

## FACT SHEET

### ELIGIBILITY CHECKS – LALC CHIEF EXECUTIVE OFFICERS

#### 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 that you are eligible to be employed by a Local Aboriginal Land Council (LALC). Through Eligibility Checks, the Office of the Registrar will seek information to find out whether you are disqualified from being employed by a LALC.

At the start of your employment as a Chief Executive Officer ('**CEO**'), 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 being employed as the CEO of a LALC.

Not all convictions will prevent you from being employed as the CEO of a LALC: only some specific offences listed in the *Aboriginal Land Rights Act 1983* (NSW) ('**ALRA**'), for which you received a conviction at a particular time, *may* disqualify you. This is explained further below.

#### Who needs Eligibility Checks?

All people who are employed as a staff member of a LALC, including as CEO, or are engaged as a consultant to a LALC, *must* have an Eligibility Check at the commencement of their employment.

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 Office of the Registrar.

Eligibility Checks are conducted in strict confidence and the LALC will only be advised whether you are eligible or not eligible to be employed as the CEO of the LALC.

#### Why do I need an Eligibility Check?

CEOs *must* be eligible to be employed by a LALC under the ALRA. Your employment depends on many factors, including the factors listed in sections 78B and 79 of the ALRA. If you are not eligible to be employed as a LALC CEO for one of the reasons listed in sections 78B and 79 of the ALRA, you may be disqualified from being employed as the CEO.

Under sections 78B and 79 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 12 months 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 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*);
- 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*);
- being convicted of an offence relating to the management of a corporation, within the last 5 years;
- being disqualified under the ALRA from being a Board member of a LALC or a Councillor of the New South Wales Aboriginal Land Council (NSWALC) (with some exceptions);
- being disqualified from involvement in a company in Australia;
- being involved in a corporation that receives payment from the LALC (with some exceptions);
- being a Board member or consultant to the LALC;
- being a Councillor or an employee of NSWALC; or
- being dismissed after recommendation by the ALC Pecuniary Interest and Disciplinary Tribunal, or the NSW Civil and Administrative Tribunal, within the last 5 years.

### **Will any and all criminal history disqualify me?**

No. Only certain convictions will disqualify you from being employed as the CEO of a LALC.

For example, if the offence has a maximum sentence that is less than 12 months in prison, or if you were convicted more than 5 years ago, you *may* not be disqualified from being employed as the CEO.

If you have been convicted of certain child sex offences (listed in section 79(1B) of the ALRA), you will be disqualified from being employed as the CEO of the LALC, or in any other capacity (including as a consultant) regardless of how long ago you were convicted.

### **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 be employed as the CEO of a LALC (referred to as a '**Registrar's Determination**').

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.

The Registrar does *not* have power under the ALRA to make a Registrar's Determination and disregard a conviction in relation to the child sex offences listed in section 79(1B) of the ALRA. If you have been convicted of an offence and are not sure if it is listed in that section n, you may seek advice from the Registrar.

**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 employed as the CEO of a LALC, or are considering employment as the CEO of a LALC, you should fill out the Office of the Registrar's ***Authorisation for Criminal Record Checks Form***, and provide it (with copies of the required ID) to the Office of the Registrar to commence the eligibility checking process as soon as possible.

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