

Authorised Examiners, Proprietors, Licensed Certifiers and Motor Dealers Fit and Proper Policy

1 Policy statement

This policy is intended to assist delegated decision makers in carrying out their functions in ensuring that all persons holding an authority, licence or sub-delegation to conduct vehicle examinations and register vehicles on behalf of Transport for NSW 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 Transport for NSW to give effect to the objects of the *Road Transport Act 2013* ('the Act') – in particular the objects relating to 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 Transport for NSW staff administering regulatory programs involving persons applying for an authority, sub-delegation or licence, or who are currently authorised, subdelegated or licensed by Transport for NSW, to examine or certify vehicles for registration purposes, or to issue registration under the:

- Vehicle Safety Compliance Certification Scheme (VSCCS),
- Authorised Inspection Scheme (AIS), or
- Dealer Vehicle Registration Scheme (DVRS)

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'), Transport for NSW 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', Transport for NSW 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', Transport for NSW may suspend or cancel the authority of a VSCCS licensed certifier found to be no longer 'fit and proper' to hold the licence.

Under clause 5 of the *Motor Dealers and Repairers Act 2013* ('the Act'), provides that a motor dealer is a person who carries on the business of dealing in motor vehicles as a retailer or on a wholesale basis. Under section 31 of the *Transport Administration Act 1988*, motor dealers may be subdelegated under the DVRS to issue registration on behalf of Transport for NSW, subject to an agreement which requires them to be fit and proper to do so.

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3 Purpose and intended outcomes

Transport for NSW administers regulatory programs in a number of areas relating to road safety, vehicle standards, licensing and registration. Under these regulatory programs, Transport for NSW 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 Transport for NSW 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, Transport for NSW 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 Transport for NSW 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 Transport for NSW decision makers to apply a consistent standard in ensuring that regulatory program participants do not pose a risk to the public, or to Transport for NSW in terms of its reputation or to carrying out its obligations.

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Transport for NSW has an obligation to members of the public seeking to have their vehicles inspected and registered to ensure that examiners, proprietors, certifiers and motor dealers 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, vehicle certifiers and motor dealers, 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, certifiers and motor dealers so that the public can access affordable services in all areas of the State.

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

5 Considerations for refusal, suspension or cancellation or other sanction

Any person seeking to be authorised, sub-delegated or licensed by Transport for NSW as a vehicle examiner, vehicle certifier, a station proprietor or a motor dealer 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.

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 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;
- Where penalty notices have been issued for breaches of the rules 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

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- of alcohol or drugs, driving whilst using a mobile phone, 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 cause 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

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 Transport for NSW or another public authority (including interstate and international) in relation to fraud or corrupt activity. This is particularly relevant where Transport for NSW is of the opinion that the applicant poses a significant risk to probity/governance.
- Currently under investigation or has been 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 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 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, proprietors, repairer, certifiers or motor dealer.
- 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

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investigation. By being under investigation or being charged for offences linked to the rules, a participant can be considered as a person who is likely to commit further contraventions of the rules.

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 Transport for NSW, and Transport for NSW has investigated and found those complaints to be justified on the balance of probabilities.

5.5 Reputation

5.5.1 A regulatory program participant is not considered 'fit and proper' or of 'suitable character' or of 'good repute' under this policy if they have been involved in falsely advertising the program on social media or similar platforms, or seeking to improperly benefit or defeat the rules of the program by such means (e.g. advertising a passed inspection on social media while not inspecting the vehicle).

5.6 Behaviour

5.6.1 A person who fails to behave with civility and proper community standards when dealing with Transport for NSW (or with a member of the public engaged under their authority) will not be considered 'fit and proper' or of 'suitable character' to hold an authority, as it may demonstrate behaviour which shows an unwillingness to meet those standards, shows a refusal to be appropriately regulated under the statutory licence, and a failure to represent Transport for NSW appropriately as its agent or licensee. This includes making personal, threatening, harassing, predatory or intimidating remarks, correspondence, or action against public servants administering the regulated scheme.

6 Exercising Discretion

It is particularly important when exercising discretion that action taken by Transport for NSW 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).

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- The risk that the offence or condition poses to Transport for NSW 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 considered, 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, VSCCS or DVRS 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.

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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

Directors Vehicle Safety, Partnerships and Regulatory Assurance and Customer Performance & Improvement are responsible for ensuring that this policy is considered in the scope of their respective staff's duties.

Senior Advisor, Customer Performance & Improvement is responsible for reviewing the policy at the nominated review date. It is the responsibility of the reviewing officer to seek input, from all business units using the policy and from Legal, to ensure that the policy is sound.

Manager, Accreditation (Vehicle Program) is responsible to identify any operational process improvements in the application of this policy.

Team Leader, Schemes Review and Processing Officers 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 licensed by Transport for NSW, to register, 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 Transport for NSW 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.

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10 Definitions

AIS – Authorised Inspection Scheme. A scheme which authorises examiners to inspect vehicles to ensure a minimum safety standard.

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 Transport for NSW 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.

DVRS – Dealer Vehicle Registration Scheme. A scheme which allows Motor Dealers to register light vehicles, heavy vehicles, motorcycles and trailers.

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.

Indictable Criminal Offence - An offence where the defendant has the right to trial by jury and are more serious offences.

Regulatory Program Participant – A person either currently authorised, licensed or sub-delegated or seeking authorisation or licensing under an AIS, VSCCS or DVRS.

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

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