



Australian Government

Attorney-General's Department

**INDIGENOUS LEGAL ASSISTANCE AND POLICY REFORM
PROGRAM GUIDELINES**

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Please refer to the Glossary of Terms document for guidance on the meanings of capitalised terms used in these Guidelines.

Purpose

The Australian Government's vision of a socially inclusive society is one in which all Australians feel valued and have the opportunity to participate fully in the life of our society.

For a wide range of reasons, including long-standing disadvantage and ongoing discrimination, Indigenous Australians¹ experience much higher rates of adverse contact with the justice system and are incarcerated at significantly higher rates than other Australians. This impacts on the ability of many Indigenous Australians to fully participate in society.

As part of a broader Australian Government strategy designed to address both the causes and the effects of Indigenous disadvantage, the Attorney-General's Department (the Department) administers a number of inter-related programs in the broad field of Indigenous law and justice. These include a national program of Indigenous Legal Assistance and Policy Reform (LAPR Program) and complementary programs including the Family Violence Prevention Legal Services and the Indigenous Justice Program.

Objective

The objective of the LAPR Program is to deliver culturally sensitive, appropriate, accessible, equitable, efficient and effective legal assistance and related services to Indigenous Australians, so that they can fully exercise their legal rights as Australian citizens. Funded legal service providers can achieve this by working collaboratively in an integrated way with other Indigenous and non-Indigenous service providers.

These attributes are consistent with the goals of the Government's Closing the Gap agenda and with the Strategic Framework for Access to Justice in the Federal Civil Justice System adopted by all Australian Governments. They are also contained within the National Partnership Agreement on Legal Assistance Services.

These Program Guidelines come into effect on 1 July 2011 and replace all previous guidelines for this Program.

Priorities

The Department is seeking value for money and will invest in an efficient, effective and ethical manner in Australian Indigenous communities with the highest need. The Department will seek to identify financially sound and, where possible, established State-based or regional Indigenous organisations that can deliver activities across regions to a flexible target group.

Assessment and management of funding applications (where applicable) and program delivery will focus on:

- accountability to Government and members of the organisation,
- provision of the best service possible,
- effective use of funds,
- effective prioritisation and management of risk,

¹ The term 'Indigenous' refers to all Aboriginal and Torres Strait Islander Australians.

- demonstration of elements of good practice, and
- alignment with the priorities of Government.

Structure

The LAPR Program consists of four funding sub-programs:

- (1) Indigenous Legal Assistance (subsuming the Expensive Indigenous Case Fund),
- (2) Indigenous Test Cases,
- (3) Law Reform, Research and Policy Development, and
- (4) Program Support and Development.

The LAPR Program Objectives provide the overarching direction for the desired outcomes of all four sub-programs.

(1) Indigenous Legal Assistance

The Indigenous Legal Assistance sub-program supplements the legal assistance services and early intervention and prevention initiatives that States and Territories provide to residents in their jurisdiction (including Indigenous Australians). The Service Delivery Directions outline in greater detail what services can be provided under this sub-program.

The legal services to be provided under this sub-program include:

- information, initial legal advice, minor assistance and referral,
- duty lawyer assistance,
- legal casework services for criminal, civil and family law matters, and
- legal assistance for the conduct of expensive Indigenous case matters.

Related services to be provided under this sub-program include:

- community legal education, early intervention and prevention initiatives, and
- advocacy, law reform and policy development.

Community legal education activities provide information and education to advance and protect the rights of Indigenous Australians under Australian law. Early intervention and prevention activities aim to divert Indigenous Australians from the criminal justice system. Advocacy, law reform and policy development activities support the identification of and seek to rectify laws, policies and practices that impact adversely and disproportionately on Indigenous Australians.

This 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 services to Indigenous Australians, which can adversely affect the provision of other services. The Expensive Indigenous Case Fund assists in addressing this problem.

