



Australian Government
Attorney-General's Department

**SERVICE DELIVERY DIRECTIONS
FOR THE DELIVERY OF LEGAL ASSISTANCE TO
INDIGENOUS AUSTRALIANS
INDIGENOUS LEGAL ASSISTANCE AND
POLICY REFORM PROGRAM**

Effective from July 2011

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1. Introduction

Service Delivery Directions

1.1 You are required to comply with these Service Delivery Directions in providing the Activity under the Indigenous Legal Assistance Sub-program of the Indigenous Legal Assistance and Policy Reform Program (LAPR). These Service Delivery Directions may be amended by us from time to time to reflect changes in Eligible Client needs and policy priorities.

Terminology

1.2 Please refer to the Glossary of Terms document for guidance on the meanings of capitalised terms used in these Service Delivery Directions.

2. Indigenous Legal Assistance

2.1 The Indigenous Legal Assistance Sub-program supplements the legal assistance services and early intervention and prevention initiatives that the States and Territories provide to their residents. Indigenous Legal Assistance includes both Legal Services and Related Services as defined in these Service Delivery Directions. Indigenous Legal Assistance must be delivered in accordance with the priorities set out in [section 4](#) of these Service Delivery Directions and all other provisions of these Service Delivery Directions.

Areas of Practice

2.2 You may provide Legal Services and Related Services to Eligible Clients in the following areas of practice:

- a. criminal law,
- b. family law, and
- c. civil matters.

Provision of Legal Services

2.3 The following Legal Services are to be provided:

- a. legal advice or information that is not provided as part of Casework Matter or Duty Matter services. This includes the provision of a free-call telephone advice service, referrals, preliminary assistance, the writing of short letters and the completing of forms (**Advice Matters**),

- b. attendance at court and receipt of initial instructions by a lawyer. This includes all mentions, guilty pleas, applications including for bail, or adjournments performed on a duty lawyer basis, or where the matter is completed on the same day. Where a lawyer appears on a matter as a duty lawyer and it is not completed on the same day the matter should be recorded as a Casework Matter (**Duty Matters**), and
- c. ongoing legal services in relation to a particular legal problem, such as conducting a defended hearing. It is not necessary that the matter involve litigation; a Casework Matter may also be the provision of detailed legal advice or the negotiation of a claim for or against the client. This does not include a test case (**Casework Matters**).

2.4 You must allocate the appropriate level of resources to each Advice Matter, Duty Matter and, Casework Matter having regard to:

- a. the complexity of the matter,
- b. the potential consequences for the Eligible Client,
- c. whether the Eligible Client is a Priority Client, and
- d. the relative needs of other Eligible Clients for whom you are providing Legal Services.

2.5 You must undertake the Related Services in accordance with your Service Plan and the Reporting Requirements.

Related Services

2.6 The following Related Services may also be provided under the Indigenous Legal Assistance Sub-program:

Component	Description
Advocacy and law reform	Activities that support the advancement of the legal rights of Indigenous Australians. This can include policy development that identifies laws, policies and practices, particularly in relation to incarceration, policing, family violence, the needs of youth and the interaction between justice services and other services that impact adversely and disproportionately on Indigenous Australians.
Community legal education	Activities which provide information and education to advance and protect the rights of Indigenous Australians under Australian law.

Prevention and early intervention

Activities which divert Indigenous Australians from the criminal justice system.

2.7 In providing the Related Services, you must liaise with State and Commonwealth government agencies as required and provide an Indigenous view of justice issues.

Expensive Indigenous Case Fund

2.8 The Indigenous Legal Assistance Sub-program includes the Expensive Indigenous Case Fund. Expensive court cases may place a significant burden on the budgets of funded providers of Legal Assistance to Indigenous Australians which can adversely affect the provision of those services. The Expensive Indigenous Case Fund assists in addressing this problem.

Further details in relation to the Expensive Indigenous Case Fund can be found below at [section 5](#).

Servicing Clients in Regional and Remote areas

2.9 In providing Indigenous Legal Assistance you must pay special attention to the needs of Indigenous Australians from regional and remote areas not serviced by mainstream legal assistance providers.

2.10 With overall resources limited, a balance will need to be struck between considerations of accessibility and cost. Outreach arrangements using field officers (sometimes known as court officers), have been shown to be an effective method of reaching people in need, particularly in remote locations. You must include strategies in your Service Plan, to meet the needs of Indigenous Australians at the community level, and address any disadvantages that may result from remoteness or language difficulties.

Service Standards

2.11 You must ensure that Indigenous Legal Assistance is delivered in the most efficient and effective manner possible, is of high quality, and delivered in accordance with the Service Standards.

Confidentiality

2.12 Subject to any disclosure requirements you may have under a funding agreement, you must ensure that all information relating to an Eligible Client seeking assistance is kept confidential unless the Eligible Client consents in writing to the disclosure of that information. These confidentiality requirements apply to all of your Personnel and to the members of the review panel described in [section 13](#) of these Service Delivery Directions.

3 Eligibility Criteria

3.1 You must only provide Indigenous Legal Assistance to Indigenous Australians or Indigenous Groups, unless the requirements for assistance to a non-Indigenous Australian or group (set out below at paragraph 3.6) are met.

3.2 The term ‘Indigenous Australian’ means:

- a. an Australian Aboriginal,
- b. a Torres Strait Islander, or
- c. both.

3.3 It also includes all cognate forms of these expressions, such as ‘Aborigine’, ‘Aboriginal person’, ‘Aboriginal people’, ‘Islander’, and so on, depending on the relevant context.

3.4 You must comply with the guidelines contained in Appendix B to these Service Delivery Directions in determining whether a person is an Indigenous Australian.

3.5 Where you refuse to provide the Legal Services to a person on the basis that the person is not an Indigenous Australian, you must advise the person of your Review Procedure, as referred to in [section 13](#) of these Service Delivery Directions.

3.6 Assistance may be provided to a non-Indigenous Australian or group, where it can be shown that:

- a. all other requirements set out in these Service Delivery Directions are met, and
- b. the provision of the assistance is of direct and substantial benefit to one or more Indigenous Australians or Indigenous Groups, and
- c. the provision of the assistance is not otherwise available from another legal aid provider within the jurisdiction.

3.7 Where you provide assistance you must document your reasons for doing so, including details of the assessed direct and substantial benefit to an Indigenous Australian or Indigenous Group.

3.8 You must not refuse to provide assistance to an Eligible Client solely on the grounds that the matter involves another Indigenous Australian or Indigenous Group.

3.9 Conflicts of interest must be managed in accordance with [section 9](#) of these Service Delivery Directions.

3.10 Subject to [section 4](#) of these Service Delivery Directions, and to the other relevant provisions of these Service Delivery Directions, you must ensure that assistance is made available to Eligible Clients without discrimination in accordance with all relevant laws.

Subsequent Assessment Processes

3.11 An assessment that a person, group or body meets the eligibility criteria outlined in [section 3](#) of these Service Delivery Directions does not mean that you must provide assistance to that person, group or body. Your decision will be made following assessment against the criteria set out in [section 4](#) of these Service Delivery Directions below and to the outcomes of the Means Test set out in [section 7](#) of these Service Delivery Directions.

4 Criteria for Determining Provision of Assistance

4.1 In determining whether assistance will be provided you must apply the criteria listed below.

Preliminary

4.2 Assistance should normally not be provided where:

- a. the Eligible Client is likely to be able to resolve the matter with assistance available to the Eligible Client from another organisation or entity (eg Consumer Affairs, Ombudsman),
- b. a resolution is likely through a simple procedure and the Eligible Client is reasonably able to pursue the claim or matter without assistance from you (eg proceedings in the Small Claims Court or similar, child support officer review procedure, social security reviews including appeals to the Social Security Appeals Tribunal),
- c. it is more appropriate for the Eligible Client to obtain expert assistance from elsewhere (eg from the Disability Discrimination Service, Welfare Rights Service, Credit Law Service, Tenancy Service etc) and such expert assistance is available to, and readily accessible by, the Eligible Client, and
- d. the Eligible Client can finance the assistance required through other means without suffering hardship.

