

Indigenous Test Case Fund Application Form

The Indigenous Test Case Fund is a sub-program of the Indigenous Legal Assistance and Policy Reform Program administered by the Attorney-General's Department (the Department).

The Department will consider applications having regard to the objectives and priorities outlined in the Indigenous Legal Assistance and Policy Reform Program Guidelines. This document is available on the Department's website www.ag.gov.au

Funding for an Indigenous Test Case is not limited to organisations that are in receipt of funding from the Department to deliver Indigenous legal assistance services.

Please ensure that the matter for which you are requesting funding will satisfy the four mandatory criteria in the eligibility section of the Indigenous Test Case Fund Sub-Program Guidelines – July 2011 (the Guidelines). This document is available on the Department's website www.ag.gov.au

Satisfaction of the mandatory eligibility criteria does not automatically qualify a matter for assistance (refer to paragraph 2.6 of the Guidelines). The Department retains ultimate discretion in determining which applications are successful.

The information provided within an application form is non-exhaustive and the decision maker will consider all of the circumstances of the matter in determining whether to approve funding. The Department may require additional information to assist with the assessment.

Note: Commercial rates for legal costs are not payable (refer to footnote 1 at question 17)

Privacy Statement

The information that you provide on this form is collected for the purpose of determining your eligibility for Indigenous Test Cases funding. The information will be used for that purpose and may be disclosed, where necessary, to obtain information regarding the application from government departments or agencies and legal aid commissions.

In making this application, the applicant consents, and confirms that their client consents, to the Department disclosing any personal information contained in this form to government departments or agencies for this purpose.

Confidentiality of information provided

All information received from an applicant 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 the applicant or, where required, by law.

By making this application, the applicant confirms that if legal advice obtained by the client is provided in support of this application, their client permits the disclosure of the advice to the Department for the limited purpose of processing the application.

Name of client's firm:

Matter name:

In answering the questions below, please refer to the Indigenous Test Cases Sub-Program Guidelines (July 2011)

1. Would the matter for which funding is being sought from the Indigenous Test Case Fund?
 - directly benefit, if successful, an identifiable sector of Indigenous Australians, rather than a single individual or small subsection or interest group, and
 - have reasonable prospects of success, and
 - test a point of Australian law before an Australian court or tribunal to resolve an important question affecting the rights of Indigenous Australians, and
 - involve a client who has insufficient resources to finance the matter.

If all of the four boxes above are not checked, do not proceed as application will be ineligible

2. Is the subject of the matter already under public discussion by Commonwealth and/or State or Territory Governments with a view to legislative and/or policy reform or under review in another matter?
 - Yes **do not proceed as application will be ineligible**
 - No **go to question 3**
3. Is the case being heard in an Australian Court or Tribunal?
 - Yes **go to question 4**
 - No **do not proceed as application will be ineligible**
4. In which court is the matter being heard?
 - Tribunal
 - District Court
 - Supreme Court
 - Federal (includes Family) Court
 - High Court

Background information

5. Provide background to the matter including, where applicable, the date, location and the facts of the matter including details of any court attendances and judgements.

6. Has the client applied for, or obtained, an order from the court to be indemnified for any cost order made against them?

Yes

No

7. Will an application be made for a costs indemnity in the matter?

Yes

No

Information required supporting the mandatory eligibility criteria at question 1

8. Provide a statement addressing the direct benefit a successful outcome would have for an identifiable sector of Indigenous Australians. In the statement, please demonstrate that the benefit of a successful outcome would:

- a. promote the review of laws and administrative practices that have the effect of discriminating against Indigenous Australians; and/or
- b. promote the recognition of Indigenous Australians' social, cultural, economic, legal and political rights, and/or
- c. promote the resolution of inconsistencies and ambiguities in the application of existing laws to Indigenous Australians, or to an identifiable group of Indigenous Australians.

9. Provide a statement from a legally qualified practitioner that the matter has reasonable prospects of success including any certification from counsel if available.

10. Provide a statement explaining the point of law to be determined in the test case and how the matter would resolve an important question of law affecting the rights of Indigenous Australians.

