

Part 2

The duty to act in good faith and for proper purpose

This fact sheet covers:

- ▶ What is the duty to act in good faith and for a proper purpose?
- ▶ Where can you find this duty in the *Aboriginal Land Rights Act 1983* (NSW) and model code of conduct?
- ▶ What are some tips to help you meet this duty in your role as a LALC board member?

This fact sheet is part of a toolkit which provides information on the key legal duties of Local Aboriginal Land Council (LALC) board members.



Summary

In this fact sheet we discuss the duty to act in good faith and for proper purpose, and explain how to meet this duty in your role as a LALC board member.

What is the duty to act in good faith and for proper purpose?

The duty to act in good faith and for proper purpose is a two-part duty which includes:

- the duty to act 'in good faith' in the best interests of the LALC, and
- the duty to act for a proper purpose and within the powers given to the board

What does acting in good faith in the best interests of the LALC mean?



In good faith

The phrase 'in good faith' generally means that you must act honestly, fairly and loyally when making decisions for your LALC.

If you act dishonestly or if you disregard the legitimate interest of the LALC, you could be acting in bad faith.



As a board member, it's important that your decisions are made based on what is best for your LALC. To do this, you should consider the objectives of the LALC under section 51 of the *Aboriginal Land Rights Act 1983 (NSW)* (**ALR Act**) (see below) and the interests of its membership as a whole, as well as its finances and operations.

You should not be making decisions based on your own personal interests, preferences or alliances - or those of particular members of the LALC, other people or organisations you are involved in.

As a board member it's important that you do not allow a particular member, another person or organisation (including any people or groups that voted for you to be on the board) to dictate how you should vote at board meetings.



Objectives of LALCs under the ALR Act

Section 51 of the ALR Act sets out the objects of each LALC:

The objects of each Local Aboriginal Land Council are to improve, protect and foster the best interests of all Aboriginal persons within the Council's area and other persons who are members of the Council.

What does acting for a proper purpose mean?

As a board member you must make decisions that help the LALC to achieve its objectives (or purposes) under the ALR Act - to improve, protect and foster the best interest of all Aboriginal people within the LALC's area and members of the LALC.

To be able to ensure you are making decisions for a proper purpose, you should make sure you are familiar with the objectives of your LALC under the ALR Act and those set out in your LALC's Community Land and Business Plan (**CLBP**), so you can make decisions which guide your LALC towards achieving these objectives.

Examples of how this duty works

Examples of situations that involve the duty to act in good faith and for proper purpose are below.



Example – the board member and the loud, young LALC members

You are a board member of a LALC which aims to engage youth in the community in LALC activities and membership.

Recently, a group of young adults became members of the LALC and have attended some of the LALC's community activities and meetings held outside working hours.

While many in the LALC are excited to have younger members of the community interested in taking an active role in the LALC, you and a few members have found the group to be quite loud and annoying, and at times even pushy.

You know that most of the trouble makers work full time, so if you can come up an excuse to convince the rest of the LALC board to move the LALC's activities and meetings to working hours only, then you probably wouldn't have to put up with the group much anymore.

The legal duty

As a board member, your duty is to act in the best interests of your LALC (and the LALC's membership and all Aboriginal people living within the LALC's area), not your own personal preferences, or in a way that disadvantages one group of the LALC's membership.

To continue with your plan of trying to convince the board to move meetings and activities to working hours, for a made-up reason, may be a breach of your duty to act in good faith and for a proper purpose.



Example – Who comes first – family or the LALC?

You are on the board of a LALC which offers services to community members.

Your LALC has employed your cousin as a service manager for a number of years. Unfortunately, the organisation has received major funding cuts and has to close some of its services.

After taking a hard look at the finances, it seems that closing the service managed by your cousin is the best option to keep the LALC out of financial trouble. You are obviously personally extremely disappointed with this news.

The legal duty

As a board member you may be called on to make difficult decisions and sometimes these decisions may negatively impact on your personal situation (for example, as a relative of a LALC employee).

While you may ask questions, and seek further information about other options the LALC could take to manage the funding cuts, ultimately your legal duty is to make a decision in the best interests of the LALC's future – not in your or your cousin's personal interests.

Where can you find this duty in the ALR Act and model code of conduct?

The wording of this duty may not be exactly the same, but its elements can be found in [section 176 of the ALR Act](#) and in the [model code of conduct](#).



Requirements under section 176 of the ALR Act

[Section 176 of the ALR Act](#) sets out how every board and staff member must act and behave.

The duty to act in good faith and for proper purpose is reflected in the wording of this section by requiring board members to act honestly, and for a proper purpose:

- (1) *Every councillor, Board member and member of staff of an Aboriginal Land Council or an advisory committee, must:*
 - (a) *act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under this or any other Act, and*
 - (b) *act for a proper purpose in carrying out his or her functions under this or any other Act, and*
 - (c) *not use his or her office or position for personal advantage, and*
 - (d) *not use his or her office or position to the detriment of an Aboriginal Land Council.*



Requirements under the model code of conduct

The model code of conduct for LALCs in [Schedule 3 of the ALR Regulation](#) sets out in further detail how board members must act and behave.

The duty to act in good faith and for proper purpose is reflected in the following clauses of the model code of conduct:

- **Clause 5** requires officers of the LALC to exercise probity, honesty and diligence in carrying out their duties and responsibilities, and
- **Clause 6** requires officers to at all times safeguard the interests of the LALC and its members.



Note

While most LALCs use and follow the model code of conduct set out in ALR Regulation, some LALCs might have their own code of conduct which they drafted (and which has been approved by the Registrar of the ALR Act).

You should check to see which version your LALC is using. If your LALC hasn't drafted its own version of the code of conduct, then the model code of conduct will automatically apply.

Tips to help you meet this duty in your role as a LALC board member



Tips

- **Read and understand your LALC's objectives** - Make sure you understand the objectives your LALC is aiming to achieve. It is a good idea to have a copy of the CLBP and the ALR Act at all board meetings to check that your decisions are in line with your LALC's CLBP and the objectives and functions of all LALCs under the ALR Act.
- **Don't let personal interests affect your decisions** - When making decisions, ask yourself 'Am I deciding this issue based on what is in the best interests of the current and future operation of the LALC – or am I deciding this based on my own personal interests or in the interest of a select group of members or other people that I favour?'
- **Don't let others dictate how you vote at board meetings** - If a particular group of members voted for your election to the board, remember that once you are on a board your duty is to act in the best interests of the LALC, and not those who voted for you. This does not prevent you from advising the board about the views of members or certain groups.
- **Apply the 'how will it look later' test** – If someone were to analyse your decision later, would they think 'This was the decision of a reasonable, honest person who, with the knowledge they had at the time, was trying to act in the best interests of the LALC'? Or could they possibly conclude that the decision was irrational, partial, and dishonest or made for with some other motive in mind?
- **Beware of conflicts of interest** - There is a close link between the duty to act in the good faith and for proper purpose and another legal duty - the duty to disclose and manage conflicts of interest. Consider whether some conflict of interest is involved in making a decision and whether action needs to be taken to disclose and manage an



More information

Justice Connect's LALC Service provides free legal information, training and advice to LALCs. To find out more visit [our website](#) or [contact the LALC Service](#).