

# Authorised Examiners, Proprietors and Licenced Certifiers Fit and Proper Policy

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## 1. Policy statement

This policy is intended to assist delegated decision makers in carry out their functions in ensuring that all persons holding an authority or licence to conduct vehicle examinations on behalf of Roads and Maritime Services are considered 'fit and proper' and of 'suitable character'. In this context, a person may be considered 'fit and proper' and of 'suitable character' if they possess the necessary inherent characteristics, moral fibre, good character, honesty, values and reputation to enable Roads and Maritime to give effect to the objects of the *Road Transport Act 2013* ('the Act') – in particular the objects relating vehicle registration, standards, road safety and transport efficiency.

This policy notes that 'fitness and propriety' and 'suitable character' are only two of several characteristics that a decision maker is required to take into account under the Act when considering whether a regulatory program participant should be refused entry, or a licence or agreement suspended or cancelled. This policy does not deal with characteristics such as competence which are also required to be considered.

## 2. Scope and coverage

This policy is for use by Roads and Maritime staff administering regulatory programs involving persons applying for an authority or licence, or who are currently authorised or licenced by Roads and Maritime, to examine or certify vehicles for registration purposes:

- under the Vehicle Safety Compliance Certification Scheme (VSCCS), or
- under the Authorised Inspection Scheme (AIS).

**Note:** AIS includes the Authorised Safety Check Inspection Scheme (ASCIS), the Authorised Unregistered Vehicle Inspection Scheme (AUVIS), the Heavy Vehicle Authorised Inspection Scheme (HVAIS) and the Authorised Crane Inspection Scheme (ACIS).

Under clause 68 of the *Road Transport (Vehicle Registration) Regulation 2017* ("the Regulation"), Roads and Maritime may authorise a person to become an AIS examiner if they are suitably qualified and are of 'suitable character'. The same provisions apply to station proprietors under clause 69 of the Regulation. In addition, under clause 72 of the Regulation, Roads and Maritime may suspend or cancel the authority of an AIS examiner or proprietor found to be no longer 'fit and proper' or of 'suitable character'.

Under clause 89 of the Regulation provides that in order to be licensed as a VSCCS Certifier, an applicant must be 'fit and proper' to hold the licence. In addition, under clause 90 of the Regulation, Roads and Maritime may suspend or cancel the authority of a VSCCS licensed certifier found to be no longer 'fit and proper' to hold the licence.

## 3. Policy

Roads and Maritime has an obligation to members of the public seeking to have their vehicles inspected to ensure that examiners, proprietors and certifiers are both 'fit and proper' and – in the case of the former two of 'suitable character' to participate in the regulatory program. 'Fit and proper' and 'suitable character' are not terms that can be defined as they must be viewed subjectively in the context of the occupation being sought. The High Court of Australia, in the matter of the [Australian Broadcasting Tribunal vs Bond \(1990\)](#), found that in order to determine whether a person is 'fit and proper' to hold a particular licence, reference should be made to their "conduct, character and reputation".

In the case of vehicle examiners, station proprietors and vehicle certifiers, conduct, character and reputation are scrutinised to provide assurance that they can participate in the regulatory program in accordance with the regulatory program objectives, which are:

- (a) to ensure that vehicles are suitable and safe for use, and do not present a safety concern either to the occupants or to other road users or members of the public
- (b) to ensure a uniform national approach to vehicle standards and to maintain those standards
- (c) to inspect vehicles in accordance with legislative requirements, including under the *Road Transport Act 2013* and the *Heavy Vehicle National Law NSW*
- (d) to reduce the costs of administering road transport services by providing a network of examiners, proprietors and certifiers so that the public can access affordable services in all areas of the State.

With this in mind, Section 5 'Considerations' provide a list of examples which may preclude a person from being considered 'fit and proper' or of 'suitable character'.

#### **4. Purpose and intended outcomes**

Roads and Maritime administers regulatory programs in a number of areas relating to road safety, vehicle standards, licensing and registration. Under these regulatory programs, Roads and Maritime accredits, authorises, licences or otherwise engages persons to perform functions which involve dealing with the public on behalf of the NSW Government. This policy is designed to reduce some of the risks associated with Roads and Maritime's third party regulatory programs. These risks may include harm or potential harm to members of the public, damage to property or reputation, 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 regulatory programs in NSW, Roads and Maritime considers all regulatory program providers to be 'Public Officials'. This is based on their requirement to enter into an agreement with or obtain a statutory licence from Roads and Maritime that defines both the services they provide and conditions under which they may provide these services. As a result, the importance of their 'fitness and propriety' and 'suitable character' cannot be overstated.

This Policy, along with all supporting procedures, is not designed to be a discriminatory tool for the exclusion of specific regulatory program participants, but rather a guide to assist Roads and Maritime decision makers to apply a consistent standard in ensuring that regulatory program participants do not pose a risk to the public, or to Roads and Maritime in terms of its reputation or to carrying out its obligations.