4.3 This does not mean that you must refer an Eligible Client to a Legal Aid Commission or a Community Legal Centre where the Eligible Client wishes to engage you to provide assistance.

Priority Clients

- 4.4 You must give priority to Priority Clients when:
- a. providing Indigenous Legal Assistance Services, and
 - b. considering requests to provide Indigenous Legal Assistance Services.
- 4.5 A Priority Client means an Eligible Client who:
- a. is, or is likely to be, detained in custody, or
 - b. faces a real risk to his or her physical, cultural or personal well-being, or
 - c. is a family member of a person who died in custody, and who is seeking representation at an inquiry into the death, unless other appropriate assistance is readily available for that person, or
 - d. would be significantly disadvantaged were assistance not provided.

Criminal matters

- 4.6 Generally, for criminal matters, the following should be taken into account:
- a. whether assistance is necessary to ensure as far as possible that an Indigenous Australian is not detained in custody, or
 - b. whether in light of relevant factors (including the seriousness of the offence and the likely penalty on conviction etc) the Eligible Client is likely to be advantaged by the provision of the Indigenous Legal Assistance Services.
- 4.7 Assistance should not normally be provided unless one of the following results would occur:
- a. imposition of a custodial sentence,
 - b. loss of the Eligible Client's livelihood, or
 - c. imposition of a penalty which would cause substantial hardship to the Eligible Client.

Plea of guilty / not guilty

- 4.8 Assistance should not normally be provided for a plea of 'not guilty' unless there is a reasonable prospect that the charge may be dismissed. In the absence of a reasonable prospect of dismissal, assistance should normally be limited to a plea of 'guilty'.

Traffic prosecutions, exceeding prescribed concentration of alcohol and driving under the influence

- 4.9 Assistance should not normally be provided for these types of matters unless:
- a. a substantial civil claim may arise or be affected by the outcome of the proceedings,
 - b. conviction may result in a custodial sentence (having regard to all the circumstances, including prior convictions),
 - c. conviction may result in loss of employment or substantial hardship to the Eligible Client, or
 - d. there is a reasonable prospect of avoiding these results or reducing the penalty.

Civil matters

- 4.10 In civil matters as a general rule, assistance should not be provided unless:
- a. the Eligible Client has reasonable prospects of success in the matter (including whether there are reasonable prospects of recovering the amount of any judgment from the other party),
 - b. the cost of providing assistance is justified in view of the likely benefit to the Eligible Client, or
 - c. engaging a private external legal service provider on a deferred payment basis would cause hardship to the Eligible Client.

4.11 If the requirements set out in paragraph 4.10 are satisfied, you should investigate the matter and report to the Eligible Client about the likely outcome of the matter.

- 4.12 Assistance should not be provided in relation to the following types of matters:
- a. commercial or business transactions,
 - b. conveyancing or the administration of deceased estates, unless these services form a necessary part of a matter for which assistance is being provided, or where there are other compelling reasons for assistance to be provided,
 - c. disputes internal to organisations, including a Service Provider, unless the Eligible Client seeking assistance, or a section of the Indigenous Australian community seeking assistance, is likely to suffer significant hardship if assistance is not provided¹,

¹ Disputes internal to organisations do not include claims for unfair dismissal or unlawful termination of employment, discrimination or compensation matters.

- d. land and sea right claims including matters under the *Native Title Act 1993* (Cth),
- e. defamation, or
- f. a claim for criminal injuries compensation, in which the Eligible Client is a respondent, under a statutory scheme where the Eligible Client's interests are likely to be adequately protected by the State or Territory.

Family law matters

4.13 Assistance should not normally be provided for family law matters unless:

- a. the Eligible Client has participated or is willing to participate with the other party in Family Dispute Resolution Services as defined in the *Family Law Act 1975* (Cth),
- b. the Family Dispute Resolution Services are unavailable (eg in Remote Australia),
- c. the Family Dispute Resolution Services are unlikely to be of assistance, or
- d. the Family Dispute Resolution Services are inappropriate in the particular case (eg due to violence or significant power imbalance between the parties).

4.14 Unless there are compelling reasons to the contrary, assistance should at first be limited to negotiation in an attempt to reach a settlement without the institution of legal proceedings and, if appropriate, to reach confirmation of an agreement in a legally binding form.

Divorce

4.15 Assistance should not be provided for an application for divorce unless the Eligible Client would be unable to complete the necessary steps without assistance. This might occur, for example, if the whereabouts of the respondent is unknown and an application to dispense with service upon the respondent is necessary.

Parenting orders (previously called guardianship, custody and access orders)

4.16 If the parties are in dispute, and a genuine attempt at settlement has failed, assistance may be provided if the dispute relates to a matter of substance concerning the safety or well-being of a child or the Eligible Client, or it is otherwise appropriate. Where the parties have reached an agreement, assistance may be provided in order to document the agreement in a legally binding form.

Parenting orders – variation

4.17 If an Eligible Client seeks provision of assistance in order to apply for a variation, discharge or the setting aside of existing parenting orders or the parenting order provisions of a registered parenting plan, then assistance should only be provided if the Eligible Client has reasonable prospects of success in respect of that application.

Denial of child/parent contact (previously called access)

4.18 Assistance should only be provided for an application to deny child/parent contact where, in light of all relevant factors, the Eligible Client has reasonable prospects of success in respect of that application.

Child support assessments (Child Support (Assessment) Act 1989 (Cth))

4.19 Assistance should not be provided to prepare an application for an assessment of child support under the *Child Support (Assessment) Act 1989 (Cth)* or to make an application for review to a Child Support Review Officer unless the Eligible Client would be disadvantaged if the Indigenous Legal Assistance Services were not provided.

Child maintenance (Family Law Act 1975 (Cth))

4.20 Assistance should not be provided to commence proceedings under the *Family Law Act 1975 (Cth)* for the purpose of seeking orders in respect of child maintenance unless it has not been possible to resolve the matter by negotiation, and the Eligible Client has reasonable prospects of success.

Domestic violence orders

4.21 Unless it is possible to refer the Eligible Client to a more appropriate service, assistance should be provided to an Eligible Client who seeks to obtain a domestic violence restraining order where the Eligible Client fears for their safety or for the safety of a child or another person in their care.

5 Expensive Indigenous Case Fund

Application process

5.1 Only Legal Assistance Providers funded under the Indigenous Legal Assistance Sub-program may submit applications for additional funding to us for the purposes of conducting expensive Indigenous cases in accordance with these Service Delivery Directions. We will consider the merits of any application that we receive on a case by case basis based on the requirements set out in the Program Guidelines and these Service Delivery Directions. We will notify you in writing within 30 Business Days of receiving an application whether, in our absolute discretion, we have accepted or rejected that application.

5.2 To apply for funding you must complete the Expensive Indigenous Case Fund application form available from our website, <http://www.ag.gov.au/>.

5.3 If requested by us you must give us permission to seek information regarding your application from government departments or agencies, including Legal Aid Commissions.

5.4 All information received from you which relates to your application for assistance will be treated in confidence and will not be disclosed to any other person or agency other than in accordance with an express authority by you or, where required, by law.

Additional eligibility criteria

5.5 The following criteria, in addition to the eligibility categories set out in [section 3](#) of these Service Delivery Directions, must be satisfied for a matter to be considered for assistance under the Expensive Indigenous Case Fund:

- a. the matter must fall within one of the priority categories set out in [section 4](#) of these Service Delivery Directions,
- b. the matter must be:
 - A. a criminal (indictable offence), family, or civil matter being heard in a district (or equivalent) court or higher court in Australia, or
 - B. an Australian coronial inquest, or
 - C. an appeal against a previous conviction, and
- c. the estimated cost of legal representation of proceeding with the matter must exceed \$20,000 (GST exclusive).

