

## FACT SHEET

### ELIGIBILITY CHECKS – LALC CHIEF EXECUTIVE OFFICERS

#### 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 for employment with a Local Aboriginal Land Council (LALC). The Eligibility Check will seek information to find out whether you are disqualified from employment.

At the start of your employment as a chief executive officer, the ORALRA seeks your consent to ask the NSW Police to confirm your national criminal history, to see if you have been convicted of any crimes that *may* disqualify you from employment. Not all crimes will prevent your employment: only some specific offences, convicted at a particular time, will disqualify you. The Eligibility Check consent will also allow ORALRA inquire 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.

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

All people who become employed by a LALC or become a consultant to a LALC, including a chief executive officer, *must* have an Eligibility Check at the commencement of their employment. All you have to do is fill out the 'Criminal Record Check Consent' form giving ORALRA the right to perform the checks.

Eligibility Checks are conducted in strict confidence and the LALC will only be advised whether you are qualified or disqualified from employment.

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

Sections 78B and 79 of the *Aboriginal Land Rights Act 1983 (NSW)* require that chief executive officers of a LALC *must* be eligible for employment in that role. Your employment depends on many factors. If you are ineligible, you will receive a Statutory Disqualification from employment. 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 was punishable by imprisonment for 12 months or more, even if you personally did not receive that sentence;
- Being convicted, within the last 5 years, of a crime under the following parts of the *Crimes Act 1900 (NSW)*: Part 3, 4, 4AA, 4AB, 4AC, 4ACA, 4AD, 4AE, 4A, 4B, 5 or 5A;
- Being convicted of a child sex offence;
- Being convicted, within the last 5 years, of an offence relating to the management of a corporation;

- Being disqualified under the *Aboriginal Land Rights Act* from being a board member of a LALC or a councillor of 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 within the last 5 years after recommendation by the ALC Pecuniary Interest and Disciplinary Tribunal, or the NSW Civil and Administrative Tribunal.

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

No. Only certain crimes will disqualify you from employment 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.

However, you will remain disqualified (under Section 79 of the *Aboriginal Land Rights Act*) if you have been convicted of a child sex offence, regardless of how long ago.

#### 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 or disregard your offence and allow you to be employed by the LALC. When making this determination, the Registrar will consider whether your offence may have been trivial, how long ago it was committed, and the nature and circumstances of your employment. The Registrar will take into consideration the Police statement of facts and any references supporting your character that you have supplied.

The Registrar does not have the power under the *Aboriginal Land Rights Act* to issue a Registrar's Determination and disregard a child sex offence. A Statutory Disqualification for a child sex offence will stand. If you have committed an offence and are not sure whether it would fall under that description, you may still seek advice from the Registrar.

#### What do I need to do now?

If you have recently been employed as a chief executive officer of a LALC, or are considering employment as a chief executive officer, you should fill out the 'Criminal Record Consent Check for Chief Executive Officer' form provided by ORALRA, and forward them to ORALRA to commence the checking process as soon as possible.

**Address:** Level 3, 2 – 10 Wentworth Street, PARRAMATTA NSW 2150

**Post:** P.O Box 5068, PARRAMATTA NSW 2124

**Phone:** 02 8633 1266