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13 September 2019

By email: johnson.katherinep@gmail.com

Dear President Walker and President Boule,

I am writing to let you and your colleagues know about the intention of the Federal Court of Australia to review and update its list of suitably qualified mediators to assist the Court in the management of its native title work.

In doing so, I also extend to you and your colleagues an invitation to review the requirements for this role and where appropriate, express an interest in joining this list.

In September 2009, the Parliament's amendments to the *Native Title Act 1993* placed with the Federal 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. Further legislative amendments were made in 2012 that had the effect of transferring all mediation functions associated with native title claim applications to the Court effective from June 2012.

While the Judicial Registrars - Native Title now conduct most mediation of native title matters, on occasion there is need to engage an external mediator to conduct or co-facilitate mediation. The Court therefore maintains a list of appropriately qualified professionals that will be periodically reviewed to remain current. The list might also be supplemented as a result of Court or parties' consultation to identify other persons suitable for appointment.

Further information in relation to the EOI for the Native Title Mediator List is attached (A1) to this correspondence. If you or your colleagues are interested and qualified to assist the Court in this very important aspect of its work, I invite you to read and complete the attached Expression of Interest document (A2).

Please email your expression of interest to Judicial Ms. Laurelea McGregor, Judicial Registrar-Native Title at laurelea.mcgregor@feddcourt.gov.au by 1 November 2019. Ms. McGregor can be contacted on (08) 9268 7128 should you have any questions.

Yours sincerely

Warren Soden
Chief Executive Office and Principal Registrar

Attachment B

A1

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 1 November 2019 and it is hoped that the list can be updated during December 2019.

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.

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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.

Contact Person

Laurelea McGregor

Judicial Registrar Native Title

laurelea.mcgregor@fedcourt.gov.au

**Federal Court of Australia
Application Form
Native Title List of Mediators**



PART 1: PERSONAL DETAILS

Name:

Address:

Telephone

Email:

Occupation:

Current Employer:

Referee name and
contact details:

Do you wish to identify as Aboriginal and/or Torres Strait Islander? Yes No

PART 2: EXPERIENCE & TRAINING

a) Mediation Experience

My record

Please or complete box as appropriate

Since 1 January 2015, I have gained mediation or ADR experience as a:

Number of Hours
(approximately)

mediator

co-mediator

observer

experience in other role relevant to mediation. Please specify:

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Please briefly describe the types of mediations you have conducted (*up to 50 words*)

and/or

Please describe any native title mediation experience you have gained since 1 January 2015 and the number of hours (approx). Eg, as a mediator, co-mediator, observer or any other relevant experience

b) Practiced as a legal practitioner, registrar or judge in a relevant area of law since 1 January 2015

- Since 1 January 2015, I have practiced as a: Duration:
- Legal Practitioner
- Registrar
- Judge

please provide details of your employer, jurisdiction and any other relevant information

c) Evidence of training and education

Complete i) or ii) as evidence of your initial training in mediation and attach certification

Please or complete box as appropriate

- i) *Tick box* I have completed one of the following mediation training courses in Year of course
the year indicated:

- Dispute Resolution Institute– 4 or 5 days
- ADP Bond University

- ii) I have completed a mediation training course by another provider :

Name of course:

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Name of provider: _____

Number of hours: _____

Year Completed: _____

d) National Mediator Accreditation

- I am **currently** accredited under the National Mediator Accreditation System (attach evidence)
- I have **never** been accredited under the National Mediator Accreditation System.
- I have previously been accredited but have not sought re-accreditation
- I have previously been accredited and I have completed some or all CPD requirements to enable re-accreditation

PART 3: FAMILIARITY WITH NATIVE TITLE

Please provide a response to demonstrate the following:-

a) Awareness of issues unique to native title mediation

b) Knowledge of issues currently facing Indigenous Australians

c) Any other relevant experience pertaining to indigenous dispute resolution or agreement making

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d) Do you have any issues of potential conflict?

I certify that the content of this application is true and correct to the best of my knowledge

Signed: _____ Date: _____

Name:
(printed) _____

**Scan and send as a PDF attachment to
laurelea.mcgregor@fedcourt.gov.au
together with a recent copy of your curriculum vitae.**