5.6 Applicants must provide a statement of the merits of the matter, the likely outcomes of the matter and identify alternative arrangements if the application for funding is unsuccessful.

5.7 Matters may be deemed ineligible if they:

- a. raise a question already under public discussion by Commonwealth or State or Territory Governments with a view to policy reform, and
- b. could be more appropriately resolved through negotiation, dispute resolution, mediation, conferencing, or arbitration.

5.8 If the matter falls into either of the categories described in paragraph 5.7, you must demonstrate that these options have already been undertaken and were unsuccessful in order

for us to consider the application for funding. We retain the ultimate discretion in determining which applications will be funded.

5.9 Satisfaction of the eligibility criteria in these Service Delivery Directions does not automatically qualify a matter for assistance under the Expensive Indigenous Case Fund.

5.10 A limited amount of funding is available for expensive Indigenous cases. Not all applications which meet the funding eligibility criteria will necessarily be approved. In prioritising eligible applications, we will take account of the following factors :

- a. the balance remaining in the Fund,
- b. the total number of applications for assistance from the Fund,
- c. other possible funding sources for the matter,
- d. the specific circumstances of the matter, and
- e. the expected consequence of not funding the application.

Performance measures

5.11 Performance measures and reporting requirements applicable under the Expensive Indigenous Case Fund are outlined in section 13 of the Reporting Requirements document.

Scope of assistance provided

5.12 Where we approve funding for expensive legal assistance cases, only the reasonably required costs for the completion of the matter will be considered. For example, the cost of electronic or hardcopy transcript may be reimbursed but not both. If there is a requirement to use legal representatives from the private sector, fees should be negotiated on a lump sum or fee for service basis. Limits on the type and amount of disbursements must be agreed with us in advance, with any variations negotiated and approved by us prior to you incurring additional expenses.

5.13 In assessing requested budgets for expensive case funding, the following principles in relation to legal costs will be applied:

- a. in-house solicitors' professional costs will be excluded,
- b. brief-out solicitors' professional costs must not exceed 80 per cent of the relevant scale as published by the Law Society or equivalent in the jurisdiction where the proceedings are instituted. Where there is no applicable scale, costs must be based on the scale applied by the local Legal Aid Commission in the jurisdiction, and

- c. where a client chooses to change solicitors or Counsel in the course of proceedings, the outstanding costs of their former solicitors or Counsel should be met by the client.

5.14 If you wish to pursue or contest appeals of a matter previously funded under the Expensive Indigenous Case Fund, you will need to make a separate application. We will make an assessment on each application independently, regardless of any previous application. It should not be assumed that financial assistance will be automatically granted for the new application.

Costs awarded

5.15 Approval of funding by us under the Expensive Indigenous Case Fund does not mean that we indemnify your client's costs, should your client be unsuccessful and have costs awarded against them. We will retain full discretion as to whether we will assist in meeting costs awarded against your client. Should costs be awarded in your client's favour, these costs must be repaid to us or utilised as directed by us in writing.

Payment of Funding

5.16 The payment of funding will be provided for in the Funding Agreement. The funding is subject to the terms and conditions of the Funding Agreement and any additional terms and conditions consistent with Departmental requirements on grant administration. You must seek in-principle approval of your budget from us as part of the application process.

5.17 Funding may be released in full or in stages or on a reimbursement basis at our discretion. If funding is released on a reimbursement basis, you must substantiate all expenditure and wherever possible provide copies of all relevant invoices.

6 Relationships with Other Service Providers

Co-operation with Other Legal Service Providers

6.1 You must establish a sound working relationship with all Other Legal Service Providers operating in the same geographic area, whether these are mainstream providers (i.e. Legal Aid Commissions, Community Legal Centres) or not.

6.2 You are encouraged to enter into formal agreements with Other Legal Service Providers in the interests of securing effective co-ordination of service delivery and an optimal range of the Services for Eligible Clients. The terms of these agreements are a matter for you to negotiate with the Other Legal Service Providers, but would typically make provision for:

- a. cross-referral of Eligible Clients and brief-out arrangements (subject to agreement with Eligible Clients),

- b. sharing of resources in appropriate circumstances,
- c. a co-operative approach to handling after-hours requests for emergency assistance,
- d. joint approaches to information dissemination and publicity,
- e. joint arrangements for staff development (eg cultural awareness training) and professional legal development, and
- f. periodic meetings and other forms of consultation.

Briefs to Other Legal Service Providers

6.3 You must develop procedures for briefing-out matters to Other Legal Service Providers.

6.4 You should ensure that your budget makes adequate provision for costs associated with engaging Other Legal Service Providers, when necessary.

6.5 You may enter into formal agreements with Other Legal Service Providers for an Eligible Client by maintaining a list of, or entering into Memorandums of Understanding with, Other Legal Service Providers:

- a. who are capable of providing assistance consistent with the terms of the Funding Agreement, and
- b. whose fees do not exceed those of the Legal Aid Commission in the State or Territory in which the assistance is to be provided.

Briefs to Private External Legal Service Providers

6.6 You may engage private counsel, or a private external legal service providers, for an eligible client if:

- a. the Eligible Client has qualified to receive assistance in accordance with the Means Test at [section 7](#) of these Service Delivery Directions,
- b. you cannot handle the matter internally due to:
 - A. a lack of resources,
 - B. a lack of expertise, or
 - C. a conflict of interest,

- c. sufficient funds are available to meet the costs of the brief-out, and
- d. appropriate, accessible and timely assistance is not available to the Eligible Client through an Other Legal Service Provider.

6.7 Where you brief-out assistance to a private external legal service provider, you must ensure that you first comply with [section 3](#) and [section 4](#) of these Service Delivery Directions.

Co-operation with Other Service Providers

6.8 The needs of many Eligible Clients extend well beyond the provision of legal assistance alone. In many cases, even where there may be an immediate and urgent need for the assistance, it is also important to deal with the underlying factors which gave rise to that need and which, if left untreated, are likely to recur in the future. For this reason, you are encouraged to develop close working relationships with Other Service Providers in the interests of improving the quality and range of services made available to Eligible Clients. For this purpose, ‘Other Service Providers’ include:

- a. government departments and agencies, both Commonwealth and State (eg Centrelink, State and Territory education and community services departments),
- b. medical services, mental health services, welfare and counselling services, alternative dispute resolution services, domestic violence services, early intervention and prevention services and financial counselling services, and
- c. courts, police, correctional services, detention and remand facilities and rehabilitation services.

6.9 You should make yourself known to such Other Service Providers operating in your state, territory or zone and develop co-operative arrangements designed to serve the interests of your Eligible Clients. The terms of such arrangements are a matter for you to negotiate with the other relevant service providers, but may include:

- a. arrangements for the cross-referral of Eligible Clients (subject to Eligible Client agreement),
- b. joint approaches to information dissemination and publicity, and
- c. periodic meetings and other forms of consultation.

Referrals

6.10 Where you consider an Eligible Client would be more suitably serviced by another organisation, you should refer the Eligible Client to the Other Service Provider for

assistance. You no longer have any further responsibility for that Eligible Client, and it is a 'referral' of the Eligible Client rather than a 'brief-out'.

6.11 Assistance delivered by 'referral' will be governed by any arrangements that are put in place between you and the Other Service Provider.

Use of Agents

6.12 Where you need to employ an agent to deliver assistance to an Eligible Client (eg where part of the proceedings in a case are conducted interstate), you should first approach a Funded Service Provider with responsibility for the jurisdiction and/or geographic area in question. Only where that Funded Service Provider is unavailable to serve as agent in the case, should you approach an Other Legal Service Provider or private external legal services provider.

