

"Land in the State of New South Wales was traditionally owned and occupied by Aborigines. Land is of spiritual, social, cultural and economic importance to Aborigines. It is fitting to acknowledge the importance which land has for Aborigines and the need of Aborigines for land. The Government has accepted that as a result of past Government decisions the amount of land set aside for Aborigines has been progressively reduced without compensation."

fact sheet



New South Wales
Aboriginal Land Council
www.alc.org.au

Payments to LALC Board members

Travelling and Other allowances

What allowances can be paid to LALC Board members?

Allowances are payments made to Board members to reimburse the out of pocket expenses of Board members such as for travel and meals incurred when the Board members carry out their duties under the *Aboriginal Land Rights Act 1983 (ALRA)*.

Section 63(4) of the ALRA provides that Board members can only be paid those allowances approved by the Minister for Aboriginal Affairs.

On 4 August 2009 the Minister for Aboriginal Affairs determined that LALC Board members could be paid those allowances set out in paragraphs six to ten and Table 1 of paragraph eleven of the Australian Taxation Office Taxation Determination TD 2008/18 and any further subsequent determination. The current determination for the 2010-11 income year is Australian Taxation Office Taxation Determination TD 2010/19.

A copy of TD 2010/19 can be accessed at:

<http://law.ato.gov.au/atolaw/view.htm?Docid=TXD/TD201019/NAT/ATO/00001>

Important note: the rates for allowances for LALC Board members will change when TD 2010/19 changes.

If you require any further assistance in relation

to the Australian Taxation Office Taxation Determination TD 2009/15, the Business tax enquiries number for the Australian Taxation Office is 13 28 66.

Allowance payments may have tax implications for a Local Aboriginal Land Council and personal income tax implications for Board members. It is recommended that Local Aboriginal Land Councils and Board members seek independent financial advice about the requirements to report any payments to the Australian Taxation Office.

Sitting fees or remuneration

What sitting fees can be paid to LALC Board members?

Section 52D of the ALRA prohibits the transfer of income or assets of a Local Aboriginal Land Council (**LALC**) to Board members but allows for the payment in good faith of remuneration to Board members.

In order to ensure that any payments to Board members are made in good faith, it is recommended that the members of the LALC, as distinct from the Board members of the LALC, should approve the payment of any allowances or sitting fees to Board members. This will avoid the conflict of interest that would arise if the



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Board members of the LALC approve payments to Board members.

It is recommended that each LALC develop a clear policy on what payments can be made to Board members under the *Aboriginal Land Rights Act 1983 (ALRA)* and how.

NSWALC recommends that remuneration only be paid:

1. Post attendance at meetings, and
2. Where the Board member has attended a required amount of meeting, for example at least 60% of meetings.

As noted above, any policy in relation to payments to Board members should be approved by the members of the LALC. Whilst the Chief Executive Officer may be responsible for the day to day management of payments to Board members, any payments should be made in accordance with the policy approved by the members.

How much can be paid to LALC Board members as sitting fee?

The determination of a reasonable amount to be paid as a sitting fee to LALC Board members is a matter for the members of a LALC to decide.

NSWALC recommends that the members of the LALC consider the following matters when determining a reasonable level of remuneration:

1. The financial position of the LALC, and
2. The qualifications and experience of the Board members,

In NSWALC's opinion in the majority of cases a payment of **up to \$1000** per year could be a reasonable sitting fee for a Chairperson of a LALC and a payment of **up to \$750** per year could be a reasonable sitting fee for other Board members.

Important notes:

- ALL payments to LALC Board members must be reported in a LALC's budget

and approved by NSWALC pursuant to section 158 of the ALRA.

- Where a Board member has not provided a Tax File Number to the LALC, the LALC must withhold 46.5% of the payment for Pay As You Go (PAYG) Withholding tax that will have to be paid to the Australian Taxation Office.

Sitting fees or remuneration payments may have tax implications for a Local Aboriginal Land Council and personal income tax implications for Board members. Some examples of taxes that may apply include: income tax, PAYG withholding tax, superannuation, worker compensation and payroll tax. It is recommended that the LALC and LALC Board members seek independent financial advice about the requirement to report any payments to the Australian Taxation Office.

How can a LALC develop a policy for payments to LALC Board members?

The Registrar of the ALRA is available to provide assistance to LALCs to develop a policy in relation to payment to Board members.

The Registrar can be contacted on:

*Post Office Box 112
GLEBE NSW 2037*

Telephone: (02) 9562 6367

Fax: (02) 9562 6350

or email to adminofficer@oralra.nsw.gov.au