It enables providers to supply legal casework, in accordance with the Service Delivery Directions, to clients whose cases require funding of an amount that would severely impact upon the providers' ability to fund their daily operations. Refer to the Service Delivery Directions for information specific to the Expensive Indigenous Case Fund.

(2) Indigenous Test Cases

Funding may be provided under this sub-program for court or tribunal litigation to promote:

- the review of laws and administrative practices that have the effect of discriminating against Indigenous Australians,
- recognition of Indigenous Australians' social, cultural, economic, legal and political rights through the conduct of litigation, and
- the resolution of inconsistencies and ambiguities in the application of existing laws to Indigenous Australians, or to an identifiable group of Indigenous Australians, through the conduct of litigation or other legal means.

Refer to the Indigenous Test Cases sub-program Guidelines for further details about this sub-program.

(3) Law Reform, Research and Policy Development

Funding may be provided for activities that support the advancement of the legal rights of Indigenous Australians and their increased access and equity to services. 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. It can also include promoting reforms to laws, policies and practices and promoting awareness, advocacy and research that is likely to lessen the adverse impact.

Funding recipients will be expected to liaise with governments and other agencies, and provide Indigenous views on justice issues.

(4) Program Support and Development

Funding may be provided to support the ongoing development and continued improvement of the Program. Activities considered for funding under this sub-program include training, reviews, evaluations, publications, domestic conferences, meetings, websites, strategic planning and advisory services.

Eligibility

Each of the sub-programs within the LAPR Program has different eligibility requirements. Applicants for all sub-programs will be required to meet sub-program specific terms and conditions that apply to activities receiving funding under the Program, as outlined in these Program Guidelines and in the Funding Agreement.

The Government may call for applications for funding for any sub-program or may directly approach providers to apply for funding, with the exception of the Indigenous Test Cases sub-program which is continually open for applications by any person or body. Where appropriate, the Department may also directly approach organisations to fund activities because of their specialised area of expertise, cultural links or cultural compatibility.

(1) Indigenous Legal Assistance

The Department may seek applications for the provision of Indigenous legal assistance services in all States and Territories.

Continued funding of organisations to deliver Indigenous legal assistance services is subject to the terms and conditions of the Funding Agreement.

To be eligible for funding under the community legal education component, a description of how the activity advances and protects the rights of Indigenous Australians through the provision of information and education may be requested.

If you are in receipt of funding under the Indigenous Legal Assistance sub-program, you may apply for further funding under the Expensive Indigenous Case Fund. Additional eligibility requirements apply as outlined in the Service Delivery Directions.

(2) Indigenous Test Cases

Any person or body may apply for funding under this sub-program, including those already in receipt of funding under the Indigenous Legal Assistance sub-program.

To be eligible for funding under the Indigenous Test Cases sub-program, a case must satisfy the eligibility criteria outlined in the Indigenous Test Cases sub-program Guidelines. Most importantly, the dominant purpose of the case must be to test a point of Australian law before an Australian court or tribunal to resolve an important question affecting the rights of Indigenous Australians. The law in question must be a law of the Commonwealth or of a State or Territory of Australia.

Cases will be deemed ineligible if:

- (a) the relevant law could be more efficiently and successfully reviewed through negotiation with Government, dispute resolution, mediation, conferencing, or arbitration. If the applicant satisfies the Department that these options have already been undertaken and were unsuccessful, the Department may consider approving funding, or
- (b) the case raises a question already under public discussion by Commonwealth or State or Territory Governments with a view to policy reform.

Satisfying all of the eligibility criteria contained in the Indigenous Test Case sub-program Guidelines does not automatically mean that a case will be funded. The Department retains ultimate discretion in determining which applications are successful.

(3) Law Reform, Research and Policy Development, and (4) Program Support and Development

Any person or body may apply for funding under these remaining sub-programs, in accordance with these Program Guidelines, for the purpose of furthering the economic, social or cultural development of Indigenous Australians.

