



## FEDERAL COURT OF AUSTRALIA

### NATIVE TITLE

### ON COUNTRY HEARING PROTOCOL

### FOR PARTIES

The holding of a hearing or part of a hearing on country is a matter for the Court to decide in the exercise of its discretion.

The Court appreciates the burden an on-country hearing place on parties, legal representatives, local communities and resources. The Court seeks to work in partnership with people, and with responsible native title representative bodies, to run orderly, efficient, culturally respectful and appropriate, and cost-effective on country hearings.

This protocol applies to all parties involved in an on country hearing including any consent determination.

### Protocol

- 1 Parties should agree a case specific on country hearing timetable and procedure in advance of the on country hearing in consultation with the Native Title Registrar responsible for the matter.
- 2 The case specific on country hearing timetable and procedure should include information for the Court about:
  - (a) the manner at which and locations and times at which evidence will be given;
  - (b) proposed orders to address general or site specific cultural concerns;
  - (c) requirements for interpreters (see point 3 below);
  - (d) safety and comfort requirements at different areas and sites including:
    - available methods of communication for emergencies;
    - level of accessibility;
    - availability of toilets;
    - footwear;
    - dress;

- shade;
  - food and water.
- (e) cultural requirements at different areas and sites including:
- conduct of and participation in any welcome ceremony, and the position of all parties about any welcome ceremony;
  - gender restrictions or concerns;
  - public attendance or not;
  - numbers permitted;
  - dress requirements;
  - permissibility of video recording, photographs and other forms of recording both generally and at specific sites by parties, news outlets and members of the public;
  - media coverage requests and requirements; and
  - other requirements (eg no touching, no picking, no collecting); and
- (f) such other requirements as may be identified by the parties, the Native Title Registrar or the judge.
- 3 Parties should give early consideration should be given to the need for interpreters and practitioners should be informed by the Native title Registrar responsible for the matter about the Recommended National Standards for Working with Interpreters in Courts and Tribunals (Recommended Standards). If interpreters are required for any witnesses and/or parties, parties should ascertain whether certified interpreters are available, the method of interpreting to be adopted, the equipment and facilities required by the interpreter(s), and the impact that the need for evidence to be interpreted is likely to have upon the duration of the trial. The expectation is that if certified interpreters are available, those at the highest level of certification should be engaged if reasonably practicable. If certified interpreters are not available in the language concerned, the matter should be raised early in the preparation of the matter for trial so as to best ensure the accuracy of interpreting by the untrained bilingual: e.g. by the provision of a professional mentor (Recommended Standards at 57).
- 4 Any difficulties with the proposed procedures should be resolved well before the on country hearing. In this regard, parties should apply for orders (agreed or in

dispute) required for the orderly, efficient, culturally respectful and appropriate, and cost-effective conduct of the on country hearing in a timely manner.

Date: 22 June 2021

Chief Justice of the Federal Court of Australia