

FACT SHEET
ELIGIBILITY CHECKS FOR NSWALC COUNCILLOR CANDIDATES
AND
CONSENT FOR NATIONAL POLICE CHECK

Background

The *Aboriginal Land Rights Act 1983* (NSW) (**ALRA**) sets out who is eligible to hold office as a Councillor of the New South Wales Aboriginal Land Council (**NSWALC**), and the reasons that a person may be disqualified from holding this office.

The reasons for which a person may be disqualified from holding office as a Councillor of the NSWALC are listed in section 132 of the ALRA.

Under section 132 of the ALRA, you cannot hold office as a Councillor of the NSWALC for reasons including:

- being convicted of an offence within the last 5 years:
 - that is punishable by imprisonment for 5 years or more in NSW (regardless of the location of the conviction) even if you personally did not receive that sentence; or
 - under the ALRA; or
 - relating to the management of a corporation; or
- being disqualified from holding office in or being involved in the management of a corporation under any law; or
- being a director or person involved in the management of a company or Aboriginal corporation that is the subject of a winding up order or for which a controller administrator has been appointed, within the last 3 years.

A copy of section 132 of the ALRA is attached to this form.

If you are disqualified, the Registrar can make a determination to allow you to stand for election (or continue in office). The Registrar can only make a determination in limited circumstances.

Registrar's Determination

The Registrar has limited power to review your disqualification from office due to a conviction for an offence (referred to as a '**Registrar's Determination**') In certain circumstances, the Registrar can decide to ignore your offence to allow you to remain in office or to stand for election as a Councillor of the NSWALC.

When making a Registrar's Determination, the Registrar can only consider:

- a) the triviality of your actions in committing the offence; and
- b) the length of time that has passed since the offence was committed.

National Police Checks and other inquiries made by the Office of the Registrar

If you are considering standing for election as a Councillor of the NSWALC, and would like to confirm that you are not disqualified from holding office, you can ask the Office of the Registrar to complete an Eligibility Check.

All candidates, when nominating for election as a Councillor, are required to sign a statutory declaration declaring that they are NOT disqualified from holding office.

There are penalties for making false declarations.

The Office of the Registrar makes the following enquiries for each candidate:

- 1) **National Police Check** – A National Police Check (also known as a Criminal Record Check) through the NSW Police. The NSW Police search their criminal record database for all offences and/or convictions (under any State, Territory or Commonwealth law) recorded against the candidate's name, and provide a report to the Office of the Registrar.
- 2) **ASIC Search** - A search of the Australian Securities and Investment Commission's (ASIC) "*Banned and Disqualified Register*" to determine if the candidate has been disqualified from involvement in the management of a corporation.
- 3) **ORIC Search** - A search of the Office of the Registrar of Indigenous Corporations' (ORIC) "*Register of Disqualified Officers*" to determine if the candidate has been disqualified from managing corporations by a Court or by the Registrar of Indigenous Corporations.

A Councillor's eligibility to hold office may need to be re-checked during their term in office if legitimate concerns are raised that the Councillor may have become disqualified from holding that office.

Consent for National Police Checks

A candidate's consent is required to conduct National Police Checks. The attached ***Authorisation for Criminal Record Check Form*** asks you to authorise the Registrar to conduct National Police Checks and to provide relevant information and identification to the NSW Police to allow the checks to be undertaken.

The National Police Checks will be conducted in strict confidence. The NSWALC will only be advised of your eligibility (or ineligibility as the case may be) if you are elected to the NSWALC Council. NSWALC will not be advised of any details discovered during the National Police Check.

The Office of the Registrar does not require a person's consent to conduct the ASIC and ORIC searches, as the registers searched are public and available for any person to search.

PLEASE NOTE: The Office of the Registrar does not provide Working with Children Checks. If you are seeking a Working with Children Check Clearance you should refer to the NSW Office of the Children's Guardian website: [Working with Children Check | Office of the Children's Guardian \(nsw.gov.au\)](http://WorkingwithChildrenCheck.OfficeoftheChildrensGuardian.nsw.gov.au).

Identification documents

The NSW Police have strict requirements in relation to the identification documents that must be provided to complete National Police Checks.

Please ensure you provide a photocopy or photo of your:

- 1) current Driver's Licence (or other photo ID i.e. Passport or Photo Identification Card issued in Australia); **AND**
- 2) Medicare Card,

with your completed **Authorisation for Criminal Record Checks Form** (see attached).

If you do not have a photo ID, you can provide another form of identification such as a certified copy of your Birth Certificate, a Change of Name Certificate or other government issued identification.