All funding recipients must have an Australian Business Number (ABN), unless a statement by the funding recipient in the form specified by the Australian Taxation Office has been provided.

To be eligible for funding, applications must relate specifically to a priority of the Department and must not be for an activity that is already funded or conducted by the Commonwealth.

The Department encourages partnerships between Indigenous organisations and tertiary and research institutions, and government and non-government agencies, which assist in the development of clearly articulated and evidence based policy and law reform, including relevant research.

Performance Measures and Compliance

Specific performance measures apply for funding under each of the four sub-programs within the LAPR Program. In relation to each funded activity the Department will assess:

- how much has been done,
- how well it has been done, and
- whether the activity achieved what was expected.

Applicants should frame their applications based on these criteria and ensure they provide a clear purpose of the activity, an outline of the services to be delivered, and how they will be measured.

The Department may negotiate additional performance indicators and measures for individual activities for inclusion in the Funding Agreement.

(1) Indigenous Legal Assistance

The Department will measure the performance of the Indigenous Legal Assistance sub-program against the Funding Agreement.

Service providers must meet the various performance and accountability requirements set out in the Funding Agreement including the Service Delivery Directions and the Reporting Requirements. The Department will use the information submitted by providers to monitor their performance for efficiency, effectiveness and accountability. The Department may conduct stakeholder feedback surveys—in addition to those undertaken by providers—to obtain an independent measure of the level of stakeholder satisfaction with the services provided. Additionally, the Department may conduct evaluations and other external performance monitoring activities to assess providers' compliance with their obligations.

Payment of funding to the provider will be made by the Department in accordance with the Funding Agreement to be made between the Department and the service provider. Funds will be released by the Department in accordance with the Funding Agreement.

Specific performance measures and compliance requirements apply to the Expensive Indigenous Case Fund, including that the provider must provide the Department with status reports after each significant step in the litigation for each matter funded. Such status reports must include a description of the work completed on the matter during that period and the outcomes of any court proceedings. Further requirements are outlined in the Service Delivery Directions.

(2) Indigenous Test Cases

Refer to the Indigenous Test Cases sub-program Guidelines for information on the specific performance measures that apply to this sub-program.

(3) Law Reform, Research and Policy Development, and (4) Program Support and Development

Performance measures for these remaining sub-programs will be determined as part of the negotiation of the Funding Agreement. Funding recipients will be required to comply with the measures outlined in the Funding Agreement.

Application Process

The Program is administered by the Indigenous and Community Legal Services Branch of the Commonwealth Attorney-General's Department. Delegates have been appointed within the Department to determine funding under the Program.

Applications for funding under the Indigenous Test Cases sub-program, which address the Indigenous Test Cases sub-program Guidelines, may be submitted throughout the financial year via the application form on our website (<http://www.ag.gov.au/>).

Where the Department has called for applications or approached an organisation to apply for funding under any other sub-program, applications should be directed to:

Assistant Secretary
Indigenous and Community Legal Services Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

General inquiries can be directed to the Indigenous and Community Legal Services Branch of the Department through our website (<http://www.ag.gov.au/>).

Complaints Mechanism

The Department regards complaints as a way of both assessing and improving our performance. The Department will endeavour, where possible, to ensure that complaints are resolved promptly, fairly, confidentially and satisfactorily and that our procedures are improved as a result.

Complaints regarding an application under the LAPR Program can be directed in writing to the Assistant Secretary at:

Assistant Secretary
Indigenous and Community Legal Services Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Complaints will not be received verbally, either in person or over the telephone. The Branch will endeavour to respond to your complaint within 10 working days.

If you are unhappy with the Branch's response or with the way the complaint is being handled, you may ask that it be referred to the appropriate Division head. All complaints referred to the Division head will be fully investigated and the Department will aim to respond within 10 working days of referral.

If you tell the Department that you are not happy with the response from the Division head, the matter will be referred to the Department's Secretary. The Department will inform you of the Secretary's decision and, if necessary, of further review processes available.