



THE LAW SOCIETY  
OF NEW SOUTH WALES



New South Wales  
Indigenous Chamber of Commerce

## Indigenous Enterprise Legal Assistance scheme

### Information for solicitors

#### INTRODUCTION

The Law Society of NSW and the NSW Indigenous Chamber of Commerce have partnered to deliver the Indigenous Enterprise Legal Assistance (IELA) scheme. The IELA scheme is a referral scheme aiming to provide free legal assistance to eligible Indigenous enterprises.

The Law Society receives referrals from the NSW Indigenous Chamber of Commerce (NSW ICC). The NSW ICC refers to the IELA scheme clients eligible under the IELA scheme criteria. Referrals are made wherever possible to solicitors prepared to act without fee for non-complex services. Clients are permitted to request up to three referrals.

Pro bono legal work comprises of legal services provided on a no fee basis. As a general rule clients are expected to pay for external disbursements.

#### OBJECTIVES OF THE IELA SCHEME

The Law Society is guided by the principles of Indigenous self-determination, and is committed to supporting Indigenous business in the Society's 2012-2014 Reconciliation Action Plan (RAP). During the development of the RAP, discussion took place on how to assist Indigenous Peoples in engaging with economic participation, and more specifically supporting the capacity building of Indigenous business. This was identified as a very important commitment.

The Society's commitment to provide the IELA scheme is a pragmatic and empowering initiative to assist Indigenous Peoples and Indigenous communities to establish a presence in the market economy. Further, the Committee understands that the flow-on benefits of Indigenous-controlled enterprise are potentially significant for communities as 72% of the staff members employed by Indigenous businesses certified by Supply Nation (previously known as the Australian Indigenous Minority Suppliers Council) are Indigenous.<sup>1</sup>

A flourishing Indigenous private sector is also likely to create robust career paths for Indigenous employees. Underpinning the IELA scheme is the view that successful Indigenous enterprise will assist with closing the gap in a real and sustainable way.

There are also commercial reasons for legal practitioners to be involved with providing legal assistance at the start up or development phase of an Indigenous business. As a business matures and financial growth increases, its capacity to pay for legal services will also develop.

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<sup>1</sup> From the Reconciliation Australia webpage:  
<http://workplace.reconciliation.org.au/program/diversifying-your-supply-chain>

## **SOLICITOR ELIGIBILITY FOR PARTICIPATION**

In order to participate in this scheme, solicitors must:

- Agree to act without fee and to carry internal disbursements;
- Hold a current unrestricted practising certificate, or be supervised by a Principal with an unrestricted practising certificate; and
- Have at least two years of practice experience in the relevant area of law.

## **PROFESSIONAL INDEMNITY INSURANCE**

The IELA scheme is covered by the National Pro Bono Resource Centre's professional indemnity insurance policy, which is underwritten by LawCover. This Policy is a "safety net" policy, and cover will only extend to circumstances where no other professional indemnity insurance applies. In order to comply with the requirements of the National Pro Bono Resource Centre, solicitors are requested to:

- keep accurate records of the number of hours undertaken on legal (and paralegal) work and report on a 6 monthly basis; and
- advise the Society as soon as practicable of:
  - any written or verbal demand or claim alleging professional negligence arising from the provision of legal services provided within the ambit of the Project, made against any lawyer or paralegal that has worked on the IELA scheme; and
  - becoming aware of any circumstance which could reasonably be expected to result in such demand or claim for professional negligence.

The National Pro Bono Insurance Policy is available [online](#).

## **PROCEDURE**

NSW ICC will determine the eligibility of prospective clients. NSW ICC will refer eligible clients to the IELA scheme by telephone.

The IELA scheme will ask the prospective client for more detail about the type of assistance sought, and will make a referral where possible.

There may be a range of factors that will limit the availability of referrals.

## **CLIENT ELIGIBILITY FOR PARTICIPATION**

Clients must:

- Be an "Indigenous business" as defined by the NSW ICC; and
- Pass a means test; and
- Be in the first three years of operation.

The NSW ICC will carry out the determination of eligibility.

### ***Definition of Indigenous business***

The Society understands that the definition of "Indigenous business" applied by the NSW ICC is:

An Aboriginal Business is a business that has an Australian Business Number (ABN), is trading as a viable enterprise and is 51% Indigenous owned, controlled and operated.

In the case of a couple where one partner is Indigenous and holds a 50% shareholding and the other partner is non-Indigenous and holds 50% shareholding, the NSW ICC considers this business an Indigenous Business due to the potential economic and social impact on the business owners' family, specifically the children of the partners.

**Means test**

The following means test will be applied (which is consistent with the test some pro bono providers use for individuals):

| Individuals  | Business   |
|--|--|
| <p>If applying as a single person:</p> <ul style="list-style-type: none"> <li>▪ Gross income of less than \$45,000 for a single person.</li> <li>▪ Equity in property less than \$150,000; and</li> <li>▪ Other assets less than \$30,000.</li> </ul> <p>If applying as a couple:</p> <ul style="list-style-type: none"> <li>▪ combined gross income less than \$60,000 (with up to \$8,000 per child in the applicant's care to a maximum of \$32,000); and</li> <li>▪ Equity in property less than \$150,000; and</li> <li>▪ Other assets less than \$30,000.</li> </ul> | <ul style="list-style-type: none"> <li>▪ Gross income of less than \$100,000; and</li> <li>▪ Assets of less than \$100,000.</li> </ul> |

The maximum gross income is increased by \$8,000 per child to a maximum of \$32,000.