7 Means Testing and Client Contributions

7.1 The strong growth in demand for Legal Services requires that the limited resources available for this purpose should be directed to those applicants in greatest need of assistance. Reflecting their high levels of socio-economic disadvantage, most Indigenous Australians lack the means to finance their own legal assistance and rely upon publicly funded legal assistance services to meet their needs.

7.2 You must ensure that applicants for Casework Matters satisfy a Means Test in addition to meeting the other requirements contained in the Funding Agreement and these Service Delivery Directions. The Means Test is designed to identify Indigenous applicants for Casework Matters who have the personal means to finance the provision of assistance without suffering undue hardship. Depending on the results of the Means Test, applicants will be classified into one of three categories:

- a. applicants eligible to receive assistance free of charge,
- b. applicants eligible to receive assistance subject to payment of a contribution towards the cost of the assistance, or
- c. applicants not eligible to receive assistance.

7.3 An Indigenous Group will be treated as a single person/sole parent without children for the purpose of conducting the Means Test.

Form of the Means Test

7.4 The Means Test is administered in two parts:

Part A: requires the completion of a small number of questions relating to the applicant's personal circumstances and income level.

Part B: is required where applicants do not satisfy the criteria in Part A. It requires more detail about the applicant's income, assets, employment status and number of dependents.

Part A

7.5 Any applicant who only needs the Advice Matter category of the Legal Services will automatically qualify to receive that component of the Legal Services free of charge.

7.6 Any applicant who only needs the Duty Matter category of the Legal Services will also automatically qualify to receive that component of the Indigenous Legal Assistance Services free of charge.

7.7 You must ensure that all applicants for the Casework Matter category of the Legal Services are either:

- a. under 18 years of age, or
- b. whose main source of income comes from Community Development Employment Projects (CDEP) participant wages or Centrelink (or equivalent) benefits, or
- c. whose gross personal income is under \$46,000 per annum.

7.8 Any applicant who satisfies one or more of the requirements set out in paragraph 7.7 above automatically satisfies the Means Test component of the Casework Matters category of the Legal Services.

Part B

7.9 You must apply Part B of the Means Test to any applicant seeking the Casework Matter component of the Legal Services and who does not satisfy any of the three criteria set out in paragraph 7.7 above.

7.10 You must then obtain more information to enable a Means Test of income and assets to be conducted. The type of information required includes the applicant's employment status, gross weekly household income, the value of any assets held (excluding certain designated assets), and the number of people in the applicant's household who are dependent on the income reported, including maintenance dependents.

7.11 A sample application kit is provided at [Appendix A](#) to these Service Delivery Directions as a guide for the type of questions that should be asked of applicants.

Means Test of Income

7.12 The Initial Contributions Table – Income at [Appendix A](#) to these Service Delivery Directions defines for each size and type of household:

- a. the level of gross weekly household income below which the Legal Assistance Services may be provided free of charge,
- b. the level of gross weekly household income above which an applicant is not entitled to receive the Legal Assistance Services from you, and
- c. between the two income thresholds described in paragraphs a. and b. above, the level of initial contribution payable by the applicant as a condition of receiving the Services from you.

7.13 The Means Test takes into account the number of people in the applicant's household who are dependent on the income, including maintenance dependents.

7.14 A person who is financially associated to the applicant may be a relative, partner, spouse, corporation, trust or group from whom the applicant:

- a. usually receives financial support, or
- b. usually gives financial support or
- c. would be likely to obtain financial help to get legal services.

7.15 The income of any financially associated person must be declared as part of the applicant's total gross weekly household income.

Means Test of Assets

7.16 The Initial Contributions Table – Assets at [Appendix A](#) to these Service Delivery Directions defines:

- a. the level of net assets below which the Legal Services may be provided free of charge,
- b. the level of net assets above which an applicant is not entitled to receive the Legal Services from you, and
- c. between the two asset thresholds described in paragraphs 7.16a. and b. above, the level of initial contribution payable by the applicant as a condition of receiving the Legal Services from you.

7.17 Assets include land, cash, shares, debentures and other forms of investment. Assets of any financially associated person are also included, unless the applicant needs the Services because they are in dispute with that person.

7.18 Assets do not include:

- a. the house the applicant lives in, land purchased on which the applicant is building a home, or cash saved for a home purchase (as long as the contracts for building or purchase have been entered into) unless the applicant's equity in the property is more than \$146,000,
- b. household furniture and effects,
- c. tools of trade,
- d. cars, unless the applicant has more than \$16,000 equity in it, and
- e. subject to specific guidelines in family law matters, the value of any property involved for which the applicant wants legal assistance.

7.19 An applicant who is a farmer or small business operator is allowed equity in assets in the farm or business. This means that only the equity in the farm or business above the following limits is assessed in the assets test:

- a. if the applicant is a homeowner and has a financial association with another person – up to \$176,000. If the applicant does not have a financial association with another person – up to \$124,000, or
- b. if the applicant does not own their home and has a financial association with another person – up to \$264,500. If the applicant does not have a financial association with another person – up to \$212,500.

7.20 'Homeowner' refers to a person who owns or is paying off the house in which they live.

Client Contributions

7.21 You must collect an initial contribution from an Eligible Client where the Eligible Client's gross weekly household income and/or the Eligible Client's net assets exceed the contribution-free thresholds at [Appendix A](#) of these Service Delivery Directions. This applies even where the Eligible Client's gross weekly household income falls below the contribution-free threshold, but the Eligible Client's net assets exceed the contribution-free threshold or vice versa.

7.22 You may, where appropriate, negotiate terms for the payment of the Eligible Client's initial contribution.

7.23 You may require Eligible Clients to pay a further contribution toward their costs or repay all the costs incurred on their behalf if their right to property is preserved or they recover money or property as a result of the provision of the Legal Services.

Your Obligations

7.24 You must administer the Means Test in accordance with the provisions of these Service Delivery Directions and any further instructions issued by us from time to time. Specifically, you must:

- a. assist applicants for assistance in completing their application forms, where necessary,
- b. inspect the completed application forms for accuracy and completeness, requesting further supporting evidence in any cases where there is reason to doubt the validity of the information supplied, eg a Centrelink Customer Reference Number (CRN), copies of recent payslips, taxation assessments, bank or building society statements or passbooks,
- c. assess all applicants against the Part A Means Test criteria and, where applicable, against the Part B Means Test criteria,
- d. advise applicants of the outcome of their applications and of any requirements to be met before the Legal Services can be provided (eg payment of an initial contribution),
- e. provide assistance to only those applicants who satisfy the Means Test,
- f. collect initial contributions from Eligible Clients in accordance with the Initial Contributions Table – Income and the Initial Contributions Table – Assets contained in [Appendix A](#) of these Service Delivery Directions,
- g. record and report to us the contributions made by Eligible Clients under these arrangements, and
- h. apply the contributions paid by Eligible Clients to enhance the quality of the Legal Services as agreed to by you and us from time to time.

7.25 Where you are not satisfied with the validity of the information supplied by an applicant, or otherwise have reason to doubt the legitimacy of an applicant's application for assistance, you are entitled to reject the application until further evidence has been provided by the applicant which you judge to be satisfactory.

8 Recovery of Costs

8.1 You must pursue the recovery of legal costs where it is reasonable to do so. This applies whether the assistance was delivered directly by you or by another party on your behalf (eg on a brief-out basis). The general principle to be applied is that costs incurred by you should be recovered as far as it is legally and reasonably possible to do so.

8.2 Where costs are awarded in favour of an Eligible Client, you must retain the amount awarded in legal costs where you decide that it is cost effective to do so.

8.3 Where an Eligible Client is awarded a settlement of money or property in a matter in which assistance was provided or otherwise paid for by you, and the settlement includes a specific amount for the costs of that assistance, you must retain the amount awarded in legal costs.

