

Tweed Byron Local Aboriginal Land Council

Code of Conduct for Board Members and Staff

1. Introduction

1.1 What is the purpose of this Code of Conduct?

This is the Code of Conduct for Tweed Byron Local Aboriginal Land Council (**TBLALC**) Board members and staff referred to in section 177(1)(a) of the *Aboriginal Land Rights Act 1983* (**ALRA**).

The immediate purpose of this Code of Conduct is:

- to clearly set out for each LALC Board member and each staff member (together referred to in this Code of Conduct as **LALC officials**) the standards of conduct that are expected of them,
- in doing that, to assist TBLALC officials to comply with their duties set out in section 176 of the ALRA, and
- provide clear standards against which TBLALC officials can be held to account, which might include using the processes in Parts 3A and 6 of the ALRA.

By observing this Code of Conduct, TBLALC officials can help ensure that the LALC is run well and is better able to pursue and achieve its goals. If this Code is observed by TBLALC officials, this will also help give LALC members, other Aboriginal people in the LALC's area and the public, confidence in TBLALC and confidence in Aboriginal Land Councils generally.

Likewise, failing to observe the standards in this Code of Conduct can have serious impact on the functioning and standing of TBLALC. For that reason, breaches of this Code of Conduct may result in action being taken against the LALC official.

TBLALC officials should also note that the protection from personal liability in section 242 of the ALRA only applies to things they do in good faith and for the purpose of carrying out the ALRA. Observing this Code of Conduct will help to ensure that TBLALC officials get the benefit of this important protection.

1.2 Relationship to duties and obligations under the ALRA and other laws

There is overlap between the standards in this Code of Conduct and some duties and obligations of LALC officials under the ALRA and other laws (such as the *Independent Commission Against Corruption Act 1988* (**ICAC Act**)).

For example, section 176 of the ALRA imposes general duties on LALC officials such as the duty to act honestly and with a reasonable degree of care and diligence. Very similar general duties are contained in this Code of Conduct.

This Code of Conduct does not alter or take away from any duties and obligations imposed by the ALRA or other law.

This Code of Conduct is a stand-alone source of standards and rules. It has been developed and adopted by TBLALC to apply only to TBLALC officials.

1.3 Reading and understanding this Code of Conduct

The spirit as well as the word

This Code of Conduct is intended to clearly set out rules and standards that TBLALC officials have to observe. TBLALC officials are expected to uphold the spirit as well as the word of this Code of Conduct.

Importance of TBLALC's Core Values

TBLALC's values are set out in Part 2 of this Code of Conduct.

This Code of Conduct should be read in the light of those values, and it should be understood and applied in a way that reflects and supports those.

Importance of the ALRA and law

This Code of Conduct should be read together with and in the light of the ALRA and law generally. It should be interpreted and applied only in a way that is consistent with the ALRA and with law generally.

The use of "you"

To make reading and understanding this Code of Conduct easier, throughout the Code – apart from this part 1 "Introduction" – the word "**you**" is used to mean the TBLALC official reading the Code.

1.4 Enforcing this Code of Conduct

All TBLALC officials need to be familiar with and to uphold this Code of Conduct.

If the conduct of an TBLALC official ever becomes an issue, TBLALC can take action to enforce this Code.

Action for a breach of this Code of Conduct could range from an informal meeting to mediation to formal action under Part 10 of the ALRA to deal with an TBLALC official for misconduct. The most appropriate and useful way of dealing with a breach will depend on a range of factors.

A breach of this Code of Conduct could also be corrupt conduct for the purposes of the ICAC Act, and in that case TBLALC's Chairperson will have a legal duty to report the matter to Independent Commission Against Corruption (**ICAC**).

This Code of Conduct also includes dismissal provisions of the kind referred to in section 177(5) of the ALRA. If a Board member breaches one of these provisions, TBLALC's members can decide to dismiss him or her from office.

2. TBLALC's values

The values held by the TBLALC are:

- **Respect** – for land and culture, in being guided by our traditions and our spiritual connection to country, for elders and family and for each other,
- **Faith** – in our youth as the future leaders of our community, hearing their voices and helping them grow
- **Support** – for each other and for those within our LALC community most in need of it, and
- **Inclusion** – making a place within our LALC community for all Aboriginal people in the LALC area.
- **Dedication and commitment** – being selflessly committed to the protection of the TBLALC’s interests and the interests of its members and the TBLALC community.
- **Fairness and impartiality** – making decisions and taking actions fairly and impartially, without favour or discrimination.
- **Honesty and integrity** – always acting honestly and not allowing private interests or obligations to influence decisions.
- **Accountability and openness** – being as open and transparent about actions and decision making, allowing TBLALC and its members to hold you to account.

