

FACT SHEET

ELIGIBILITY CHECKS – LALC EMPLOYEES

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 certain information to find out whether you could be disqualified from being employed by a LALC.

At the start of your employment, 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 by a LALC.

Not all convictions will prevent you from being employed by 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 or are engaged as a consultant to a LALC *must* have an Eligibility Check at the commencement of their employment or engagement. This Fact Sheet will refer to employees of LALCs, but also applies to people engaged as consultants to LALCs.

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 LALC CEO, who will forward them to the Office of the Registrar on your behalf.

Eligibility Checks are conducted in strict confidence and the LALC will only be advised if you are eligible or not eligible to be employed as a staff member of the LALC.

Why do I need an Eligibility Check?

LALC staff members and consultants to a LALC *must* be eligible to be employed by a LALC under the ALRA. Your eligibility depends on the factors listed in section 79 of the ALRA. If you are not eligible for employment for one of the reasons listed in section 79 of the ALRA, you may be disqualified from being employed as a staff member of a LALC.

Under section 79 of the ALRA, you can be disqualified for any of the following reasons:

- 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, 5 or 5A of the *Crimes Act 1900*); or

- being convicted of certain child sexual offence under the *Crimes Act 1900* (NSW) (including offences under sections 66EB or 66EC, or section s80D)).

Will any and all convictions disqualify me?

No. Only certain convictions will disqualify you from being employed by a LALC.

For example, if the offence is not listed in Section 79(1) of the ALRA, or if you were convicted more than 5 years ago, you *may not* be disqualified from being employed by a LALC.

If you have been convicted of certain child sex offences (listed in section 79(1B) of the ALRA), you will be disqualified from employment with a LALC, 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 (under section 79(1A) of the ALRA) to review your disqualification and, in certain circumstances, can decide to ignore your offence and allow you to continue to be employed by a LALC (referred to as a Registrar's Determination).

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

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

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 would fall under that section, 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 by a LALC, you should fill out the Office of the Registrar's ***Authorisation for Criminal Record Checks Form***, and give it (with copies of the required ID) to your 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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