8.4 Where an Eligible Client is awarded a settlement of money or property in a matter in which assistance was delivered or otherwise paid for by you, but the settlement does not specify an amount for the costs of that assistance, you must negotiate the payment of an appropriate contribution from the Eligible Client towards the cost of the assistance provided in light of the amounts that would usually be awarded by a court for party-party legal costs. The contribution to be made by the Eligible Client must not exceed the costs incurred by you in delivering or arranging the assistance provided, and must also take into account:

- a. any contribution already paid by the client,
- b. the outcome of the matter for the client,
- c. the client's financial position and personal circumstances,
- d. the proportion of the total settlement represented by the costs of your assistance, and
- e. any other relevant matter.

8.5 Where appropriate, you may negotiate terms for the payment of the Eligible Client's contribution.

Costs Awarded Against an Eligible Client

8.6 Where an Eligible Client assisted by you has been ordered to pay the legal costs of another party to the proceedings, you agree to consider any request, made in writing, to meet legal costs an Eligible Client is ordered to pay.

8.7 You may decide to meet all, part or none of the legal costs ordered against an Eligible Client.

8.8 You must:

- a. ensure that each Eligible Client is aware that they can make the request for you to meet their legal costs, and
- b. to the extent necessary, assist an Eligible Client to make such a request.

8.9 When assessing a request to pay legal costs awarded against an Eligible Client, you will consider the merits of the request having regard to:

- a. whether you have advised the client in writing that you will pay legal costs awarded against the Eligible Client,
- b. the Eligible Client's conduct during the proceedings,
- c. the funds available to you,
- d. the implications for the provision of assistance to other potential clients if the Eligible Client's request is granted,
- e. the Eligible Client's financial position and personal circumstances,
- f. the likelihood that the Eligible Client will face substantial hardship if you do not pay all or part of the costs, and
- g. any other matter which, in the particular circumstances of the case, you judge it relevant to take into account.

8.10 You must not agree to pay legal costs awarded against an Eligible Client where that Eligible Client:

- a. fails to provide complete and accurate instructions, or
- b. has been properly advised that the matter is likely to be unsuccessful, but gives instructions to proceed nonetheless, or
- c. has been properly advised to offer or agree to a proposed settlement, but refuses to do so.

8.11 Where the Eligible Client is required to meet part of the costs awarded, you may negotiate terms for the payment of the Eligible Client's contribution.

8.12 Where an Eligible Client requests you to provide assistance in paying the costs of another party, and the request for assistance is likely to take some time to resolve, you should apply to the court for a stay of costs order.

Use of Funds Recovered

8.13 Any funds recovered in accordance with this [section 8](#) will be retained by you and used to enhance the quality of the Legal Services delivered as agreed to by you and us from time to time. These funds must be recorded as 'Contributions' or 'Recoveries' in your Income and Expenditure Report and details supplied to us on request.

Decisions Subject to Review

8.14 All decisions taken by you under this [section 8](#) are subject to the Review Procedure according to [section 13](#) of these Service Delivery Directions.

9 Conflicts of Interest Principles

Overview of lawyers' professional responsibility

9.1 You must uphold the applicable legislation, regulations and/or practice rules relating to conflicts of interest for the State or Territory in which the Services are to be provided.

9.2 You must maintain effective procedures to identify conflicts of interest associated with your Indigenous Legal Assistance Activities and uphold your legal, professional and ethical requirements in managing any conflicts of interest that arise. Where relevant, you must also make your clients aware of the procedures for managing conflicts of interest.

9.3 Failure to adequately identify and manage conflicts of interest can have serious consequences for both lawyers and legal practices in terms of their ongoing ability to practise.

9.4 The rules relating to conflicts of interest relate to both perceived and actual conflicts of interest. This means that lawyers have a duty to avoid both *actual* and *perceived* conflicts of interest. Courts regard the appearance of bias or disloyalty on the part of a lawyer as equally damaging to the community's confidence in legal practitioners and the administration of justice.

National Legal Profession Reforms

9.5 The rules relating to the legal profession, including conflicts of interest are undergoing significant reform. A National Model Code for Solicitors is being developed as part of the National Legal Profession Reforms. If adopted, this code would replace the current state and territory rules regarding conflicts of interest.

Types of Conflicts of Interest

9.6 Conflicts of interest can be categorised into 'legal' and 'community' conflicts.

9.7 Legal conflicts of interest involve both a lawyer's duty of loyalty and duty of confidentiality to their client. These duties are part of the broader fiduciary relationship between a lawyer and their client.

- a. A lawyer's duty of loyalty means that a lawyer must always act in the best interests of the client; they cannot have regard to the interests of any other

party or to the lawyer's own personal interest. This duty generally ends with the conclusion of the professional relationship with the client.

- b. A lawyer's duty to confidentiality means that a lawyer cannot disclose confidential information obtained while representing a client. Confidential information can include both formal information about a client's legal matter as well as informal 'getting to you know' factors, such as the client's character and habits. This duty of confidentiality lasts indefinitely and can continue even after the death of a client.

9.8 There are three main types of legal conflicts of interest:

- a. conflict between a lawyer and a client (duty of loyalty),
- b. conflict between two current clients (duty of loyalty), and
- c. conflict between a former client and a current client (duty of confidentiality).

9.9 A conflict arises when a lawyer cannot fully uphold their duty of loyalty or of confidentiality to their client because they have a competing duty to another client or a personal interest in the matter.

9.10 Community conflicts of interest can be seen as a conflict between a lawyer's duty of loyalty to their client and the need to maintain good relationships with local Indigenous communities.

9.11 There are a number of situations in which community conflicts of interest might arise:

- a. a civil law matter involving two Indigenous people,
- b. a criminal law matter involving an Indigenous defendant and an Indigenous victim of crime, and
- c. a criminal law matter involving an Indigenous defendant and a key Indigenous witness who would be cross-examined as to credit.

Commitment to training lawyers about their professional obligations

9.12 You must train your staff (lawyers and non-legal staff) on the legal obligations, ethical obligations and the procedures regarding management of conflicts of interest.

9.13 This training should include:

- a. professional conduct and practice rules,
- b. establishment and maintenance of information barriers,

- c. how to explain the existence of a conflict of interest to applicants, and
- d. how to make appropriate referrals where necessary.

Client Awareness of Conflicts of Interest Management

9.14 If you have determined that there is a conflict of interest you must inform the applicant of the reason for your inability to provide representation.

9.15 You must then refer the applicant to an Other Legal Service Provider where such is available.

Conducting Conflict Checks

9.16 Where reasonable and practicable, each time a client applies for Legal Services you must:

- a. obtain the applicant's name including current, alternative and former names,
- b. obtain all other relevant details including details of the other party to the dispute, and
- c. conduct a conflict check on your client database to ascertain whether you have acted for any of the parties, and if so, record pertinent details of any such representation.

Legal Conflicts of Interest – Lawyer-Client Conflicts of Interest

9.17 You must not allow an interest of the lawyer, or an associate of the lawyer, to conflict with the client's interest.

- a. An 'interest' is generally a financial interest.
- b. An 'associate' is a very broad term. It can include:
 - A. everybody in the same law firm including solicitors, partners, non-legal staff,
 - B. the immediate family of the lawyer, and
 - C. the immediate family of a partner.

9.18 You or a lawyer employed by you cannot stand to benefit from an investment or other transaction by a client. To avoid a conflict, you and your staff must keep your own business interests and financial affairs separate from the interests of your clients.

9.19 You must not exercise any undue influence over a client for the benefit of your organisation.

9.20 If there is a conflict of interest you must not act or continue to act for a client.

9.21 In the event that an application for assistance is lodged by a close relative of a staff member or Board member of your organisation, the staff member or Board member concerned is not to be involved in any way in the determination or (if applicable) the subsequent handling of the case.

