



# fact sheet

NEW SOUTH WALES ABORIGINAL LAND COUNCIL

## Transfer of Aboriginal Land Council assets under *Aboriginal Land Rights Act 1983 (NSW)*

Section 52D of the *Aboriginal Land Rights Act 1983 (ALRA)* was enacted in 2006 under the *Aboriginal Land Rights Act Amendment Act*. The provision re-enacts a prohibition on transferring the income or property of a Local Aboriginal Land Council (**LALC**) to LALC members, Board members, staff members or consultants to the LALC.

### Section 52D

Section 52D provides:

- (1) *A Local Aboriginal Land Council must ensure that no part of the income or property of the Council is transferred directly or indirectly by way of dividend or bonus or otherwise by way of profit to members of the Council, Board members or any member of staff of, or consultant to, the Council.*
- (2) *Nothing in this section prevents:*
  - a) *the provision of a benefit in good faith to a Council member, Board member, member of staff or consultant in accordance with this Act, or*
  - b) *the payment in good faith of remuneration to any such member, Board member, member of staff or consultant.*

### When does s 52D apply?

Section 52D applies to LALCs. It creates a duty on LALCs not to transfer LALC income or property to:

- Council members
- Board members
- Staff
- Consultants

except in good faith and in accordance with the ALRA.

While LALCs must not directly transfer assets, they must also be careful that they do not indirectly transfer income or property by paying dividends or bonuses or otherwise distributing profit to the persons specified in s 52D.

*Note: the content of this fact sheet is intended for information purposes only. It is not intended as advice and should not be relied upon as advice. All parties should seek independent advice that is suited to their own specific circumstances.*

Section 52D, however, does not mean that Council members, Board members, members of staff and consultants cannot be remunerated or receive any kind of benefit from LALCs. Section 52D states that remuneration can be paid and benefits provided, but only when these acts are done in good faith. The ALRA does not define good faith. In general terms, though, the requirement of good faith means that any payment must be made honestly, openly and transparently, and should be consistent with the work undertaken by the LALC in accordance with the ALRA.

LALCs should consider the fact that transfer of assets is generally prohibited when deciding to make payments or provide benefits in good faith. Section 52D indicates that any payment made should be for work performed or expenses incurred, and benefits should be provided in accordance with the ALRA. This means that benefits should only be made where they are consistent with the ALRA (for example, benefits in accordance with a community benefit scheme approved by NSWALC).