#### **5. Considerations for refusal, suspension, cancellation or other sanction**

Any person seeking to be authorised or licensed by Roads and Maritime as a vehicle examiner, vehicle certifier or a station proprietor must demonstrate that they can satisfy the considerations set out in this section before they can be considered 'fit and proper' or of 'suitable character'. Failure to meet these considerations by a regulatory program participant should ordinarily result in a refusal or a suspension or cancellation from the regulatory program in cases where the decision maker determines that the regulatory program objects cannot be met by the regulatory program participant. These considerations are:

## 5.1 Conflict of Interest

5.1.1 A person must not be considered 'Fit and Proper' or of 'suitable character' 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'](#).

## 5.2 Criminal Record

5.2.1 This part must be read in conjunction with Section 7 – 'Irrelevant Considerations' and Section 10 – 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 Legal Branch for advice.

5.2.2 The fact of the existence of a criminal record is not of itself a reason to refuse or sanction. A previous offence must be looked at only in the context of whether it reasonably demonstrates that a regulatory program participant is, or is not, 'fit and proper' or of 'suitable character' to participate in a regulatory program.

5.2.3 A regulatory program participant is not considered 'fit and proper' or of 'suitable character' under this policy if they have been convicted or found guilty of:

- breaches of the rules of the regulatory program where those breaches are significant enough to threaten the integrity of the regulatory program;
- any offence relating to making false or misleading statements or declarations, including, but not limited to, perjury, benefits by deception, forgery, and failure to declare previous convictions;
- any offence relating to tax fraud or evasion, or social security fraud;
- any offence which can be categorised as involving dishonest, corrupt or unethical practices;
- any offence involving vehicle rebirthing, vessel rebirthing, or the tampering with identification plates or numbers, or any offence involving fraud or attempted fraud on a regulatory program involving road transport law (such as obtaining vehicle registration by false statement etc.)
- a serious driving offence including negligent, reckless or dangerous driving, driving with a prescribed concentration of alcohol, driving under the influence of alcohol or drugs, menacing driving, a loss of traction offence, unlawful racing or a police pursuit;
- an indictable criminal offence including:
  - i. Murder and/or Manslaughter;
  - ii. Attempted murder;
  - iii. A sexual assault or indecent assault of any kind;
  - iv. An assault or affray of any kind;
  - v. Any offence related to voyeurism or child abuse material;
  - vi. Any offence which has caused reckless or negligent danger to life or has caused bodily harm (including public safety matters such as arson);
  - vii. Theft and similar offences (including larceny, motor vehicle theft or embezzlement);
  - viii. Fraud, forgery, money laundering or dealing in the proceeds of crime;
  - ix. Identity offences;
- Any interstate or overseas offence that is the equivalent of any of the above offences.

## 5.3 Current investigations and matters pending

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5.3.1 A regulatory program participant is not considered 'fit and proper' or of 'suitable character' under this policy if they are:

- Currently under investigation by Roads and Maritime or another public authority (including interstate and international) in relation to fraud or corrupt activity. This is particularly relevant where Roads and Maritime is of the opinion that the applicant poses a significant risk to probity/governance.
- Found to have breached the conditions of their licence or authority in terms of Rules or standards that are required to be met in the exercise of the licence or authority, where those breaches create a serious risk or impact on public or road safety (e.g. failure to conduct brake tests on a vehicle presenting for mandatory registration inspection).
- Charged by Police with an indictable offence that is a matter of assault of any kind, stalking or intimidating, or a matter involving any allegation of dishonesty, theft, fraud or other deception
- Charged by Police (or any other relevant regulatory authority) with any offence committed in the context of driving a motor vehicle, registering a motor vehicle or repairing a motor vehicle which has as a potential maximum penalty a period of imprisonment, or any offence committed while in the act of performing duties as a vehicle examiner or repairer.
- Bankrupt (unless bankruptcy is discharged or annulled).

**Note:** *Where a regulatory program participant is under investigation or has been charged (but not yet convicted), their 'fitness and propriety' or 'suitable character' may be characterised as temporarily under question by suspending (as opposed to cancelling) an application, licence, accreditation or agreement pending the outcome of the investigation.*

#### 5.4 Justified complaints

5.4.1 A regulatory program participant is not considered 'fit and proper' or of 'suitable character' under this policy if they have been the subject of repeated complaints by customers in relation to conduct under this, or any third party regulatory program, administered by Roads and Maritime, and Roads and Maritime has conducted an investigation and found those complaints to be justified on the balance of probabilities.