Legal Conflicts of Interest – Concurrent Client Conflict

9.22 Acting for multiple parties in the one proceeding can give rise to a conflict of interest concerning confidential information. A conflict occurs when:

- a. the lawyer receives confidential information from one of the current clients,
- b. the information is material to the other current client's matter, and
- c. the information is detrimental to the interests of the first client.

9.23 In such circumstances, you must not act or continue to act for both parties unless it is consistent with the relevant laws for the State or Territory in which the Services are to be provided.

9.24 Representing multiple parties in a proceeding should generally only occur in situations of geographical isolation where one party to an undisputed matter would otherwise be left unrepresented.

Legal Conflicts of Interest – Acting Against a Former Client

9.25 You cannot act for a new or current client if the lawyer, or another lawyer in the same firm, received confidential information from a former client and:

- a. the confidential information is relevant to the new proceedings, and
- b. it is reasonable for the former client to believe there is a real possibility that the information would be used to their detriment.

9.26 Where a conflict is identified you may only act against a former client if the former client gives informed written consent to the lawyer acting or if an effective information barrier has been established.

Community Conflicts of Interest

9.27 Aboriginal and Torres Strait Islander Legal Services (ATSILS) are community based organisations which provide legal services to community members throughout the

jurisdiction they service. In cases of serious conflict between community members or when an incident occurs that produces deep divisions within a community, ATSILS do not wish to be seen to be taking sides in the conflict by representing one side at the expense of another. In cases of serious discontent or conflict within the Indigenous community, the legal dispute between the parties in conflict, whether it takes the form of criminal charges or a civil claim should not be handled by the ATSILS' lawyer. If necessary, both sides should be referred or briefed out in accordance with these Service Delivery Directions. This ensures that the broadest number of people within the Indigenous community concerned can continue to access the services provided by the ATSILS if required.

9.28 The only circumstance in which you should decline to provide services to an eligible person on the grounds that the other party to the matter is Indigenous is where to provide the services in question would cause serious discontent within the local Indigenous community.

9.29 You must have principles in place for making an assessment of the impact representing the applicant will have on the community.

9.30 If it is determined that you will not provide services, you must refer the applicant to an alternative legal provider (such as the relevant legal aid commission). You must also write to the applicant explaining your decision and the alternative arrangements made on their behalf.

9.31 If it is determined that you will not provide services, the applicant will have a right of appeal against the decision. Refer to Review Procedure in [section 13](#) of these Service Delivery Directions.

Responsibility for Making Decisions Regarding Conflicts of Interest

9.32 You must indicate which individual/panel of individuals will be responsible for determining whether, and how, to provide representation in the following situations:

- a. lawyer-client conflicts,
- b. concurrent client conflicts,
- c. former client conflicts,
- d. applications by family members or employees, and
- e. community conflicts.

Referrals and briefing out

9.33 Where there is a conflict of interest you should manage that conflict in a manner consistent with the relevant legislation or rules in the state or territory where the Services are

to be provided. There are a range of options available for managing conflicts of interest such as:

- a. where a conflict has been identified from the outset, continue to act for one party and refer or brief out the other(s) to external legal service providers,
- b. refer or brief out all parties to the case, or
- c. where there is no other service provider or solicitor to which the client can be referred or briefed out – for example, in remote areas or where access to other services is limited – you may act for both parties by using information barriers if both parties provide their written consent in advance to this means of managing the conflict.

9.34 Where briefing out you must ensure that the alternative legal provider is notified as soon as possible and given all information required to provide comprehensive representation to the client.

Information barriers

9.35 There is a general presumption that information moves within a legal practice. A legal practice must rebut this presumption by demonstrating that the information barrier ensures that there is no real risk of disclosure of confidential information. Mere undertakings not to disclose information between staff are not sufficient to rebut the presumption.

9.36 If you determine that establishing an information barrier is an appropriate approach to dealing with conflicts of interests within your practice the information barrier must meet the following criteria:

- a. Information barriers are designed to *prevent* conflicts of interests from occurring in the first place and must be part of the institutional fabric of a legal practice. They cannot be used as an ad hoc response once a problem has arisen.
- b. Information barriers must be robust enough to prevent inadvertent/innocent leaks of information.

10 Performance

Performance Standards with respect to Legal Assistance Services

10.1 In providing the Legal Assistance Services, you must:

- a. at all times achieve or exceed the service levels specified in your Service Plan, and

- a. report to us on your performance against the service levels in your Service Plan.

10.2 Without limiting our rights to measure your performance, you must:

- a. comply with the Service Standards,
- b. use appropriate measurement and monitoring procedures to measure your performance accurately, and
- c. provide us with information and access to those measurement and monitoring tools and procedures on request, to verify that they accurately measure your performance of your obligations under the Funding Agreement.

Performance Management Scheme

10.3 You must report against the service levels specified in your Service Plan at every Performance Meeting we have with you.

10.4 If you fail to meet any of the service levels specified in your Service Plan, you must promptly:

- a. investigate the underlying failure to meet the service levels,
- b. prepare and deliver to us a report identifying the failure and its cause,
- c. take whatever action is reasonably necessary to minimise the impact of the failure and prevent it from recurring, and
- d. correct the failure and meet the service levels.

10.5 Any report provided under paragraph 10.3 must include details of:

- a. the reasons for your failure to meet the service levels,
- b. strategies to ensure that the Legal Assistance Services are provided at the service levels specified in your Service Plan, and
- c. the time-frame for implementation of the strategy.

10.6 If we reasonably consider that any report submitted in accordance with paragraph 10.4 is not satisfactory, we may, within 25 Business Days after receiving the report, give you a Notice setting out the deficiencies we require you to address.

10.7 You must, within 10 Business Days after receiving a Notice under paragraph 10.6, submit a revised report which addresses the deficiencies identified by us.

10.8 Action taken by us under this [section 10](#) is without prejudice to any other right or remedy of ours, whether under an agreement or at law, and does not operate as a waiver of any of our rights under an agreement or at law.

Performance Meeting

10.9 We may, by giving 10 Business Days' Notice, request a Performance Meeting with you to discuss your performance of the Activities, at a time and location determined by us.

10.10 We may require you to attend two Performance Meetings in each financial year of the Activity Period, though additional Performance Meetings may be requested by us, where reasonably required.

10.11 You must be represented at a Performance Meeting by your representative or such other of your Personnel as agreed to by us from time to time.

10.12 The parties will bear their own costs associated with attendance at Performance Meetings.

11. Administrative Requirements

11.1 You must maintain your client files, general records and accounts in accordance with the requirements of the Funding Agreement, these Service Delivery Directions, the Service Standards and all applicable legislation, regulations and/or practice rules of the Commonwealth and the State or Territory in which the Legal Services are provided.

12. Complaints Policy

12.1 You must develop, maintain and apply a Complaints Policy that addresses the following:

a. Receiving Complaints

Complaints can be received either verbally or in writing. Verbal complaints are to be discouraged. Nonetheless, if the complainant is unable or unwilling to make a written complaint, two employees must be present when the complaint is taken and a file note must be made and signed by both employees and, when appropriate, the complainant wherever possible.

b. Complaints Register

All complaints must be recorded in a complaints register. The complaints register must contain:

- A. a copy of the original complaint,
- B. details of who is handling the complaint,
- C. a record of the outcome of the investigation into the complaint, and
- D. any follow up activity from the complaint.

c. Responding to the Complainant

The complainant must be advised, *in writing*, of how their complaint will be handled, who is handling it and when they will be told of the outcome of their complaint. This notice must be sent to the complainant within 10 Business Days of their complaint being made.

d. Investigating Complaints

The complaint must be investigated by a member of your Personnel who, where possible, is not located at the same office as the person who the complaint is about. This investigating officer must report their findings to your Legal Practice Manager *and* Chief Executive Officer.

e. Informing Complainant of Outcome

When the outcome of the investigation into the complaint has been finalised, the complainant must be informed in writing of that outcome.

f. Resolution of Complaints

All complaints must be resolved within 40 Business Days of the complaint being made. You must notify our Contract Manager of any complaints which are not resolved during this period and provide an explanation as to why it has not been resolved within 40 Business Days.

g. Review Procedure

If the complainant wishes to pursue a complaint about Legal Services further, the complainant must be offered a copy of the Review Procedure, as described in [section 13](#). The complainant must also be provided with the contact details of our Contract Manager, and the relevant body for taking complaints about legal services in the state or territory in which you provide the Legal Services.

h. Responsibility of the Chief Executive Officer

The Chief Executive Officer is responsible for complying with the Complaints Policy. In addition, the Chief Executive Officer must provide an up to date

copy of the complaints register to your Board for consideration at Board meetings.

