



Australian Government  
Attorney-General's Department

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# PROGRAMME GUIDELINES

*Indigenous Legal Assistance Programme*

*from 2015-16*

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## **INTRODUCTION**

Indigenous Australians continue to be significantly overrepresented as both offenders and victims in the criminal justice system. The Australian Government is committed to improving the lives of Indigenous Australians, including making communities safer and ensuring the ordinary law of the land applies.

The justice system should be accessible by all, especially those facing economic, social and other disadvantage. Despite improvements to mainstream programmes, Indigenous people continue to face barriers accessing culturally appropriate services. The Indigenous Legal Assistance Programme (ILAP) supports access to justice for Indigenous Australians, ensuring they receive the help needed to overcome their legal problems.

As a part of the justice system, legal assistance service providers perform a crucial role in helping the most disadvantaged people in our community to access justice and receive the legal support they need. In this way, the legal assistance system contributes to the functioning of the Australian community, fostering social, cultural and economic benefits and contributing to the maintenance of the rule of law.

Australian Government funds for legal assistance services should be directed to activities that relate to the provision of legal advice, assistance and representation services to people who, by reason of social or economic disadvantage, may otherwise not have access to justice.

## **PROGRAMME OBJECTIVES AND KEY PRINCIPLES**

The objective of the ILAP is to ensure Indigenous people are able to access justice and exercise their rights in the same way as other Australians. The intractable disadvantage experienced by Indigenous people impacts on the rates of offending, violence and incarceration experienced by them. ILAP addresses this aspect of their disadvantage by providing the culturally appropriate legal assistance services necessary to ensure that Indigenous people can effectively access justice.

In line with the objective of the programme, delivery will focus on the following outcomes:

- improving access to justice for Indigenous Australians
- reducing the disproportionate disadvantage experienced by Indigenous people in the justice system, and
- providing cost effective legal assistance.

Service Delivery Principles for the ILAP are:

- Legal assistance services are focused on and accessible by Indigenous people, particularly priority clients, nation-wide.
- Quality legal assistance services are appropriate, proportionate and tailored to clients' needs and capabilities.
- Legal assistance providers, governments and other service providers collaborate to provide joined up services to address clients legal and other problems.
- Legal problems are identified and resolved at the earliest opportunity before they escalate.
- Indigenous Australians are empowered to understand and protect their legal rights and responsibilities and to address, or prevent, legal problems.

In contributing to the objective and priorities of the programme, the legal services to be provided include:

- information, initial legal advice, minor assistance and referral
- community legal education and early intervention and prevention activities
- duty lawyer assistance, and
- legal casework services for criminal, civil and family law matters.

Indigenous legal assistance providers will work collaboratively with state and territory justice agencies and other legal assistance providers including legal aid commissions and community legal centres to enhance coordinated service delivery across the sector. This will include attending and participating in jurisdictional service planning processes.

Funding of \$204.6 million has been allocated over 2015-16 to 2017-18 by the Australian Government for this programme.

These guidelines apply from 1 July 2015.

## **FUNDING ARRANGEMENTS**

The Australian Government will continue to support Indigenous legal assistance providers who have a proven ability to efficiently, effectively and equitably deliver Indigenous legal assistance and can deliver on the objectives, priorities and outcomes detailed in these guidelines.

This approach is consistent with the Commonwealth Grants Rules and Guidelines and the Australian National Audit Office Better Practice Guide *Implementing Better Practice Grants Administration*. As it provides an efficient method of ensuring services continue at a high level while ensuring accountability and value for money. This approach also reflects the specialised nature of services and limited number of potential providers of Indigenous legal assistance.

Where the Attorney-General's Department (the department) determines that the service delivery approach requires improvements or efficiencies, the following approaches may be used:

- direct grant process where the department directly approaches a new or existing provider to expand their current service delivery or undertake new service delivery. In these cases, the department will assess the provider's current performance and capacity to deliver an expanded service, or capability to deliver a new service.
- targeted grant round where the department directly approaches particular organisations and invites them to submit a proposal to deliver services. This approach may be open to existing providers as well as other entities, which will be selected based on the specialised requirements of the service to be delivered. Where this approach is used, an application pack will be made available to applicants detailing relevant information including relevant dates, eligibility and selection criteria and the assessment process.
- open grant round where the department will call for applications, opening and closing at nominated dates. Eligible applications will be assessed against criteria and prioritised against competing applications for delivery of services within a jurisdiction. Where this approach is used, an application pack will be made available to applicants detailing relevant information including relevant dates, eligibility and selection criteria and the assessment process.

Information on specific funding arrangements by jurisdiction will be available from 1 July 2015 on the departmental website: <http://www.ag.gov.au>.

### ***Allocation of funding***

Delegates have been appointed within the department to determine funding arrangements under the programme. Funding will be allocated on a state-wide basis. Negotiation of funding allocations with service providers will be informed by the ILAP Funding Allocation Model. The model allows for the equitable distribution of funds for the provision of services, taking into consideration a range of factors including Indigenous population levels, socio-economic status and geographical remoteness. The ILAP Funding Allocation Model is an internal model and not publicly available.

Funding for up to five years may be offered to providers under the programme.

### ***Programme Support and Development***

Funding may be provided to support the ongoing development and continued improvement of the ILAP. Activities considered for funding may include training, evaluations, meetings, websites, strategic planning and advisory/support services. These grants are often one-off or adhoc and do not involve a planned selection process, but are designed to meet a specific need.

## **ELIGIBILITY**

The department will fund state/territory based organisations (where possible) that can deliver legal and related services across regions to Indigenous Australians.