11. With regard to the client's financial position:

- a. If the client is a natural person, provide a statement of income and assets, or
- b. If the client is a group or association, provide a copy of the most recent audited financial statements and information about the capacity of the group or association to levy its members; or
- c. If the client is a trust or a company, provide a copy of the most recent audited financial statements.

Additional information required if matter relates to an appeal

12. Provide a copy of the decision to be appealed against.

Information relevant to additional considerations

13. Is any other source of legal assistance available to the client in this matter:

Yes **go to question 14**

No **go to question 16**

14. If there is another source of legal assistance available to the client in this matter, has the client applied for this legal assistance?

Yes **go to question 15**

No please detail the other source of legal assistance available and why the client did not apply for legal assistance and then **go to question 16**

ENTER DETAILS OF OTHER LEGAL ASSISTANCE HERE

15. Was the application to another source of legal funding successful?

Yes Please detail the source and amount of other legal assistance obtained and why additional assistance is sought through the Test Case sub-program.

IF APPLICABLE - ENTER DETAILS OF SOURCE, AMOUNT AND WHY HERE

No Please detail the source and amount of other legal assistance refused and briefly indicate why the assistance was refused

IF APPLICABLE - ENTER DETAILS OF SOURCE, AMOUNT AND WHY HERE

Pending Please detail the nature and amount of other legal assistance sought

IF APPLICABLE - ENTER DETAILS OF NATURE AND AMOUNT HERE

Further relevant information

16. Provide any evidence or a statement of the support for the application from appropriate Indigenous Australian communities.

Estimated costs

17. Provide an itemised budget

Solicitor's costs ¹	\$
Counsel's costs ² (provide detail of costs per day and number of days)	\$ ENTER NUMBER OF DAYS
Court costs	\$
Expert witness opinions (provide detail of which experts)	\$ ENTER DETAILS OF EXPERTS
Transcripts	\$
Expert reports (provide detail of what reports)	\$ ENTER DETAILS OF REPORTS
Relevant disbursements: (provide detail of what disbursements)	\$ ENTER DETAILS OF DISBURSEMENTS
Total estimated costs	\$

Declaration

Please complete the following declaration.

I, ENTER YOUR NAME HERE of ENTER NAME OF LEGAL FIRM solicitor acting for ENTER NAME OF CLIENT HERE declare that the information provided in this application is true and correct to the best of my knowledge and belief.

Signed:

Dated: / /20

To assist you to complete this application a checklist is at Attachment A.

¹ Solicitors' professional costs, other than for solicitors employed by an Indigenous legal service, community legal service, family violence prevention legal service or legal aid commission funded by the Commonwealth or a State or Territory, should be estimated at the rate of 80% 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 will be based on the scale applied by the local legal aid commission in the jurisdiction.

² Financial assistance for Counsel will only be provided where it is shown that engaging senior or junior counsel is justified having regard to the complexity of the matter. Before approving funding for senior counsel to be briefed, the Department may require advice by independent counsel as to whether this is necessary or justified and whether the other party is, or is likely to be, represented by senior counsel. If an applicant is required to engage counsel or an outside legal practitioner, the Department must be consulted before any fee is agreed.

CHECKLIST

Indigenous Test Case Fund Application

- Application complies with criteria set out in the Indigenous Test Case Fund Sub-Program Guidelines – July 2011.
- All relevant questions of the Indigenous Test Case Fund Application Form have been completed.
- Background to the matter including, where applicable, the date, location and the facts of the matter including details of any court attendances and judgements is attached.
- A statement addressing the direct benefit a successful outcome would have for an identifiable sector of Indigenous Australians is attached.
- A statement from a legally qualified practitioner that the matter has reasonable prospects of success including any certification from counsel if available is attached.
- A statement explaining the point of law to be determined in the test case and how the matter would resolve an important question of law affecting the rights of Indigenous Australians is attached.
- Relevant documentation relating to the client's financial position (question 11) is attached.
- A copy of the decision to be appealed against is attached (if applicable).
- Evidence or a statement of the support for the application from appropriate Indigenous Australian communities is attached (if applicable).
- Declaration has been signed and dated.
- Application form and attachments have been scanned in and emailed to ILASReporting@ag.gov.au