

Driving Instructors and Assessors Fit and Proper Policy

1. Policy statement

This policy is intended to ensure that all persons holding accreditation as a Driving Instructor / Assessor meet the core requirements of being 'fit and proper' including possessing the necessary skills and abilities, underpinned by the value of honesty as a fundamental prerequisite to execute the required Scheme duties.

2. Scope and coverage

This policy is for use by Roads and Maritime staff involved in management of any applicant / participant for a scheme which:

- provides a driving instructor function,
- provides professional driver training, or
- conducts driving competency assessments on members of the public.

This includes the following schemes:

- Driving Instructors,
- Motorcycle Rider Training,
- Older Driver Assessors,
- Safer Drivers Course providers.

It is intended that this policy will cover instructors, assessors and operators within these schemes.

Under Section 18(1)(c) of the *Driving Instructors Act 1992*, Roads and Maritime must refuse to grant a Driving Instructors License where it is established that a person is not Fit and Proper. Similarly, Section 26 of the Act requires Roads and Maritime to cancel a Driving Instructors License where Roads and Maritime is satisfied that the holder is no longer Fit and Proper.

This policy is intended to provide criteria for assessing Fitness and Propriety for:

- Applicants, both when applying for an instructors licence, and applying for entry into the relevant scheme (where applicable), and;
- Participants, both when considering their fitness and propriety to remain within a scheme and to hold a Driving Instructor's licence.

Note: Persons either applying for entry into, or participating within the Heavy Vehicle Competency Based Assessment Scheme are covered under both this policy, and PN276 Heavy Vehicle Competency Based Assessment Fit and Proper Policy.

Read this policy in conjunction with the PN276g01 *Guidelines for Considering Fitness and Propriety*.

3. Purpose and intended outcomes

Roads and Maritime Services (Roads and Maritime) manages a number of Third Party Schemes relating to road safety, vehicle standards, licensing and registration. Under these schemes, Roads and Maritime accredits private individuals to perform public functions on behalf of the NSW Government. This policy is designed to reduce the risks associated with Roads and Maritime's Third Party Schemes. These risks include harm to members of the public, damage to property and corrupt business practices.

Following an investigation conducted by the Independent Commission Against Corruption (ICAC) in January 2014 (Operation Nickel) and a subsequent organisational review of third party schemes in NSW, Roads and Maritime now considers all Third Party Scheme Providers to be 'Public Officials'. This is based on their requirement to enter into an accreditation or licensing agreement with Roads and Maritime that defines both the services they provide and conditions under which they may provide these services.

Similarly, a review of the Authorised Inspection Station Scheme identified the need for a fit and proper policy to assist with risk reduction by ensuring that only persons of good character and/or fit and proper persons are able to enrol within RMS' Third Party Schemes.

This Fit and Proper Policy, along with all supporting procedures, is not designed to be a discriminatory tool for the exclusion of specific individuals, but rather a guide to ensure that Roads and Maritime applies consistent standards in ensuring that Scheme participants do not pose a risk to either the public or Roads and Maritime's obligations under the Code of Conduct, Conflict of Interest and any other related policies.

Similarly, it is intended that this process will be actioned within the context and scope of Roads and Maritime's key behaviours. Roads and Maritime's Key Behaviours include being above the line, listening with curiosity, asking questions and using 'bureaucracy busting questions'.

4. Policy

Roads and Maritime has an obligation to the NSW public to ensure that any person currently accredited to provide a service on the organisation's behalf is of both 'suitable character' and 'fit and proper' to enter the Scheme. The definitions of both 'suitable character' and 'fit and proper' are a matter of sensitivity as both are often referred to in legislation, yet no formal definition is provided. The High Court of Australia, in the matter of the [Australian Broadcasting Tribunal vs Bond \(1990\)](#), determined that in order to be considered fit and proper, an individual must demonstrate that they possess the 'intrinsic character and moral fibre' required to assure Roads and Maritime that they can perform the inherent duties associate with the scheme.

With this in mind, Section 5 'Mandatory Exclusions' and Section 6 'Discretionary Exclusions' provide a list of examples which may preclude a person from being considered 'Fit and Proper'.

5. Mandatory Exclusions

As noted above, any person wishing to provide a service on behalf of Roads and Maritime must demonstrate that they meet the three primary components of fitness and propriety. Mandatory Exclusions are those which, if a person is found to be in breach of, they may not be accepted or retained as a Scheme participant. These include:

5.1 Conflict of Interest

- 5.1.1 A person must not be considered 'Fit and Proper' if it can be demonstrated that a conflict of interest exists. Information on assessing conflicts of interest can be found in the Roads and Maritime document [PN 247P03 'Conflict of Interest Procedure'](#).

