



**New South Wales  
Aboriginal Land Council**

**NSW Aboriginal Land Council Direction  
Section 66A  
Approved Work Policy for LALCs**

The Aboriginal Land Rights Amendment Bill 2022 came into force on 25 November 2022. Section 66A now provides an exception to disqualification under s.66(1)(j) which provides that “a person is disqualified from holding office as a Board member of a Local Aboriginal Land Council if the person is an employee of, or consultant or contractor to, the Council”.

Section 66A allows for Board members to undertake employment, or be engaged as a consultant or contractor to, the Local Aboriginal Land Council (**LALC**), provided the employment or engagement is approved by LALC members in accordance with s. 66A. This document sets out the direction of the NSW Aboriginal Land Council (**NSWALC**) prescribed by s.66A(2)(a).

**s.66A Exception to disqualification—approved short-term work**

1. *Despite section 66(1)(j), a person is not disqualified from holding office as a Board member of a Local Aboriginal Land Council on the ground that the person is an employee of, or a consultant or contractor to, the Council if the employment, consultancy, or contract meets the requirements of this section.*
2. *The employment, consultancy or contract must involve the performance of work of a kind specified in a policy (an approved work policy)—*
  - a. *prepared in accordance with the directions of the New South Wales Aboriginal Land Council, and*
  - b. *approved by resolution of the voting members of the Local Aboriginal Land Council.*
3. *The employment, consultancy or contract must be approved by—*
  - a. *resolution of the voting members of the Local Aboriginal Land Council, or*
  - b. *if the approved work policy requires the Board of the Local Aboriginal Land Council to approve the employment, consultancy, or contract—the Board.*
4. *An approved work policy may not specify either of the following as approved work—*
  - a. *work involving exercising of the functions of the chief executive officer of a Local Aboriginal Land Council,*
  - b. *work to be performed on a permanent basis.*

The intent of s.66A is to empower LALC members to make decisions about appropriate short-term work of Board members of a LALC including, for example, circumstances where Board members may seek to carry out short term work relating to the provision of cultural heritage advice, land management activities and Welcome to Country ceremonies.

- 1. Basis for exception:** Section 66A details three requirements to fulfil when a LALC is considering whether an exception to the disqualification should apply:
  - a. The work must be of a kind specified in a policy prepared in accordance with the directions of NSWALC and approved by resolution of the voting members of the LALC, and;
  - b. The employment, consultancy or contract must also be approved by resolution of the voting members of the LALC or, if required by the approved work policy, the Board, and;
  - c. The policy may not specify, as approved work, the functions of the Chief Executive Officer, or any administrative activities of the LALC or work performed on an ongoing permanent basis.
  
- 2. Definition of short-term work:** Short term work is defined as being non-permanent, time bound work.
  
- 3. Types of short-term work:** The intent of s.66A is to allow for Board members of a LALC to engage in short-term work (employment, consultancy or contract). This could include, but not be limited to culture and heritage work, such as sites work, land management on LALC owned lands and/or Welcome to Country ceremonies. Short term work must not include functions of the chief executive officer. As per s.78B(1)(a) of the ALRA, a Board member may not be employed, or engaged as a consultant, to undertake any of the functions of the chief executive officer of the LALC.
  
- 4. Approval of short-term work:** Employment, consultancy or contract of a Board Member, shall be by resolution of the voting members of the LALC or the Board (if allowed by the approved work policy). Approval of the employment or engagement as a consultant of a Board Member, shall be subject to the following requirements:
  - a. The Board member who is seeking such employment must disclose and declare their interest and remove themselves from the part of the Council and/or Board meeting where the decision is to be made.
  - b. The Board must ensure that staff and consultants are engaged on the basis of merit (as per s.80 and s.81 of the ALRA) before seeking the approval of Members/or the Board.
  - c. The Members/or Board must not approve the employment, or engagement of the Board member if the Members/Board believes that the employment or engagement will be on an ongoing, rather than non-permanent and time bound.
  - d. The remuneration paid to the Board member for their employment or engagement must be approved by the Members/or the Board and must within the prescribed rates of remuneration to applicable award rates of any other person/s undertaking such work.
  - e. Such employment must be within the LALCs approved budget, or a variation to the LALCs budget be undertaken prior to engagement of the Board member, and depending on the type of arrangement, all oncosts need to be considered, such as superannuation, PAYG which may be payable.
  - f. The CEO will provide regular reports to the Board and Members on the nature of the employment of the Board member, such as the terms of engagement, remuneration paid, and the merit-based process used to engage the Board member.

7. **Reporting:** LALCs will be required to report in their Annual Report the nature and period of the engagement of all Board members employed under the approved work policy during the financial period.
8. **Management and oversight:** The LALC CEO will be responsible for the direct management of those Board members who are engaged by the LALC to undertake short term work (as an employee, consultant or contractor). Those engaged to undertake short term work will abide by all relevant employment conditions during their engagement and all requirements of the LALC's code of conduct and engage in ethical behaviour.
9. **Applicable LALC policies:** A LALC will need to consult and abide by their policies when considering adopting and implementing a policy on short term work, such as, but not restricted to:
  - Conflict and Pecuniary Interest Policy
  - Culture and Heritage or Sites Works Policy
  - Welcome to Country Policy, and any applicable
  - Employment Policy
  - Any applicable Code of Conduct Policy of the LALC or ALRA, ALRR (the Regulations)

Below is a summary of the steps a LALC will need to undertake in accordance with s.66A.

1. The LALC Members should consider if they wish to develop a work policy for the short- term employment of LALC Board members at the LALC.
2. In drafting the work policy, it is recommended that the above criteria be used in the development of a policy to ensure transparency. Consideration be given as to the nature of the employment, length and terms of the employment, and how such employment will be managed and reported upon.
3. The policy should clearly set out if the approval of LALC Members or the Board is required to the engagement of the Board member which will require a separate formal approval process of the Members or the Board.
4. Once the draft working policy has been developed, this policy must then be approved by the LALC Members by way of formal resolution of a special majority (representing 80% of the voting members present).
5. Board members must consider the pecuniary interest provisions when deciding to engage in any aspect of the approval process where they may have or perceived to have a conflict.
6. The Chief Executive Officer shall report regularly to the Board and LALC Members on the engagement of any Board member/s employed, to include the nature of the employment, the commencement and end date and as to the merit-based process applied for the engagement.