12.2 The Complaints Policy must be displayed in at least A3 size dimensions, in the waiting room or other suitable area where Legal Services are provided. Copies must also be available for Eligible Clients to take with them.

13. Review Procedure

13.1 You must develop, maintain and apply a Review Procedure to allow a person who has requested provision of the Legal Services to seek a review of:

- a. the outcome of that request, including where the outcome involves a decision by you to refuse to provide the Services to the person on the basis that the person is not an Indigenous Australian,
- b. the terms and conditions on which you have agreed or declined to provide the Legal Services, and
- c. any decision to cease or vary the terms and conditions for providing the Legal Services to that person.

13.2 The Review Procedure must be developed, and submitted to us for approval no later than 30 days after the commencement date of the Funding Agreement. If we require any changes to the Review Procedure, you must complete those changes in accordance with our request within 10 Business Days of receiving notice of the changes from us.

13.3 Your Review Procedure must provide for:

- a. an internal review,
- b. the review of the internal review decision by a review panel that includes at least one independent person from an Other Legal Service Provider, and
- c. completion of both reviews within two months after the initial decision.

13.4 We must approve the membership of the panel prior to the commencement of any panel review.

13.5 You must act in accordance with the outcome of a review conducted in accordance with the Review Procedure.

13.6 You must record, in writing, the details and outcome of any review conducted under the Review Procedure.

14. Reporting using ABS Remoteness Structure

14.1 The Data Protocol specifies a range of reporting requirements with which you must comply, and which are designed to assist us in generating a database that will help to identify the factors that determine the need of Indigenous Australians for the Services. This will be achieved by comparing the demographic and socio-economic characteristics of Eligible Clients with the equivalent characteristics of the general population.

14.2 The Australian Bureau of Statistics' (ABS) concept of remoteness is based upon the Accessibility/Remoteness Index of Australia (ARIA) which was developed for the former Commonwealth Department of Health and Aged Care (now Department of Health and Ageing) by the National Key Centre for Social Applications of Geographical Information Systems. ARIA measures the remoteness of a point based on the road distances to the nearest town (service centre) in each of the population size classes. The basic premise of ARIA is that there are more services available in large towns than small towns and that remoteness is a factor of the relative distance a person must travel to access a full range of services.

14.3 The ABS Remoteness Structure, as used since the 2001 Population Census and now incorporated in the Australian Standard Geographical Classification, contains five categories that provide a measurement of whether geographic distances impose restrictions on the availability of a range of goods, services and opportunities for social interaction. The five categories are:

a. Major Cities of Australia

Imposes minimal restrictions, eg Sydney including Newcastle and Wollongong (New South Wales), Melbourne including Geelong (Victoria), Brisbane including the Gold Coast (Queensland), Adelaide (South Australia), Perth (Western Australia) and Canberra (Australian Capital Territory).

b. Inner Regional Australia

Imposes some restrictions, eg Hobart and Launceston (Tasmania), Tamworth, Wagga Wagga (New South Wales), Ballarat, Bendigo (Victoria), Rockhampton, Bundaberg, Gladstone (Queensland), the Adelaide Hills (South Australia) and Bunbury (Western Australia).

c. Outer Regional Australia

Imposes moderate restrictions, eg Darwin (Northern Territory), Broken Hill, Griffith, Gunnedah (New South Wales), Horsham, Swan Hill, Traralgon (Victoria), Roma, Cairns (Queensland), Port Augusta, Mount Gambier (South Australia), Albany (Western Australia) and Burnie (Tasmania).

d. Remote Australia

Imposes high restrictions, eg Cobar (New South Wales), the northern Wimmera district (Victoria), Charters Towers and Cooktown (Queensland), Port Lincoln (South Australia), the Kalgoorlie goldfields (Western Australia), parts of the west coast of Tasmania, Alice Springs and Katherine (Northern Territory).

e. Very Remote Australia

Imposes very high restrictions, eg the far west parts of New South Wales and Queensland, northern South Australia and Western Australia, most of the Northern Territory and Flinders and King Islands in Bass Strait (Tasmania).

14.4 You are required to report to us using a three-level version of the ABS Remoteness Structure. The three levels to be reported to us are: Metropolitan, Regional and Remote. These three levels on the map are as follows:

a. Metropolitan

Identical to the Major Cities of Australia category of the ABS Remoteness Structure,

