

Section 31(3) Mediation

Participant Information

Purpose of this document

This information sheet outlines what to expect when participating in mediation provided by the National Native Title Tribunal (NNTT) under section 31(3) of the *Native Title Act 1993* (Cth) (the Act).

It explains the purpose, principles and confidentiality of the process so that all parties can participate openly, respectfully and effectively.



What is section 31(3) mediation?

Mediation is a voluntary negotiation process facilitated by the NNTT to assist parties in reaching agreement about a proposed future act.

The mediation provides an opportunity for the parties to meet, discuss the issues, and explore ways to move forward collaboratively. The mediator manages the mediation process, including determining who may participate. A party may elect to have a lawyer represent them at the mediation, subject to the mediator's approval. Any support person or other representative may also attend with the mediator's approval.



Goals of mediation

The NNTT provides mediation as a forum for parties to attempt to resolve matters, or narrow the issues in dispute, in a timely, respectful and economical process.

The mediation will be conducted by a Tribunal Member or an NNTT officer (the mediator). The mediator will facilitate structured discussions between the parties to assist them to identify issues and options for resolution.



Karlu Karlu Country, Devils Marbles, Northern Territory.



Confidentiality – a core principle

Confidentiality is central to effective mediation and will be protected to the extent that the law allows. It ensures parties can communicate with one another freely, in good faith and without concern that their communications will later be used against them.

All discussions, documents generated for the purpose of the mediation, and conduct during mediation are to be treated as confidential and must not be disclosed outside the mediation process, except in the limited circumstances below.

Good faith disclosures

Information from the mediation may be shared with the Tribunal Member presiding in a future act determination Inquiry (section 35 of the Act) only if it is required to establish whether a party has failed to negotiate in good faith. This may include, without limitation, all materials generated or received during the mediation.

Additional permitted disclosures

Information from the mediation may only be shared:

- where all parties agree to its disclosure
- where necessary to seek instructions, obtain legal or other advice, or to comply with consultation or consent provisions under the *Native Title (Prescribed Body Corporate) Regulations 1993* (Cth) or
- where otherwise required by law.

Media and social media communication

Unless every party agrees in writing, no party is to make any public comment or statement about the mediation – whether to traditional media (such as television, radio, print or online news) or on social media platforms (such as Facebook, Instagram, X/ Twitter, LinkedIn or similar).

No recording

Audio or video recording of any part of the mediation is strictly prohibited unless expressly authorised in writing by all parties and the NNTT.

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Expectations of participants

Parties are expected to:

- ✓ negotiate in good faith
- ✓ participate respectfully and allow all parties to be heard
- ✓ attend with appropriate authority to make decisions or obtain instructions promptly
- ✓ comply with agreed timeframes, directions and scheduling arrangements
- ✓ make reasonable efforts to progress discussions and
- ✓ ensure any new representatives are appropriately briefed.



Mediation format and sessions

The mediation process may include initial single-party sessions between the mediator and individual parties, as well as joint sessions with all parties present.

The structure and number of sessions will depend on the circumstances of the matter and the needs of the participants. Multiple mediation sessions may be scheduled:

- at the request of the parties or
- on the mediator's assessment that additional sessions are required to support progress toward agreement.

Mediations are facilitated via video on Teams however, at the request of parties, the NNTT may facilitate in-person mediations. Please contact the case manager if you would like to discuss the provision of an in-person mediation.

Notification of attendees and support people

Parties must inform the NNTT in advance of all individuals who will attend or observe, including any support persons, advisors or technical staff. No additional participants may join without the prior agreement of the parties and the NNTT.

Commencement of mediation

Please ensure you arrive on time for the mediation. At the start of the mediation, the mediator may hold a brief one-on-one meeting with each party to confirm attendance, explain the process and address any immediate procedural matters.



Provision of documents

To assist the process, parties should provide the NNTT, in a timely manner, with copies of any draft agreements or documents relevant to the discussions.



Summary of participation and outcomes

Following each mediation session, the NNTT will circulate a brief written summary to all parties. This summary will:

- confirm which parties and representatives participated
- note any agreed actions, next steps or outcomes (as confirmed by the parties) and
- record any future scheduling arrangements.

The NNTT does not provide transcripts or minutes of mediation sessions. Parties are encouraged to keep their own records.



Termination of mediation

The NNTT will make ongoing assessments as to the willingness of participants to engage in the process of mediation and their capacity to reach an agreement.

The NNTT may terminate the mediation if it considers that it is unlikely to assist the parties in reaching agreement about the proposed future act, or if the parties are no longer willing to engage.



Summary of commitments

By participating, all parties agree to:

- ✓ engage in the process in good faith
- ✓ maintain confidentiality at all times
- ✓ make reasonable efforts to progress negotiations efficiently and
- ✓ uphold respectful and culturally appropriate communication throughout the process.

Future Acts Information Sheet Series

For further information:

Contact: your NNTT case manager

Email: enquiries@nntt.gov.au

Or visit: www.nntt.gov.au/future-acts/future-act-mediation

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