3. General duties and standards

3.1 Conduct generally

- (1) You must always conduct yourself and exercise your authority:
 - (a) in the best interests of TBLALC, its members and the community it serves,
 - (b) in compliance with the ALRA, the ALR Regulation and law generally and with TBLALC’s Rules, this Code of Conduct and TBLALC’s policies, and
 - (c) in a way which upholds TBLALC’s core values and its core leadership and governance values.
- (2) You must not conduct yourself in a manner detrimental to or likely to be detrimental to TBLALC’s interests, or those of its members and the community its serves.
- (3) You must not conduct yourself in a manner that is likely to bring TBLALC or Aboriginal Land Councils generally into disrepute.

3.2 Care and attention

- (1) You must always be reasonably attentive to your office or your duties.
- (2) Whatever your level of knowledge, skill or experience, you must always perform your duties and carry out your functions with reasonable care.

3.3 Fairness, impartiality and proper purpose

- (1) You must make your decisions and exercise your authority objectively and consistently and according to any laws, policies or procedures that apply. You must base your decisions on merit, taking account of all relevant matters and ignoring irrelevant matters.

- (2) You must always act fairly and impartially. You must not engage in favouritism or prejudice in relation to the provision of benefits or services to LALC members or other Aboriginal people in the LALC's area.
- (3) You must make your decisions and carry out your functions only for a proper purpose.

3.4 Respect for others

- (1) Your interactions with others – including TBLALC officials, members and other community members – must always be respectful, polite and professional so as to help foster:
 - (a) a well run LALC that members and other community members are pleased to be involved with,
 - (b) a good workplace, and
 - (c) a positive image of the LALC amongst its members, its community and within the wider community.
- (2) You must never harass, discriminate against, or encourage or support others who harass and discriminate against other TBLALC officials, members or community members. This includes, but is not limited to, harassment and discrimination on the grounds of sex, pregnancy, age, race, marital status, disability, homosexuality or transgender grounds.

3.5 Honesty and integrity

- (1) You must always act honestly and in good faith.
- (2) You must never allow any private interest or obligation to improperly influence your decision making or the exercise of your authority.
- (3) You must not improperly use your office or position to gain a personal advantage or benefit for yourself or another person or organisation, or to cause detriment to TBLALC.
- (4) You must not improperly use information that you have access to because of your office or position to improperly gain a personal advantage or benefit for yourself or another person or organisation, or to cause detriment to TBLALC.
- (5) You must not seek to influence other TBLALC officials in order to gain a personal advantage or benefit for yourself or another person or organisation, or to cause detriment to TBLALC.

4. Conflicts of interests and duties of disclosure

4.1 Avoiding conflicts of interests

- (1) You must take reasonable steps to avoid actual and perceived conflicts of interests from arising in relation to the performance of your duties.
- (2) When conflicts of interests do arise, you must take all reasonable steps to disclose and manage them, to ensure they are visible and do not improperly influence, or appear to improperly influence, the performance of your duties.

- (3) Without limiting paragraph (2), you must disclose pecuniary and non-pecuniary interests in accordance with this Code of Conduct and the ALRA.

4.2 Disclosure of pecuniary interests

- (1) You must comply strictly with your duties of disclosure in relation to ***pecuniary interests*** set out in Part 10, Division 4 of the ALRA (**ALRA disclosure provisions**).
- (2) In complying with the ALRA disclosure provisions, you must assume that any reference to “a meeting of the Council” includes a meeting of TBLALC’s Board and a meeting of any sub-committee of the Board. That means that you must comply with s 184 of the ALRA not only in relation to member meetings, but also in relation to Board meetings and sub-committee meetings.
- (3) In addition:
 - (a) if you are the chief executive officer, you must disclose in writing to the Board, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.
 - (b) if you are a member of staff other than the chief executive officer, you must disclose in writing to the chief executive officer, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.

4.3 Disclosure of non-pecuniary interests

- (1) You must also disclose any ***non-pecuniary interest*** in relation to any matter being discussed at a TBLALC meeting, as if it was a pecuniary interests and as if the ALRA disclosure provisions and provisions 4.2(1) to 4.2(3) of this Code of Conduct applied. This means you must disclose non-pecuniary interests as if they were pecuniary interests.
- (2) If you are required by paragraph (1) to disclose a non-pecuniary interest at a meeting, you must also have to leave the meeting and remain out of sight of the meeting unless the Board has decided the disclosed interest is not significant.
- (3) A non-pecuniary interest is to be regarded as significant if it involves:
 - (a) a family relationship that is particularly close (e.g. a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, child or grandchild of you or of your spouse, your current or former spouse or partner, de facto or other person living in the same household),
 - (b) another relationship that is particularly close (e.g. a friend or business associate), or
 - (c) an affiliation between you and an organisation, sporting body, club, political party, corporation or association that is particularly strong.

and if it could appear to a reasonable observer that the non-pecuniary interest could improperly influence your participation in decision making about the matter.