It is proposed that eligible clients should be required to pay for their disbursements. Clients should have sufficient funds or be able to obtain sufficient funds to pay disbursements and to provide evidence that their business is viable.

**Length of operation**

As the aim of IELA scheme is to encourage the growth of Indigenous business and to build capacity within Indigenous business, the scheme is, at this stage, targeted towards the early stage of the business. The IELA scheme is currently limited to assisting a business which is in its first three (3) years of operation.

The Law Society's Pro Bono Solicitor has the sole discretion to accept matters that are outside the IELA scheme guidelines in exceptional circumstances, including disability, risk of physical harm to the applicant and extreme financial hardship.

**COSTS DISCLOSURE**

While costs disclosure is unlikely to be required under the Legal Profession Uniform Law and regulations, the Law Society of NSW requires participating solicitors to enter into a letter of engagement with the client setting out, at a minimum:

- the scope of work,
- that no fee will be charged and
- the anticipated disbursements.

Many of the clients referred through this scheme will not have a lot of experience dealing with lawyers. A disclosure agreement will provide them with assurance that they will not be

charged legal fees and offers solicitors the opportunity to consider the scope of work and likely disbursements. It will help to ensure that the relationship, and the limits to the relationship, is clearly understood by both parties from the outset. This is standard procedure in most pro bono practices.

## **FEEDBACK**

The IELA scheme is new, and the Society welcomes your feedback:  
[IELA@lawsociety.com.au](mailto:IELA@lawsociety.com.au)

## **PRIVACY STATEMENT**

Information provided by you to the IELA scheme may be made available to the public or other lawyers who contact the service for the purpose of receiving a referral. Occasionally, referrals are made to overseas enquirers. You have the right to request access to any information held by the IELA scheme that relates to you.

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## **SUMMARY OF SOLICITOR PARTICIPANT COMMITMENTS**

Participants are agreeing to:

1. Act on a no-fee basis, and to carry internal disbursements.
  2. Meet the professional indemnity insurance reporting obligations by:
    - a) keeping accurate records of the number of hours undertaken on legal (and paralegal) work and report on a 6 monthly basis; and
    - b) advising the Society as soon as practicable of:
      - i. any written or verbal demand or claim alleging professional negligence arising from the provision of legal services provided within the ambit of the Project made against any lawyer or paralegal that has worked on the IELA scheme; and
      - ii. becoming aware of any circumstance which could reasonably be expected to result in such demand or claim for negligence.
  3. Provide disclosure of the scope of work, that no legal fees will be charged and anticipated disbursements in a written letter of engagement.
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## Indigenous Enterprise Legal Assistance scheme Registration of Interest

Firm solicitor contact name:.....

Firm admin contact name .....

Firm name: .....

Street address: .....

DX or postal address: .....

Office telephone: ..... Mobile: .....

Email address:.....

This email to be included in our referral letters to clients?  Yes  No

Does your firm have an existing formal pro bono scheme?  Yes  No

Please note that estimated costs disclosure must be made and a Costs Agreement or a letter and a written retainer must be provided to the client.

Areas in which you can offer pro bono services and in which you have at least two years of practice experience:

- |  |  |
|--|--|
| <input type="checkbox"/> Establishing a legal entity or other business model | <input type="checkbox"/> Contract law        |
| <input type="checkbox"/> Tax   | <input type="checkbox"/> Trade practices law |
| <input type="checkbox"/> Employment law                                      | <input type="checkbox"/> Consumer law        |
| <input type="checkbox"/> Intellectual property law                           | <input type="checkbox"/> Corporations law    |
| <input type="checkbox"/> Commercial leasing                                  | <input type="checkbox"/> E-Commerce          |
| <input type="checkbox"/> Tendering processes                                 | <input type="checkbox"/> Privacy             |
| <input type="checkbox"/> Building and construction law                       |  |
| <input type="checkbox"/> Other:.....   |  |

By signing this document, you are declaring that:

- You are eligible to participate in the IELA scheme; and
- You agree to provide your client with a written retainer; and
- You agree to provide the Society with a report every six months on the number of hours spent by you and any paralegals on work completed under the IELA scheme; and
- You agree to advise the Society as soon as practicable of:
  - any written or verbal demand or claim alleging professional negligence arising from the provision of legal services provided within the ambit of the Project made against any lawyer or paralegal that has worked on the IELA scheme; and
  - becoming aware of any circumstance which could reasonably be expected to result in such demand or claim for negligence.
- The information you have provided is accurate.

.....  
Signature

.....  
Date

.....  
Signature of Principal where applicable

**Please return to:**  
Indigenous Enterprise Legal Assistance scheme  
170 Phillip Street, Sydney NSW 2000  
DX 362 Sydney  
Tel: 02 9926 0300  
Fax: 02 9231 5809  
Email: [IELA@lawsociety.com.au](mailto:IELA@lawsociety.com.au)