u>	NSW	Yes	Yes		Yes
Mr	David	<u>Bryson</u>	VIC	Yes	Yes		Yes
Mr	Adam	<u>Butt</u>	NSW	Yes			Yes
Mr	John	<u>Campbell</u>	QLD	Yes			Yes
Mr	Philip	<u>Carr</u>	NSW	Yes			
Ms	Catherine	<u>Cashen</u>	SA	Yes	Yes		
Mr	Graham	<u>Castledine</u>	WA	Yes	Yes	Yes	Yes
Assoc. Prof.	Patrick	<u>Cavanagh</u>	QLD	Yes	Yes		Yes
The Hon.	Fred	<u>Chaney AO</u>	WA	Yes	Yes		
Ms	Ann	<u>Daniel</u>	VIC		Yes	Yes	
Mr	Ian	<u>De Lacy</u>	VIC	Yes			Yes
Prof.	Mick	<u>Dodson AM</u>	ACT	Yes	Yes		

Title ⬇	First Name ⬇	Last name ⬇	State ⬇	Expertise in:			
				Mediation / ADR ⬇	Aboriginal & Torres Strait Islander Societies ⬇	Land Management ⬇	Accreditation ⬇
Ms	Jennifer	<u>Scott</u>	NSW	Yes			
Prof.	Tania	<u>Sourdin</u>	NSW	Yes	Yes		Yes
Ms	Alison	<u>Stenmark SC</u>	NSW	Yes			Yes
Mr	John	<u>Thurtell</u>	WA		Yes	Yes	
Mr	John	<u>Waters</u>	NSW		Yes	Yes	
Ms	Joan	<u>Welsh</u>	QLD	Yes	Yes		
Mr	Michael	<u>Whelan</u>	NSW	Yes	Yes	Yes	Yes
Ms	Kerry	<u>Willis</u>	VIC	Yes			Yes

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