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Version: 1.0

Effective date: October 2016

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General Manager, Accreditation; A/General Manager,
Compliance Operations; A/General Manager, Customer
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5.2 Criminal Record

- 5.2.1 This part must be read in conjunction with Section 8 – ‘Irrelevant Considerations’ and Section 11 – Definitions (specifically the definition relating to spent convictions’ If there is any confusion as to whether an offence is spent or not, the matter should be referred to Roads and Maritime Services’ legal branch for adjudication.
- 5.2.2 It is not the role of Roads and Maritime to simply sanction a member of the public based on a previous offence, instead Roads and Maritime Services staff consider a previous offence only in the context of whether it demonstrates that an individual is, or is not, fit and proper to participate within a third party scheme. As such, an applicant’s / participant’s criminal record is only considered relevant in relation to the insight it provides as to the perceived honesty and trustworthiness of that individual.
- 5.2.3 An individual is not considered fit and proper if they are or have been:
- Currently under investigation by RMS or another public authority (including both interstate and international) in relation to fraud or corrupt activity. This is particularly relevant where RMS is of the opinion that the applicant poses a significant risk to probity/governance.
Note: Where an individual is under investigation, their application or participation may be temporarily suspended pending the outcome of the investigation.
 - Found guilty of any offence under the *Oaths Act* 1900 and/or the *Criminal Procedure Act* 1986 including, but not limited to, perjury, providing false statements and failure to declare previous convictions.
 - Have been found guilty of any offence relating to tax fraud or evasion.
 - Have been found to have engaged in negligent, dishonest, corrupt or unethical practises.
 - Is bankrupt (unless bankruptcy is discharged or annulled).
 - Not passed a national criminal record check. A person shall not be considered to have passed a Police Check if they have been found guilty of an offence under the *Crimes Act* 1900 including:
 - i. Murder and/or Manslaughter.
 - ii. Attempted murder.
 - iii. Actions causing danger to life or bodily harm (including Grievous Bodily Harm, Dangerous/Furious/Predatory Driving and/or Police Pursuits).
 - iv. Theft and similar offences (including larceny, motor vehicle theft or embezzlement).
 - v. Any offence committed under Division 10 of the *Crimes Act* 1900.
 - vi. Fraud, Forgery or Money Laundering.
 - vii. Identity offences.
 - viii. Provision of False or Misleading Information.

5.3 Working With Children Check

- 5.3.1 In order to be considered fit and proper, an individual must hold a Working With Children Check notification indicating that they are cleared to work with Children.

6. Discretionary Exclusions

Unlike Mandatory Exclusions, Discretionary Exclusions are those which, if an Applicant / Participant is found to be in breach of them, may be disregarded if the person assessing fitness and propriety considers that there are extenuating factors. For more information on where and how discretion should be exercised, please refer to Section 7 'Exercising Discretion'. The discretionary exclusions for 'Fit and Proper' under the above Schemes include:

6.1 Criminal Exclusions

- 6.1.1 As with Section 5, this part must be read in conjunction with Section 8 – 'Irrelevant Considerations' and Section 11 – Definitions (specifically the definition relating to spent convictions'.
- 6.1.2 Under a delegated person's discretion, a person may not be considered fit and proper if they have been found guilty of an offence under the *Road Transport Act 2013* including:
- Driving under the influence of alcohol or drugs.
 - Speed and/or other dangerous driving offences (including Negligent, Reckless and Menacing Driving).
- 6.1.3 Under a delegated person's discretion, a person may be considered not to be fit and proper if they have been found guilty of an offence listed above under the Commonwealth or any other State/Territory's criminal legislation. This includes, but is not limited to:
- *Crimes Act 1914* (Commonwealth).
 - *Criminal Code Act 1995* (Commonwealth).
 - *Crimes Act 1958* (Victoria).
 - *Crimes Act 1900* (Australian Capital Territory).
 - *Criminal Code Act 1899* (Queensland).
 - *Criminal Law Consolidation Act 1983* (South Australia).
 - *Criminal Code Act Complication Act 1913* (Western Australia).
 - *Criminal Code Act 1924* (Tasmania).
 - *Criminal Code Act 1983* (Northern Territory).
- 6.1.4 Under a delegated person's discretion, a person may not be considered fit and proper if they have been found guilty of an offence relating to bullying or discrimination as defined under the *Anti-Discrimination Act 1977*.
- 6.1.5 Under a delegated person's discretion, a person may be considered not fit and proper if they have been found guilty of any offence relating to another State or Territory's road transport legislation (including driving under the influence of a prescribed substance, speeding and/or other dangerous driving).

7. Exercising Discretion

It is particularly important when exercising discretion that actions taken by Roads and Maritime are seen as both consistent and fair. In considering any discretionary circumstances where the Applicant / Participant has been found guilty, the Officer responsible for determining whether the person is 'Fit and Proper' may take into account;

- The nature, seriousness and frequency of the offence(s).
- The nature, seriousness and frequency of previous offences where the applicant or participant has been convicted.

