

FACT SHEET

ELIGIBILITY CHECKS – LALC BOARD MEMBERS

What are Eligibility Checks?

Eligibility Checks are checks that the Office of the Registrar of the *Aboriginal Land Rights Act 1983* (NSW) ('**Office of the Registrar**') performs to make sure you are eligible to hold office as a Board member of a Local Aboriginal Land Council ('**LALC**'). Through Eligibility Checks, the Office of the Registrar will seek certain information to find out whether you could be disqualified from holding office as a Board member.

When you are elected to the Board of a LALC, the Office of the Registrar will ask for your consent to conduct National Police Checks through the NSW Police, to see if you have been convicted of any offences that *may* disqualify you from holding office.

Not all convictions will prevent you from holding office – only specific offences listed in the *Aboriginal Land Rights Act 1983* (NSW) (**ALRA**), for which you have received a conviction at a particular time, including crimes involving the management of a corporation, may disqualify you. This is explained further below.

The Office of the Registrar will also make enquiries with the Australian Securities and Investments Commission and with the Office of the Registrar of Indigenous Corporations to see if you have been disqualified from involvement in the management of corporations.

The Office of the Registrar's **Authorisation for Criminal Record Checks Form** also contains questions that will help to assess your eligibility to hold office.

Who needs Eligibility Checks?

All people elected to the Board of a LALC *must* have their eligibility checked as soon as possible after they are elected.

All you have to do is:

- 1) fill out the Office of the Registrar's **Authorisation for Criminal Record Checks Form** (which authorises the Office of the Registrar to carry out National Police Checks); and
- 2) make copies of your required ID,

then provide those documents to the NSWALC Zone Office or the LALC CEO, who will forward them to the Office of the Registrar on your behalf.

Why do I need Eligibility Checks?

LALC Board members *must* be eligible to hold office under the ALRA. Your eligibility depends on many factors, including those listed in section 66(1) of the ALRA. If you are not eligible to hold office for one of the reasons listed in that section you may be disqualified from holding office.

Under section 66(1) of the ALRA, you can be disqualified for any of the following reasons:

- being convicted of an offence within the last 5 years that has a sentence of 5 years or more in prison in NSW (regardless of where the offence was committed), even if you personally did not receive that sentence;
- being convicted of an offence under the ALRA or an offence relating to the management of a corporation, within the last 5 years,
- a finding being made by the Independent Commission Against Corruption that you have engaged in serious corrupt conduct, within the last 5 years;
- being declared bankrupt; taking bankruptcy relief steps; being involved in a corporation forced to wind up or had a controller or administrator appointed within the last 3 years; or being disqualified from involvement in a company in Australia;
- remaining or becoming an employee (or a consultant or contractor) of a LALC or the New South Wales Aboriginal Land Council (NSWALC), after you are elected to the Board;
- becoming a Councillor of NSWALC;
- being disqualified from being a Councillor of NSWALC;
- being a Board member of a LALC at any time in the 2 years prior to an administrator being appointed in the last 5 years;
- no longer being a voting member of your LALC;
- failing for more than 3 months to undergo training as instructed by NSWALC (without reasonable excuse); or
- being assessed as mentally incapacitated.

Will any and all convictions disqualify me?

No. Only certain convictions will disqualify you from holding office with as a Board member of a LALC.

For example, if the offence has a maximum sentence that is less than 5 years in prison, or if you were convicted more than 5 years ago, you may *not* be disqualified from holding office.

If I am disqualified, is there something I can do about it?

Yes. If you are disqualified due to a conviction, the Registrar has the power to review your disqualification and, in certain circumstances, can decide to ignore your offence and allow you to remain on the Board anyway (referred to as a '**Registrar's Determination**').

The Registrar also has the power to review your disqualification if it is due to you previously holding office when a LALC went into administration.

When making a Registrar's Determination in relation to a conviction, the Registrar can only consider:

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

When making a Registrar's Determination in relation to previously holding office as a Board member of a LALC prior to administration, the Registrar will take into consideration the circumstances surrounding the LALC heading into administration and may be assisted by

relevant meeting minutes, letters of explanation from people involved, and character references.

Is there a fee for the Eligibility Checks?

No, there is no fee payable.

What do I need to do now?

If you have recently been elected to the board of a LALC, you should fill out the Office of the Registrar's ***Authorisation for Criminal Record Checks Form*** provided by the Office of the Registrar, and give it (with copies of the required ID) to the NSWALC Zone Office or the LALC CEO, who will provide it to the Office of the Registrar to commence the eligibility checking process as soon as possible.

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