4.4 Gifts and benefits

- (1) You must not:

- (a) seek or accept a bribe or other improper inducement,
 - (b) seek gifts or benefits of any kind in connection with the performance of your duties, or
 - (c) accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your duties, including any gift or benefit.
- (2) Without limiting paragraph (1)(c) above, a gift of benefit will be taken to be one that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you, if it:
- (a) is for more than nominal value, or
 - (b) consists of cash or a cash-like gift (gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internal credit, memberships or entitlements to discounts), regardless of the amount.
- (3) If you receive a gift or benefit of a kind referred to in paragraph (1), you must:
- (a) if you are a Board member – disclose the gift to the next Board meeting,
 - (b) if you are the Chief Executive Officer or a Board member – disclose it to the next Board meeting, or
 - (c) if you are a staff member other than the Chief Executive Officer – disclose it to the Chief Executive Officer as soon as practicable.

In each case, the gift or benefit must be surrendered to TBLALC and then returned, unless the nature of the gift or benefit makes either surrender or return impractical.

4.5 Other business or employment – staff members

- (1) If you are a staff member considering outside employment or contract work that relates to the business of TBLALC or that might conflict with your duties to TBLALC, you must notify and seek the approval of the Chief executive Officer in writing. If you are the Chief Executive Officer, you must notify and seek the written approval of the Board.
- (2) As a staff member, you must ensure that any outside employment or business you engage in will not:
- (a) conflict with your duties to TBLALC,
 - (b) involve using information or resources obtained through your work with TBLALC,
 - (c) require you to work while on duty for TBLALC, or
 - (d) discredit or disadvantage TBLALC.

4.6 Personal dealings with TBLALC

It is possible you may have reason to deal with TBLALC in your personal capacity (for example, as a tenant in one of TBLALC's houses). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your position. You must

avoid any action that could lead members or members of the public to believe that you are seeking or receiving preferential treatment.

5. Other specific duties and standards

5.1 Board member interactions with staff and consultants

- (1) If you are a Board member, you must respect the division of roles and responsibilities between the Board and the Chief Executive Officer in relation to the direction of staff and consultants. While the Board directs and controls the affairs of TBLALC generally, staff and consultants are under the direction of the Chief Executive Officer. You must not:
 - (a) try to direct staff or consultants (other than by a resolution of the Board giving an appropriate direction to the Chief executive Officer),
 - (b) try to influence staff or consultants, including by things said at a TBLALC meeting or other forum.
- (2) Further, while the Chief Executive Officer is subject to the control and direction of the Board, it is not appropriate for individual Board members to try and direct the chief executive officer. As with other functions of the Board, this function may only be exercised by Board resolution.

5.2 Board members attendance at Board meetings

- (1) If you are a Board member, you must make a reasonable effort to properly prepare for, attend, and participate constructively in all Board meetings and any sub-committee meetings you may be required to participate in.
- (2) A reasonably attentive and careful Board member will:
 - (a) take the time needed to gain a reasonable level of knowledge and understanding about TBLALC's objects and functions, its operations and priorities (as set out in its community, land and business plan) and its overall financial position,
 - (b) make an effort to attend all Board meetings (as well members meetings and any relevant Committee meetings),
 - (c) make an effort to prepare for meetings (e.g. by reading papers that may be provided in advance) so that at the meetings he or she will be ready and able to engage,
 - (d) pay attention at meetings and do his or her best to understand the matters being discussed, and
 - (e) apply his or her knowledge and understanding about TBLALC's objects and functions, operations and priorities to those matters.
- (3) If you are unable to attend a meeting you must request leave of absence from the Board, identifying:
 - (a) the meeting you wish to be excused from, and
 - (b) the grounds on which you wish to be excused.

You should note that if you are absent from 2 consecutive meetings or the Board of which reasonable notice has been given, except on leave from the Board or unless you are excused by the Board for having been absent, your office may be vacated by operation of s 67 of the ALRA.

5.3 Behaviour at LALC meetings

- (1) When at LALC meetings (including TBLALC members' meetings, Board meetings and sub-committee meetings) you must observe and comply with Appendix 1 – Code of meeting behavior.
- (2) When at a members' meeting, you must take care to not misuse information that you have because of your office or position.