## 6. Exercising Discretion

It is particularly important when exercising discretion that action taken by Roads and Maritime is seen as both consistent and fair. In considering circumstances where the regulatory program participant has not met the considerations set out in section 5, the decision maker responsible for determining whether the person is 'fit and proper' and of 'suitable character' 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 or found guilty.
- The nature, seriousness and frequency of previous complaints made against the applicant/participant.
- The time lapsed since the finding of guilt.
- The severity of any sentence imposed by the Court (e.g. a dismissal or non-conviction will be an indication the offence was considered trivial or technical in nature)
- 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).
- The risk that the offence or condition poses to Roads and Maritime's ethical, probity and governance obligations, and to its reputation.

- Other similar cases - where another applicant/participant has been assessed as 'fit and proper' or not (as the case may be) in similar circumstances. Note that these must be taken into account, especially as an applicant might obtain details of similar decisions under the *Government Information (Public Access) Act 2009*.

- **Disciplinary Exclusions**

A person might not be considered 'fit and proper' or of 'suitable character' if they have been a previous participant in AIS or VSCCS and have been previously suspended and/or cancelled.

**Note:** *Where an applicant or participant has previously been suspended or cancelled, the suspension or cancellation will be assessed in the same manner – in terms of the time that has since elapsed - as a spent conviction as defined in Section 10.*

- **Medical Exclusions**

A person might not be considered 'fit and proper' if they suffer from one or more of the following medical conditions which may adversely affect the person's ability to carry out the inherent requirements and tasks associated with the associated regulatory program:

- Eyesight deficiencies.
- Learning disabilities.
- Degenerative diseases or disorders.
- Neurological disorders.
- Alcohol or drug dependency.
- Acquired Brain injuries.
- Any additional medically diagnosed condition which may impact upon a person's ability to perform the duties of a particular regulatory program in a manner that cannot be reasonably adjusted for - in accordance with Equity and Diversity Anti-Discrimination Legislation.

If a person is considered to not be 'Fit and Proper' based on the above medical grounds, every possible consideration must be given as to whether reasonable adjustments can be made to allow the applicant/participant to conduct their duties.

**Note:** *in the instance of a medical condition, any advice provided by the applicant/participant's medical specialist or general practitioner should be taken into consideration.*

In addition to the above, every consideration must be assessed in the context of the services to be performed by the regulatory program participant. The relevance of the consideration to the act of vehicle examination and road safety must be established (*for instance a minor conduct matter committed in the context of a domestic dispute will not be as relevant or concerning to a decision maker as the same conduct committed in the context of vehicle inspection*)

The steps taken by a decision maker in exercising their discretion to sanction (whether to refuse, exclude, suspend or cancel) a regulatory program participant (including criteria that the regulatory program participant has not met, reasoning behind the decision and any internal communications) must be documented and stored for future reference.

If necessary, the decision maker may decide that more information is required to make a decision. If so, the decision maker may request more information from the regulatory program participant. Failure by the regulatory program participant to provide requested additional information may be a factor which can be considered in determining if a person is 'fit and proper' and of 'suitable character'.

## 7. Irrelevant Considerations

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

- 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 equivalent 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 regulatory breaches or summary 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.

## 8. Responsibilities

Director Program Management, Director Enrolment, Director Compliance and Director Insights and Education are responsible for ensuring that this policy is considered in the scope of their respective staff's duties.

Senior Manager Policy Implementation is responsible for reviewing the policy at the nominated review date. It is the responsibility of the reviewing officer to seek input, from all branches using the policy and from the Legal Branch, to ensure that the policy is sound.

Senior Manager Regulatory Program Improvement is responsible to identify any operational process improvements in the application of this policy.

Senior Manager Enforcement Adjudication, Senior Management Compliance Management and Manager Enrolment Services are responsible for the application of this policy when decision making to ensure that all applicants for an authority or licence, or who are currently authorised or licenced by Roads and Maritime, to examine or certify vehicles for registration purposes are considered 'fit and proper' and of 'suitable character'.

## 9. Evaluation

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

Evaluation should also include a review of regulatory program participants who have been refused or removed from regulatory program relevant to this policy. These should be assessed for common themes leading to the administrative sanction taken and any themes considered for inclusion into the policy.

## 10. Definitions

**ACIS** – Authorised Crane Inspection Scheme. An AIS which allows a person to conduct inspections on specific types of cranes for the purpose of registration.

**ASCIS** – Authorised Safety Check Inspection Scheme. An AIS which allows a person to conduct safety check inspections on light vehicles for the purpose of registration.

**AUVIS** – Authorised Unregistered Vehicle Inspection Scheme. An AIS which allows a person to conduct safety check and identity check inspections on unregistered light vehicles for the purpose of establishing registration.

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

**HVAIS** – Heavy Vehicle Authorised Inspection Scheme. An AIS which allows a person to conduct safety check and identity check inspections on heavy vehicles for the purpose of registration.

**Regulatory Program Participant** – A person either currently authorised or licenced, or seeking authorisation or licensing under an AIS or VSCCS.

**Public Official** – Any regulatory program participant who enters into a service agreement with, and is appointed to exercise authority on behalf of the NSW State Government.

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

## 11. Related information

**Reference documents:** None.  
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