

ATTORNEY-GENERAL'S DEPARTMENT

Legal Assistance Branch

Native Title Practitioners Panel

The Legal Assistance Branch of the Attorney-General's Department is required to provide effective and efficient financial assistance to persons in accordance with section 183 of the Native Title Act 1993, and also in accordance with the Guidelines for the Provision of Financial Assistance by the Attorney-General in Native Title Cases (the Guidelines).

To assist in achieving that objective, a panel of practitioners (both legal and non-legal) has been established to provide services in Native Title matters pursuant to paragraph 7.10 of the Guidelines. Unless a practitioner is a member of this panel he/she will not be eligible for payment on behalf of assisted persons. Accordingly, the Attorney-General's Department invites expressions of interest from practitioners (legal and non-legal), firms and incorporated practitioners in having their name included on the panel.

Pursuant to the Guidelines, the following information relevant to those applications is provided:

1. **Qualifications:** applicants must have relevant adequate professional qualifications. In the case of legal practitioners they must be admitted as practitioners of a Supreme Court of a State or Territory and hold a current practising certificate.
2. **Experience:** applicants either must have practised in the Native Title area before one or more of the following: the National Native Title Tribunal, Federal Court, High Court or a State/Territory Supreme Court, or have been admitted as a practitioner for at least three years and preferably have had previous experience (and performed satisfactorily) in legally assisted cases.
3. **Period of appointment:** up to three years.
4. **Payment:** in accordance with standard rates of payment set out in the Guidelines.

The Legal Assistance Branch may decide applications on the basis of the material submitted. However, Legal Assistance Branch reserves the right to interview some applicants should it choose to do so. Appointments to the panel will be made by a committee established within Legal Assistance Branch. The committee's decision will be final and binding on all practitioners who express interest.

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SELECTION CRITERIA

The Native Title Practitioners Panel established by the Legal Assistance Branch of the Attorney-General's Department will be selected from those practitioners who express interest in appointment to the panel according to the following criteria:

1. Demonstrated experience and competence as a practitioner (legal and non legal) in native title matters.
2. Demonstrated knowledge of native title law.
3. Previous experience in financially assisted native title proceedings and demonstrated willingness to assist the Legal Assistance Branch achieve its statutory and non statutory objectives.
4. The quality of the services provided by the practitioner in those previous financially assisted matters as assessed by Legal Assistance Branch.
5. Reputation or standing within the profession as assessed by Legal Assistance Branch.
6. Demonstrated capacity to deal with other practitioners and NNTT/Federal Court representatives in a co-operative manner designed to achieve effective and efficient outcomes in financially assisted cases.
7. Willingness to represent financially assisted clients on the basis of Legal Assistance Branch's performance standards, fee structures and so on outlined in the material enclosed with the information kit and in accordance with the Native Title Guidelines.
8. Demonstrated capacity to provide services which satisfy reasonable client expectations.

Attorney-General's Department

Legal Assistance Branch

**PERFORMANCE STANDARDS AND REPORTING AND RECORD
REQUIREMENTS FOR NATIVE TITLE PRACTITIONERS PANEL**

1. The practitioner shall use his or her best endeavours to assist the Legal Assistance Branch to achieve its statutory and non statutory objective to provide effective, economic and efficient financial assistance for persons at a reasonable cost.
2. The practitioner shall familiarise himself or herself with the provisions of and act in accordance with the Guidelines for the Provision of Financial Assistance by the Attorney-General in Native Title Cases.
3. The practitioner shall hold, if a lawyer, a current practising certificate or, if some other professional, appropriate practising certificates.
4. The practitioner shall comply with all of his or her duties to the financially assisted client and the National Native Title Tribunal and the Court.
5. The practitioner shall comply with all of his or her ethical or professional obligations under statutory requirements or obligations imposed by his or her recognised professional association.
6. The practitioner shall deal with matters for financially assisted clients effectively, economically and efficiently in a timely manner. This requirement means that, as a general principle, the practitioner will focus on those elements of the case which are likely to lead to a successful outcome to the exclusion of peripheral or insignificant issues and, in the case of litigation, will only conduct defences with a reasonable prospect of success.
7. The practitioner shall respond promptly to any request from the Legal Assistance Branch for information or advice about a financially assisted matter or any complaint relating to a financially assisted matter.
8. The practitioner shall immediately advise the Legal Assistance Branch of any information which comes to his or her attention which gives rise to any doubt about the client's eligibility to receive financial assistance.
9. The practitioner shall maintain an up-to-date knowledge of native title law and shall, on request, advise the Legal Assistance Branch of continuing legal education activities undertaken.
10. The advocate shall, on request, give the financially assisted client or Legal Assistance Branch a realistic assessment of the likely outcome of the client's case.