5.4 Use of TBLALC resources

- (1) TBLALC resources (including its property, vehicles and letterhead) are to be used only for the purposes of TBLALC business. You must not use them for private purposes unless this use is lawfully authorised.
- (2) You must avoid any action or situation that could create an appearance that TBLALC resources are being improperly used for your benefit or the benefit of any other person or body.

5.5 Use of information

- (1) Information that you have access to as a result of your office or possession must not be abused. You must only access TBLALC information that you need to perform your duties. You must use TBLALC information only as needed to perform your duties. You must not use TBLALC information for your own purposes.

Confidential information

- (2) You must take special care with confidential information. This includes:
 - (a) Board papers and your knowledge of things said during Board meetings, and
 - (b) any other information or document that by its nature is confidential and that you know or ought to know is confidential.
- (3) You must:
 - (a) protect confidential information,
 - (b) not release or disclose confidential information unless you are authorised to do so.

Private information

- (4) You must also take special care with any private information that you have access to because of your office or position, being aware that it may be protected by privacy law.

5.6 Unauthorised public comment

Unless you are the Chairperson or have been authorised to do so by the Board, you may not make any public statement, including to any newspaper, radio or TV station, or in a post on Facebook, Twitter or any other social media service:

- (a) on behalf of TBLALC,
- (b) about TBLALC or its affairs, or
- (c) about other TBLALC officials.

5.7 Public interest disclosures

- (1) Nothing in this Code of Conduct, including provision 5.6, is intended to discourage or hinder any LALC official or member from making a public interest disclosure under the *Public Interest Disclosures Act 1994 (NSW) (PID Act)*.
- (2) However, you must take care to ensure your reports of wrongdoing are made responsibly and in accordance with the PID Act. Amongst other things, this means:
 - (a) you must honestly believe on reasonable grounds that the information being reported shows or tends to show wrongdoing,
 - (b) you must make the report to either:
 - an *investigating authority* (which includes ICAC, the NSW Ombudsman, the Auditor-General of NSW or the Information Commissioner),
 - the Chief Executive Officer or, for reports about the Chief Executive Officer, to the Chairperson;
 - if another person is nominated to receive a report of wrongdoing in any TBLALC reporting policy or procedure – that person; or
 - in the limited circumstances set out in section 19 of the PID Act, a Member of Parliament or journalist.

6. Dismissal from office – Board members

6.1 Introduction

Each of the provisions under heading 6.2 is a **dismissal provision** of the kind referred to in section 177(5) of the ALRA. If you are a Board member, breaching any one of those provisions could lead to you being dismissed from office.

6.2 Dismissal provisions

- (1) You must not:
 - (a) steal from TBLALC or obtain a benefit from TBLALC by deception,
 - (b) physically assault or threaten to physically assault another LALC official, a member or another community member,
 - (c) physically assault or threaten to physically assault any person at a LALC

meeting (whether a members' meeting, a Board meeting or a sub-committee meeting) or otherwise while performing your duties, or

- (d) attempt to do any of (a), (b) or (c).
- (2) If, pursuant to the processes in Part 10, Division 3A of the ALRA, the Registrar has previously been satisfied that, during your current term of office, you have been guilty of misconduct giving rise to grounds for the taking of disciplinary action, you must not commit any further act of misconduct that gives rise to grounds for the taking of disciplinary action.
- (3) The term ***grounds for the taking of disciplinary action*** has the same meaning as in section 181B of the ALRA.

6.3 Dealing with breaches of dismissal provisions

- (1) TBLALC must only consider dismissing a Board member for breach of one of the dismissal provisions in 6.2(1), if the Registrar has found, pursuant to the processes in Part 10, Division 3 of the ALRA, that the Board member has breached the provision.
- (2) TBLALC must only consider dismissing a Board member for breach of the dismissal provision in 6.2(2), if the Registrar has on at least 2 occasions been satisfied, pursuant to the processes in Part 10, Division 3A of the ALRA, that the Board member was guilty of misconduct giving rise to grounds for the taking of disciplinary action.
- (3) TBLALC must give a Board member not less than 21 clear days' notice of any intention to consider dismissing the Board member at a members' meeting.
- (4) At a members' meeting at which the members are considering the removal of a Board member for breach of a dismissal provision, the Board member must be given a reasonable opportunity to put his or her case about why he or she should not be dismissed. The reasonable opportunity must include allowing the Board member to speak at the meeting or, if the Board member prefers, reading aloud a statement that the Board member has written.