

## FACT SHEET

### ELIGIBILITY CHECKS – LALC BOARD MEMBERS

#### What is an Eligibility Check?

An Eligibility Check is a check that the Office of the Registrar of the *Aboriginal Land Rights Act 1983 (NSW)* ('ORALRA') performs to make sure that you are eligible to hold office as a board member of a Local Aboriginal Land Council ('LALC'). The Eligibility Check will seek information to find out whether you are disqualified from holding office as a board member.

At the start of your time as a board member, the ORALRA will seek your consent to ask the NSW Police to check your national criminal history, to see if you have been convicted of any crimes throughout Australia that *may* disqualify you from holding office. Not all crimes will prevent you from holding office: only some specific offences, convicted at a particular time, including crimes involving the management of a corporation.

The Eligibility Check will also allow the ORALRA to make enquiries with the Australian Securities and Investments Commission (ASIC) and with the Office of the Registrar of Indigenous Corporations (ORIC) to see if you have been disqualified from involvement in the management of corporations. The Eligibility Check form also contains questions that will help ORALRA to assess your eligibility.

#### Who needs an Eligibility Check and When?

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 fill out the 'Criminal Record Check Consent' form giving ORALRA the right to perform the checks and obtain any criminal history and ASIC and ORIC disqualifications you may have.

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

Section 66 of the *Aboriginal Land Rights Act 1983 (NSW)* requires that board members of a LALC *must* be eligible to hold office. Your eligibility depends on many factors. If you are ineligible you will receive a Statutory Disqualification from holding office. You can be disqualified for any of the following:

- Being convicted, within the last 5 years, of a crime committed in any place that if committed in NSW would have had a maximum sentence of more than 12 months in prison, even if you personally did not receive that sentence;
- Being convicted, within the last 5 years, of an offence against the *Aboriginal Land Rights Act 1983 (NSW)*;
- Being convicted, within the last 5 years, of an offence relating to the management of a corporation;
- Being bankrupt or taking bankruptcy relief steps, or being involved in a company forced to wind up within the last 3 years, or being disqualified from involvement in a company in Australia;

- Remaining an employee 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 a time within the last 5 years when it went into administration;
- No longer being a voting member of your LALC;
- Failing for more than 3 months to undergo training as instructed by NSWALC; or
- Being assessed as mentally incapacitated.

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

No. Only certain crimes will disqualify you from holding office with a LALC. For example, if the type of crime has a maximum sentence that is less than 12 months in prison, or if the conviction took place more than 5 years ago, you will *not* receive a Statutory Disqualification.

#### If I do receive a Statutory Disqualification, 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 Statutory Disqualification and make a Registrar's Determination. The Registrar can ignore your offence and allow you to join the Board anyway. The Registrar also has the power to review your Statutory Disqualification if it was due to you previously holding office when a LALC went into administration.

When making this determination in relation to a criminal offence, the Registrar will consider whether your offence may have been trivial, and how long ago it was committed. The Registrar will also take into consideration the Police statement of facts and any references supporting your character that you have supplied.

In relation to previous board membership prior to administration, the Registrar will take into consideration the circumstances surrounding the LALC heading into administration and may be assisted by reading the meeting minutes, letters of explanation from people involved, and character references.

#### Is there a fee for the Eligibility Check?

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, or are considering nominating for election, you should fill out the Criminal Record Consent Check for LALC Board members' form provided by ORALRA, and forward them to ORALRA to commence the checking process as soon as possible.