11. The practitioner shall, on request, advise of his or her plan for the conduct of a financially assisted case including details of witnesses to be called and an outline of argument.
12. The practitioner shall use his or her best endeavours to co-operate with other parties in a timely manner to establish the issues which are in dispute and to be determined either before the National Native Title Tribunal or at a hearing.
13. The practitioner shall advise details of the outcome of a financially assisted matter immediately after the conclusion of the case or any significant step or proceeding in the case.
14. The practitioner shall provide written advice about the legal merits of an appeal against a decision at first instance. That advice shall contain details of the proposed grounds of appeal.
15. The practitioner shall promptly render accounts for financially assisted services.
16. The practitioner shall maintain such records of advice given to financially assisted clients and such records of the conduct of financially assisted cases as accord with good practice by members of the practitioner's recognised professional association.
17. The practitioner shall assist the Legal Assistance Branch (if required) to conduct surveys or make other enquiries of financially assisted clients to ascertain their views about the quality of service provided to them.
18. The practitioner shall notify the Legal Assistance Branch immediately of any serious complaint made to the practitioner by a financially assisted person concerning the manner in which the practitioner is conducting or has conducted that client's case.
19. The practitioner shall notify the Legal Assistance Branch immediately of any complaint made against the practitioner arising out of a financially assisted matter to the Ombudsman (if any) or the practitioner's recognised professional association.
20. The practitioner shall comply with any variation or addition to these performance standards and reporting and record requirements notified to him or her from time to time.
21. The practitioner acknowledges placement confers a preferred status as a member of the Native Title Practitioners Panel. The practitioner shall not act in a manner which is inconsistent with that appointment.

Attorney-General's Department

Legal Assistance Branch

**STATEMENT OF GROUNDS FOR REMOVAL FROM NATIVE TITLE
PRACTITIONERS PANEL**

A practitioner may be removed from the panel in any of the following circumstances:

1. The practitioner commits a serious breach (as determined by the Legal Assistance Branch) of the performance standards and reporting and record requirements for the Native Title Practitioners Panel ("the performance standards"). A serious breach would include:
 - a breach of the practitioner's duty to the client or to the Court
 - acting in a manner which is contrary to or inconsistent with s.183 of Native Title Act 1993 or the Guidelines for the Provision of Financial Assistance by the Attorney-General in Native Title Cases
 - a serious breach of the performance standards and reporting and record requirements which is not capable of remedy by the practitioner
 - loss or non-renewal of practising certificate or other professional requirement
 - a finding of misconduct against the practitioner by a recognised Legal Profession Tribunal, or other professional tribunal
 - demonstrated unwillingness to assist Legal Assistance Branch to achieve its statutory and non statutory objectives.
2. The practitioner commits a breach or persistent breaches of the performance standards which continues or continue after Legal Assistance Branch has given the practitioner notice of the breach or breaches and required him or her to cease that breach or those breaches.
3. The practitioner provides poor quality of work or advice as determined by Legal Assistance Branch.
4. Any information supplied by the practitioner in support of his or her appointment to the panel is found to be inaccurate or false.
5. The practitioner applies to have his or her name removed from the panel by notice in writing to Legal Assistance Branch.
6. The practitioner appointed to a Tribunal or court on a full time basis with the result the practitioner ceases to practice as a solicitor, barrister or other profession.

The process for removal from the panel is as follows:

1. Legal Assistance Branch will give the practitioner written notice of the ground for removal alleged against him or her.
2. The practitioner will have seven days in which to lodge a written submission responding to the notice and containing such other information as the practitioner considers appropriate.
3. Legal Assistance Branch will consider the explanation provided by the practitioner.
4. Legal Assistance Branch will, if so requested, specify a time (being not more than 30 days after Legal Assistance Branch receives the request) and place at which it will hear the practitioner in support of his or her response to the notice.
5. If there is a delay in finalising the process for removal in any particular case which is not caused by Legal Assistance Branch, Legal Assistance Branch may suspend the practitioner from the panel until a decision is made.
6. If Legal Assistance Branch decides to remove a practitioner from the panel, that decision takes effect immediately unless Legal Assistance Branch specifies a later date.