

ELIGIBILITY (CRIMINAL RECORD) CHECKS CONSENT FOR CHIEF EXECUTIVE OFFICERS

Background

The *Aboriginal Land Rights Act 1983* (NSW) ('**ALRA**') sets out who is eligible to be employed as a Chief Executive Officer ('**CEO**') of a Local Aboriginal Land Council ('**LALC**'), and the reason that a person may be disqualified from being employed in this role.

The reasons for which a person may be disqualified from being employed as the CEO of a LALC are listed in sections 78B and 79 of the ALRA. These reasons are further explained in the Office of the Registrar, *Aboriginal Land Rights Act 1983* ('**Office of the Registrar**') Fact Sheet *Eligibility Checks – LALC Chief Executive Officers*. A copy of sections 78B and 79 of the ALRA are also attached to this form.

If you are disqualified from being employed as CEO for any of the reasons listed in sections 78B or 79 of the ALRA, you **cannot** be employed as a CEO of a LALC (Unless the Registrar has decided to disregard your offence in accordance with section 78B(2) of the ALRA).

Under s78B and 79 of the ALRA, you can be disqualified from being employed as a CEO for reasons including:

1. being convicted of an offence relating to the management of a corporation, within the last 5 years;
2. being convicted of certain offences under the *Crimes Act 1900* (NSW), within the last 5 years (specifically offences under Part 3 (except section 61), 4, 4AA, 4AB, 4AC, 4ACA, 4AD, 4AE, 4A, 4B, 5 or 5A of the *Crimes Act 1900*);
3. being convicted of a crime or other offence within the last 5 years that has a maximum sentence of 12 months or more in prison in NSW, even if you personally did not receive that sentence; or
4. being convicted of certain child sex offences under the *Crimes Act 1900* (NSW) (including offences under sections 66EB or 66EC, or section 80D of the *Crimes Act 1900*);
5. being disqualified from holding office in or being concerned in the management of a corporation in Australia.

Inquiries made by Office of the Registrar

When a person commences employment as the CEO of a LALC, the Office of the Registrar conducts Eligibility Checks to make sure the person is eligible to be employed in that role. The Office of the Registrar makes the following inquiries about each new LALC CEO:

- 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 person’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 person 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 person has been disqualified from managing corporations by a Court or by the Registrar of Indigenous Corporations.

A LALC CEO’s eligibility may need to be checked again during their employment if legitimate concerns are raised that the CEO may no longer be eligible to be employed in that role.

Consent for National Police Checks

A LALC CEO’s consent is required to conduct National Police Checks. The ***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.

If you authorise the Registrar to conduct National Police Checks, they will be conducted in strict confidence. The LALC that you have been employed by will **only** be advised if you are eligible or not eligible to be employed as the CEO. The LALC will *not* be advised of any of the details discovered during that check.

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 \(nsw.gov.au\)](https://www.workingwithchildren.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***.

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 Chairperson of the LALC, who will forward it to the Office of the Registrar on your behalf.

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.

AUTHORISATION FOR CRIMINAL RECORD CHECK

Being for the role of **CEO** at the _____ Local 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 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.

Attachment 1: sections 78B and 79, *Aboriginal Land Rights Act, 1983*

78B Certain persons must not be employed as chief executive officers

(1) The following persons must not be or continue to be employed as the chief executive officer of a Local Aboriginal Land Council:

- (a) a person who is a Board member of the Council or a councillor,
- (b) a person who 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,
- (c) a person who has a conviction in New South Wales for an offence that is punishable by imprisonment for 12 months 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,
- (d) a person who 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,
- (e) a person who has an interest in, or is an employee of or concerned in the management of, a corporation that receives a benefit from the Council,
- (f) a person who is already engaged as a consultant to the Council,
- (g) a person who is a member of staff of the New South Wales Aboriginal Land Council,
- (h) a person who has been dismissed on the recommendation of the former Aboriginal Land Councils Pecuniary Interest and Disciplinary Tribunal or the Civil and Administrative Tribunal within the last 5 years,
- (i) a person who is disqualified under this Act from being a Board member or a councillor (other than on the grounds of employment by the Council or ceasing to be a voting member of a Local Aboriginal Land Council).

(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) Despite subsection (1) (e), a person may, with the approval of the Board of a Local Aboriginal Land Council, be employed or continue to be employed as the chief executive officer of the Local Aboriginal Land Council, if the person would be prohibited merely because:

- (a) the person is concerned in the management of a corporation established, acquired, operated or managed in connection with an arrangement to which section 52C applies, or

(b) the person is employed as the chief executive officer of another Local Aboriginal Land Council.

79 Certain persons must not be employed

(1) A person who is convicted of an offence under Part 3 (except section 61), 4, 4AA, 4AB, 4AC, 4ACA, 4AD, 4AE, 4A, 4B, 5 or 5A of the *Crimes Act 1900* must not be employed as a staff member of, or a consultant to, a Local Aboriginal Land Council for 5 years from the date of conviction.

(1A) The Registrar may determine that an offence committed by a person may be disregarded for the purposes of subsection (1) because of:

- (a) the time that has passed since the offence was committed, or
- (b) the triviality of the acts or omissions giving rise to the offence, or
- (c) the nature and circumstances of the proposed employment.

(1B) A person must not be employed as a staff member of, or engaged as a consultant to, a Local Aboriginal Land Council if the person has been convicted of:

- (a) an offence that involves sexual intercourse with a child or of attempting, or of conspiracy or incitement, to commit an offence of that kind, or
- (b) an offence under section 66EB or 66EC of the *Crimes Act 1900*, or
- (c) an offence under section 80D of the *Crimes Act 1900* where the person against whom the offence is committed is a person under the age of 18 years.

(2) A person who is an officer of an Aboriginal Land Council must not be employed as a member of staff of a Local Aboriginal Land Council while the person is an officer of an Aboriginal Land Council.

(3) A person who is a consultant to a Local Aboriginal Land Council must not be employed as a member of staff of that Council while the person is such a consultant.

(4) A member of staff of the New South Wales Aboriginal Land Council must not be employed as a member of staff of a Local Aboriginal Land Council while the person is such a member of staff.

(5) Subsection (4) does not prevent a member of staff of the New South Wales Aboriginal Land Council from being seconded to the staff of a Local Aboriginal Land Council.