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- The nature, seriousness and frequency of previous complaints made against the applicant/participant.
- The time lapsed since the finding of guilt.
- Any sentence imposed by the Court.
- The likelihood that the person will re-offend (including time since last offence, expressions of remorse, efforts made towards rehabilitation and any other relevant changes in the applicant/participant's circumstances).
- Risk that the offence or condition poses in relation to RMS' ethical, probity and governance obligations.
- Any similar precedents whereby another applicant/participant has been approved or rejected based of 'Fit and Proper'. Note that these must be taken into account, especially as the applicant may request any previous adjudication under the *Government Information (Public Access) Act 2009*.

In addition to the above, every factor should be considered in regards to the context of what services they will perform under the scheme, and how failing to meet an individual criteria may impact on their ability to provide this service.

If the delegated person makes an adjudication utilising discretion, all steps leading to the decision (including criteria that the applicant/participant has not met, reasoning behind the decision and any internal communications) must be stored for future reference.

If necessary, the delegated person may determine that more information is required in order to make a decision. In this instance, the staff member may request more information from the applicant or participant. Failure to provide additional information may be a factor considered in determining if a person is of suitable character and/or fit and proper.

8. Irrelevant Considerations

The following factors should not be considered when determining if a person is of suitable character or a fit and proper person:

- The person's race, ethnicity, religious beliefs or any attributes that are protected under the *Anti-Discrimination Act 1977* and/or the *Commonwealth Disability Discrimination Act 1992*.
- Spent convictions, as defined under the *Criminal Records Act 1991*, or a relevant interstate legislation, unless they are considered to be part of a pattern evidencing a disregard for the law or they may suggest the presence of a road or public safety risk.
- Minor offences, unless they are considered to be part of a pattern evidencing a disregard for the law or they may suggest the presence of a road or public safety risk.

9. Responsibilities

The General Manager, Accreditation Branch; General Manager, Customer and Support Services Branch; Senior Manager, Schemes Management (Accreditation Branch) and Principal Manager, Support Services (Customer Service Branch) are responsible for ensuring that this policy is considered in the scope of their respective staff's duties.

The Scheme Project Officer, Schemes Management, is responsible for reviewing the policy at the nominated review date. It is the responsibility of the reviewing officer to seek input, both from all branches utilising the policy and from RMS' Legal Branch, to ensure that the policy is suitably written.

10. Evaluation

The policy will be reviewed every two years to determine whether it still meets RMS obligations. The review should focus on including additional criteria which may identify individuals that do not meet the 'fit and proper' criteria and in evaluating the current criteria to ensure that they are still relevant.

Evaluation should also include a review of a proportionate number of scheme participants who have been removed from any of the above schemes due to sanctions. These should be assessed for common themes leading to their removal and any themes considered for inclusion into the policy.

11. Definitions

Accreditation – Roads and Maritime appoints participants to act on its behalf under the various schemes. A participant within the scheme is said to be 'accredited' and is managed by the Accreditation Branch of Roads and Maritime while still operating under the scheme

Accreditation Branch – The branch of Roads and Maritime responsible for administering (not including the enrolment process) and ensuring compliance within the nominated Third Party Schemes.

Applicant – A person seeking accreditation from Roads and Maritime as a Driving Instructor or Assessor.

Compliance Operations Branch – The Branch of Roads and Maritime responsible for investigating Third Party Scheme Providers to ensure compliance with the rules and conditions of operation.

Customer and Support Services Branch – The Branch of RMS responsible for providing customer services including enrolment within all Third Party Schemes.

Delegated Person – Any Roads and Maritime staff member with delegated authority, involved in the management of the above Schemes and tasked with specific roles in relation to that Scheme.

Participant – A Registered Training Organisation either currently accredited, or seeking accreditation, under one or more of the above schemes, on behalf of Roads and Maritime.

Public Official – An individual who enters into a service agreement with, and is appointed to exercise authority on behalf of, the NSW State Government.

Reasonable Adjustment – As defined in the Commonwealth Disability Discrimination Act, these are adjustments that would allow a person living with a disability to conduct the same duties as a person that does not have a disability.

Spent Convictions – A conviction is considered 'spent' where it meets criteria as defined under the *Criminal Records Act 1991*, or relevant interstate legislation

Third Party Scheme – A Third Party Scheme is any service, administered by RMS, which is then provided by an accredited individual on RMS' behalf.

12. Related information

Reference documents: PN 247P03 Conflict of Interest Procedure
Contact details: Scheme Project Officer, Accreditation Branch
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Procedure replaces: PN 276 HVCBA Fit and Proper Policy
PN 276g Guide for Assessing Fitness and Propriety

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