



Australian Government

Attorney-General's Department

Social Inclusion Division

ATTORNEY-GENERAL'S DEPARTMENT

**EXPENSIVE INDIGENOUS CASE FUND
PROGRAM GUIDELINES**

INDIGENOUS AND COMMUNITY LEGAL SERVICES BRANCH

2010-2011

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1. INTRODUCTION

- 1.1 Expensive court cases may place a significant burden on the budgets of contracted providers of legal aid services to Indigenous Australians (Providers), which can adversely affect the provision of other services. The Expensive Indigenous Case Fund (EICF/the Fund) has been established to assist in addressing this problem.
- 1.2 The Fund is administered by the Indigenous and Community Legal Services Branch (the Branch) of the Australian Government Attorney-General's Department (the Department). Expensive Indigenous case funding is a sub-program of the Branch's *Indigenous Legal Aid and Policy Reform Program*.
- 1.3 These Guidelines set out the criteria for obtaining EICF funding, the procedure for applying for funding and the conditions upon which funding is granted.
- 1.4 In addition to these Guidelines, applications for funding will be considered in accordance with the objectives of the *Indigenous Legal Aid and Policy Reform Program* and the policy priorities of the Australian Government.

2. OBJECTIVES

- 2.1 The objective of the EICF is to enable Providers to supply legal casework, in accordance with the *Policy Directions for the Delivery of Legal Aid Services to Indigenous Australians – Effective July 2008* (Policy Directions), to clients whose cases require funding of an amount that would severely impact upon the Providers' ability to fund their daily operations if it were pursued.

3. ELIGIBILITY AND ASSESSMENT

- 3.1 All of the following criteria must be satisfied for a matter to be considered for assistance under the EICF:
 - 3.1.1 The applicant is a Provider that is under contract with the Department.
 - 3.1.2 The application is for assistance to clients who satisfy the eligibility criteria as stated in Section 2 the Policy Directions.
 - 3.1.3 The matter falls within one of the priority categories stated in Section 3 of the Policy Directions.
 - 3.1.4 The matter is
 - a criminal (indictable offence), family, or civil matter being heard in a District (or equivalent) Court or Higher Court in Australia
 - a coronial inquest, or
 - an appeal against a previous conviction.
 - 3.1.5 The estimated cost of legal representation proceeding with the matter exceeds \$20,000 (GST exclusive).

- 3.2 Satisfaction of the criteria at 3.1 does not automatically qualify a matter for assistance under EICF. The Department retains the ultimate discretion in determining which applications are successful.
- 3.3 A fixed amount of funding is available for expensive Indigenous cases. Not all applications which meet the funding criteria will necessarily be approved. In prioritising eligible applications, the following factors will be considered:
- 3.3.1 the balance remaining in the Fund
 - 3.3.2 the total number of applications for assistance from the Fund
 - 3.3.3 other possible funding sources for the matter
 - 3.3.4 the specific circumstances of the matter, and
 - 3.3.5 the expected consequence of not funding the application

4. ADMINISTRATION OF PROGRAM

Payment of funding

- 4.1 Payment of funding to the Provider will be made by the Department in accordance with a funding agreement to be entered into by the Provider.

Supplementary Conditions

- 4.2 The Provider must provide a copy of any advice received from Counsel relating to the evidence in the matter, the prospects of success, or proposed settlement of the case within seven (7) days of receipt.
- 4.3 The Provider must provide the Department with six (6) monthly status reports for each matter funded under the EICF, which must include a description of the work completed on the matter during that period and the outcomes of any court proceedings.
- 4.4 The Department must be notified, in writing, of the reasons for the withdrawal and/or discontinuance of proceedings, funded under the expensive case program, within seven (7) days of the appropriate notice being filed.

5. HOW TO APPLY

Information required

- 5.1 Providers requesting EICF assistance must provide sufficient information to enable the Department to make a decision. This includes the following information:
- 5.1.1 A written submission outlining the following:
 - 5.1.1.1 Background to the matter including where applicable:
 - date and location of matter, and

- the facts of the matter and any relevant court judgments.

- 5.1.2 A statement of the merits of the case and likely outcome of proceedings.
- 5.1.3 A budget of the estimated total costs of proceeding with the matter. The estimate should include a comprehensive breakdown of costs including:
- Solicitor’s costs
 - Counsel’s fees
 - Court costs and filing fees (where no exemption can be obtained)
 - Obtaining expert witness opinions
 - Preparation and discovery
 - Interlocutory steps
 - Transcripts
 - Reports, and
 - Relevant disbursements
- 5.1.4 Alternative arrangements if the Department decides not to approve funding.
- 5.1.5 Copies of any court documents already filed, judgments, orders (including interlocutory orders) already obtained in the matter.
- 5.1.6 Information regarding the current financial position of the Provider in relation to legal aid funding.

Authority to seek information

- 5.2 Providers are required to give permission to the Department to seek information regarding their application from government departments or agencies, including legal aid commissions.

Confidentiality of information provided

- 5.3 All information received from a Provider 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.

Lodgement of applications for assistance

- 5.4 Submissions should be lodged by post to the following address:

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

Telephone inquiries

- 5.5 Telephone inquiries should be directed to the Indigenous and Community Legal Services Branch, Attorney-General's Department, (02) 6141 4842.

6. SCOPE OF PROGRAM

Assistance provided

- 6.1 Where the Department approves funding for expensive legal aid cases, only reasonably required costs for the completion of the matter will be considered. 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 will be agreed in advance, with any variations negotiated and approved by the Department prior to the legal practitioner incurring additional expenses.
- 6.2 In assessing requested budgets for expensive case funding, the following principles in relation to legal costs will be applied:
- 6.2.1 Solicitors' professional costs 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.
- 6.2.2 Where parties change solicitors or Counsel in the course of proceedings, the outstanding costs of their former solicitors or Counsel should, unless there are exceptional circumstances, must be met by the parties themselves.

Appeals

- 6.3 Applicants who wish to pursue or contest appeals of a matter previously funded under these Guidelines will need to make a separate application. The Department 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

- 6.4 Approval of funding by the Department does not mean that the Department indemnifies the Provider's costs, should they be unsuccessful and have costs awarded against them. The Department will retain full discretion as to whether it will assist in meeting costs awarded against a Provider.
- 6.5 Should costs be awarded in the Provider's favour, these costs must be repaid to the Department or utilised as directed by the Department.