Eligible organisations must:

- be a legal entity (excluding individual persons) with an Australian Business Number and registered for GST
- be able to deliver legal services to third parties i.e. clients, and
- demonstrate sound governance and financial management (including necessary insurances)

Indigenous and non-Indigenous non-government organisations, state/territory and local government entities and not-for-profit organisations that meet those requirements are eligible to apply for funding. Providers are not required to have had a prior funding relationship established with the department.

Priority will be given to organisations best placed to deliver outcomes for Indigenous Australians. Organisations need to demonstrate they have the support of the Indigenous community, relevant state/territory authorities and related service providers, and that they are able to deliver services in a culturally accessible manner.

### ***Incorporation Requirements***

In line with the requirements of the Department of the Prime Minister and Cabinet's Indigenous Advancement Strategy, all organisations receiving funding of \$500,000 (GST exclusive) or more in any financial year will be required to either be:

- incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, or
- incorporated under the *Corporations Act 2001*.

These arrangements are required to be maintained as long as the organisation continues to receive funding under this programme.

This requirement applies to all grant funding executed on or after 1 July 2015. The requirement will also apply to contract variations where the agreement was executed on or after 1 July 2015.

Organisations will have six months from the date of execution of the Funding Agreement or variation to comply with the requirements. The department may consider longer transition periods for organisations on a case-by-case basis. Organisations may incur some additional one-off costs to support the transfer of incorporation. Programme funds may be utilised to support these costs, pending approval by the department. This requirement does not apply to statutory bodies, state/territory or local governments. This requirement does not apply to organisations where services are purchased under the Commonwealth Procurement Rules (CPRs).

The Attorney-General may provide an exemption from the incorporation requirements where an organisation can demonstrate the requirements may excessively disadvantage their operations. Requests for an exemption or consideration to lengthen the transition period can be forwarded to [ILASReporting@ag.gov.au](mailto:ILASReporting@ag.gov.au).

## **MANAGING THE PROJECT**

The department will measure the performance of the Indigenous legal assistance providers against the requirements of the Funding Agreement, and the objectives and outcomes of the programme.

The Funding Agreement is an agreement between the service provider and the department, acting on behalf of the Australian Government. It will outline the terms, conditions and obligations of, service delivery, performance, accountability and reporting requirements for both the department and provider.

Service providers will be required to meet the various performance and accountability requirements set out in the Funding Agreement, including periodic reporting of performance information and financial expenditure as well as annual acquittal of funding. In most cases this will be required on a half-yearly basis.

- Performance Information – providers will be required to submit periodic performance reports. Providers will also be required to collect data to measure the extent to which services are being delivered and the objectives, priorities and outcomes of the programme are being met.
- Financial Reports – providers will be required to submit periodic financial reports on income and expenditure to account for funding provided. This will be used to monitor and assess how funding is being used and whether this is in line with the terms of the funding agreement.
- Acquittal Documentation – providers will be required to submit acquittal documentation at the end of each financial year for the term of the funding agreement.

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, audits 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 between the department and the service provider. Generally, payment of funds will be on a six monthly basis in advance.

## **CONFLICT OF INTEREST**

A conflict of interest arises where a person makes a decision or exercises a power in a way that may be, or may be perceived to be, influenced by either material personal interests (financial or non-financial) or material personal associations. Examples of when a conflict of interest arises include where:

- decision makers or agency staff involved in spending activities have a direct or indirect interest in organisations, which may influence the selection of a particular project or activity
- members of expert or advisory panels or committees have a direct or indirect interest in informing a decision about expenditure or providing advice on grants, and
- a provider has a direct or indirect interest, which may influence the selection of their particular project or activity during the application process. Conflicts may also arise when undertaking the grant project.

All departmental officers have a responsibility to consider whether their actions or decisions could give rise to a conflict of interest and are bound by the department's Conflict of Interest Policy. All departmental officers are required to identify and disclose any conflict of interest as soon as possible after the conflict becomes apparent.

Organisations are required to advise the department of any potential perceived or actual conflict of interest arising in relation to Indigenous legal assistance. This should include a statement disclosing the conflict and how it will be managed.

## **GRANT PUBLICATION REQUIREMENTS**

The department will publish information about all successful grant arrangements on its website. If an organisation has concerns about the publication of information, these should be raised with the department.

## **PRIVACY**

Personal information collected by the department is protected by the *Privacy Act 1988 (Cth)*. The department collects personal information to carry out its functions properly and efficiently. The department only uses personal information for the purposes for which it was given to the department and for directly related purposes (unless otherwise required by, or authorised under, law).

## **TAXATION**

Grant payments will be inclusive of GST unless otherwise indicated. Payments to states, territories and local government do not attract GST. The department does not provide advice on whether or how organisations pay GST. If required, organisations are advised to seek advice from a qualified professional or the Australian Taxation Office [www.ato.gov.au](http://www.ato.gov.au). The department reports details of all grant payments to the Australian Tax Office.

## **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 processes are improved as a result. Complaints regarding any aspect of the application process should be directed to the contact address below.

## CONTACT DETAILS

*Indigenous Legal Assistance Section,  
Attorney-General's Department:*

Telephone: (02) 6141 6666

Email: [ILASReporting@ag.gov.au](mailto:ILASReporting@ag.gov.au)

Internet: [www.ag.gov.au](http://www.ag.gov.au)

Mail: Assistant Secretary  
Legal Assistance Branch  
Attorney-General's Department  
3-5 National Circuit  
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