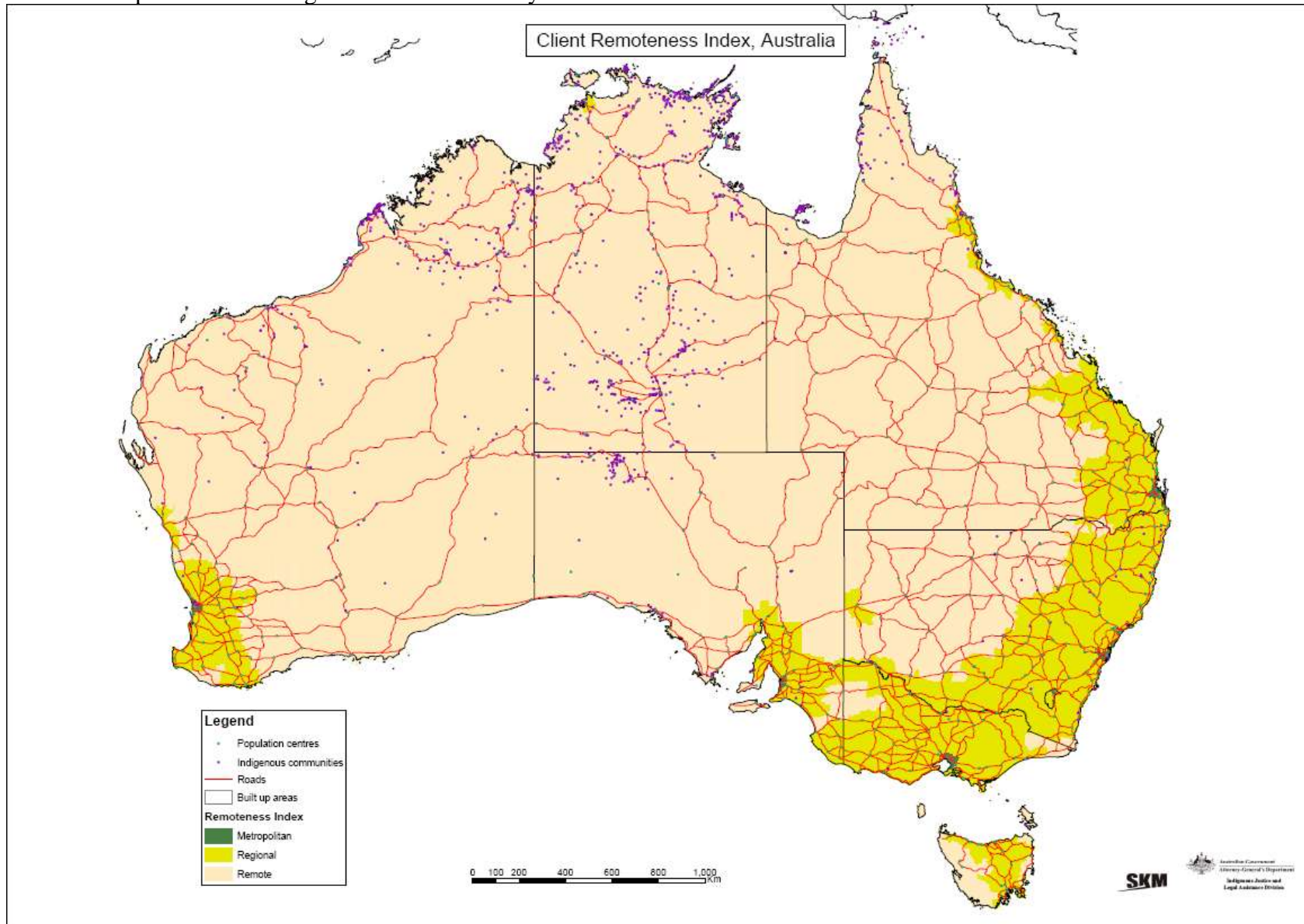
b. Regional

Includes both the Inner Regional Australia and Outer Regional Australia categories of the ABS Remoteness Structure, and

c. Remote

Includes both the Remote Australia and Very Remote Australia categories of the ABS Remoteness Structure.

14.5 A map of discrete Indigenous communities by remoteness is shown below:



Appendix A
Sample Indigenous Legal Assistance Application Kit

Initial Contributions Table

LEGAL AID SERVICES TO INDIGENOUS AUSTRALIANS INITIAL CONTRIBUTIONS TABLE - INCOME

Household Type	Work Status	Number of Children	Contribution Free Threshold Gross income \$ per week	Maximum Income Threshold Gross income \$ per week	Client Contribution																
					Amount payable on gross income (\$ per week) above:																
					887	985	1030	1105	1150	1155	1200	1255	1300	1330	1375	1415	1460	1505	1705	1955	2005
Couple	Both in workforce	0	985	1265	–	200	270	380	450	540	630	740	990	1060	1180	1490	1630	1760	2360	3110	see note 2
		1	1105	1505	–	–	–	200	270	280	340	500	590	650	880	980	1090	1400	2000	2750	
		2	1155	1655	–	–	–	–	–	200	270	350	420	550	640	720	960	1080	1580	2600	
		3	1255	1715	–	–	–	–	–	–	200	270	310	380	520	610	700	1330	1950		
		4	1330	1815	–	–	–	–	–	–	–	–	–	200	270	330	400	550	950	1450	
	5+	1415	1905	–	–	–	–	–	–	–	–	–	–	–	200	270	340	640	1280		
Couple	One in workforce	0	1030	1405	–	–	200	310	380	390	540	650	740	950	1060	1160	1490	1630	2230	2980	see note 2
		1	1150	1605	–	–	–	–	200	210	280	360	500	560	650	860	980	1090	1870	2620	
		2	1200	1705	–	–	–	–	–	–	200	280	350	400	550	630	720	960	1460	2090	
		3	1300	1765	–	–	–	–	–	–	–	–	200	250	310	370	520	610	1010	1840	
		4	1375	1865	–	–	–	–	–	–	–	–	–	–	200	260	330	400	860	1360	
	5+	1460	1955	–	–	–	–	–	–	–	–	–	–	–	–	200	270	570	940		
Single person/sole parent	In workforce	0	887	1335	200	350	420	530	730	740	830	1130	1240	1310	1670	1790	1930	2060	2660	3410	see note 2
		1	985	1405	–	200	270	380	450	540	630	740	990	1060	1180	1490	1630	1760	2360	3110	
		2	1105	1605	–	–	–	200	270	280	340	500	590	650	880	980	1090	1400	2000	2750	
		3	1155	1705	–	–	–	–	–	200	270	350	420	550	640	720	960	1080	1580	2600	
		4	1255	1765	–	–	–	–	–	–	–	200	270	310	380	520	610	700	1330	1950	
	5+	1330	1865	–	–	–	–	–	–	–	–	–	–	200	270	330	400	550	950	1450	

Note 1 Aid is not normally granted where a client's income exceeds the Maximum Income Threshold.

Note 2 For incomes above \$2005, add \$300 for every \$10 of income in excess of \$2005 to the contribution payable on \$1955 gross income per week.

Note 3 Clients may have to pay a further contribution toward their costs or repay all the costs incurred on their behalf if their right to property is preserved or they recover money or property as a result of their grant of aid.

Note 4 Organisations will be treated as a single person/sole parent without children

LEGAL AID SERVICES TO INDIGENOUS AUSTRALIANS

INITIAL CONTRIBUTIONS TABLE - ASSETS

Net Assets		Client Contribution Payable
Financial association with another person:		
No	Yes	
870	1650	20
970	1750	45
1070	1850	65
1170	1950	85
1270	2050	105
1370	2150	140
1470	2250	170
1570	2350	205
1670	2450	235
1770	2550	265
1870	2650	310
1970	2750	355
2070	2850	395
2170	2950	440
2270	3050	480
2370	3150	535
2470	3250	590
2570	3350	640
2670	3450	695
2770	3550	750
2870	3650	810
2970	3750	875
3070	3850	940
3170	3950	1005
3270	4050	1070
3370	4150	1135
3470	4250	1195
3570	4350	1260
3670	4450	1325
3770	4550	1390
3870	4650	1485
3970	4750	1580
> 3970	> 4750	\$ for \$

Note 1 Clients may have to pay a further contribution toward their costs or repay all the costs incurred on their behalf if the right to property is preserved or they recover money or property as a result of their grant of aid.

Appendix B

Identifying as an Indigenous Australian: Guidelines for Funded Service Providers

Introduction

These Guidelines must be applied by you in deciding whether a person is an Indigenous Australian in connection with the delivery of the Legal Assistance Services.

Application of these Guidelines

The application of these Guidelines is subject to any qualification that any applicable legislation requires.

Any decision of whether a person is an Indigenous Australian must be made in accordance with these Guidelines.

Guidelines

An Indigenous Australian is a person who:

- A. is of Aboriginal or Torres Strait Islander descent, and
- B. identifies as an Aboriginal or Torres Strait Islander, and
- C. is accepted as an Aboriginal or Torres Strait Islander by the Indigenous community in which he or she resides or has resided.

These guidelines should not be applied inflexibly.

A balancing exercise

The weight to be given to each of the three elements of these Guidelines will vary in different cases. A decision as to whether a person is an Indigenous Australian is a balancing exercise involving all three elements. In particular:

- (i) some degree of Indigenous descent is a necessary, but not a sufficient, condition for eligibility to be an Indigenous Australian, and
- (ii) a small degree of Indigenous descent, coupled with a genuine self-identification or with community recognition may be sufficient to be an Indigenous Australian, and

- (iii) a substantial degree of Indigenous descent may be sufficient to be an Indigenous Australian.

In assessing whether there is community recognition of a person as an Indigenous Australian, the relevant community might be the general Indigenous community in a particular locality, or a much smaller part of that community whose members have resided in a specific locality or have some common historical, cultural or social characteristic. In some instances, a community might consist of an extended Indigenous family living in a particular locality. You need not be concerned with defining the relevant community or communities other than in the most general sense.

Evidentiary issues

Evidence relevant to determining whether a person is of Indigenous descent may include:

- (i) evidence of self-identification, or community recognition, of a person as an Indigenous Australian, and
- (ii) family history and tradition (ie a long-held family tradition of Indigenous descent with a credible basis can provide evidence of Indigenous descent).

Neither the absence of archival records, or other historical records, of Indigenous descent nor the presence of such records of lack of Indigenous descent is conclusive in relation to this element of these Guidelines.