Please make sure all copies of your ID are clear and that your ID is current. If you are providing a copy of a digital Driver's Licence, please provide a copy of the whole licence from top to bottom – i.e. including both the card and licence number.

After you have completed the attached **Authorisation for Criminal Record Checks Form**, please provide it and your ID documents to the Office of the Registrar via email to adminofficer@oralra.nsw.gov.au.

If you have any questions about any of the issues discussed in this form, please contact the Office of the Registrar on (02) 8575 1160 for assistance.

Updated on 11 December 2023.

AUTHORISATION FORM FOR CRIMINAL RECORD CHECKS

Being for the role of **COUNCILLOR** at the **New South Wales Aboriginal Land Council**.

PERSONAL DETAILS:

Surname: _____ First Name: _____

Other Given Names: _____ Date Of Birth: _____

Town/Suburb of Birth: _____ State: _____

Country of Birth: _____

Daytime Contact Number: _____

Email Address: _____

Current Residential Address: Number: _____ Street: _____

Suburb: _____ State: _____ Postcode: _____

Previous Residential Address (in the last 5 years):

Are you known by any other names? (i.e. Former Name, Maiden Name etc.)

Surname: _____ First Name: _____

Other Given Names: _____

IDENTIFICATION DOCUMENTS - PLEASE PROVIDE A PHOTO OR COPY OF YOUR:

1. current Australian Drivers Licence (or other form of photo ID i.e. photo card or passport issued in Australia OR *if you do not have photo ID* a certified copy of Birth certificate, Change of Name Certificate or other government issued ID) **AND**
2. current Medicare Card.

AUTHORISATION:

I, _____ authorise the Registrar of the Aboriginal Land Rights Act 1983 to provide the New South Wales Police with the information contained in and accompanied with this form, including copies of any identification documents provided by me, for the purpose of completing National Police Checks and providing details of all offences and/or convictions that may be recorded against my name to the Office of the Registrar.

I declare the personal information I have provided on this form and any identification documents I have provided to the Office of the Registrar relate to me and are correct.

Signature: _____ Date: _____

Attachment 1: section 132 of the *Aboriginal Land Rights Act 1983*

132 Grounds for disqualification from office (NSWALC Councillor)

- (1) A person is disqualified from holding office as a councillor of the New South Wales Aboriginal Land Council if the person—
- (a) has a conviction in New South Wales or elsewhere for an offence relating to the management of a corporation that was recorded within the last 5 years, or
 - (b) has a conviction for an offence under this Act that was recorded within the last 5 years, or
 - (c) has a conviction in New South Wales for any other offence that is punishable by imprisonment for 5 years or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable that was recorded within the last 5 years, or
 - (c1) has, within the last 5 years, been the subject of a finding by the Independent Commission Against Corruption that the person has engaged in serious corrupt conduct, or
 - (d) is a mentally incapacitated person, or
 - (e) is or becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (f) is or was a director or person concerned in the management of a body corporate that is the subject of a winding up order or for which either of the following has been appointed during the last 3 years—
 - (a) a controller or administrator under the *Corporations Act 2001* of the Commonwealth,
 - (b) a controller or administrator, other than a special administrator, under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth, or
 - (g) is disqualified from holding office in or being concerned in the management of a corporation under any law of this or any other State or Territory or the Commonwealth, or
 - (h) is an employee of, or a consultant to, the Council, or
 - (i) in the case of a councillor, engages in other paid work without the approval of the New South Wales Aboriginal Land Council, or
 - (j) was, within the last 5 years, an officer of the Council immediately before an administrator was appointed for the Council, or
 - (k) fails, without a reasonable excuse, for a period of 3 months or more to comply with a written requirement by the Council to undergo training under section 131, or
 - (l) is disqualified from being a Board member, other than on the ground that the person is a councillor.
- (2) The Registrar may determine that an offence committed by a person should be ignored for the purposes of this section because of the time that has passed since the offence was committed or because of the triviality of the acts or omissions giving rise to the offence.
- (3) The Registrar may determine that a person is not disqualified on the ground set out in subsection (1)(j) if the Registrar is satisfied that it is appropriate in the circumstances that the person not be disqualified on that ground.
- (4) Despite subsection (1)(h), a person is not disqualified from holding office as a councillor of the Council on the ground that the person is an employee of, or consultant to, the Council (and is taken not to have been disqualified from holding office at the time of the person's nomination) if—
- (a) the person takes a leave of absence from employment with the Council in accordance with section 132A, and
 - (b) if the person is elected to the Council, the person resigns from their employment with, or as a consultant to, the Council as soon as practicable after becoming aware of the result of the election.