

Fit and Proper Assessments and Disqualifying Offences for the Commercial Passenger Vehicle Industry

Background

Before granting a licence to drive a commercial passenger vehicle ('h' endorsement), an identity card, network approval or operator accreditation, the Registrar of Motor Vehicles (the Registrar) under the *Motor Vehicles Act* and the Director under the *Commercial Passenger (Road) Transport Act* must be satisfied that the applicant is:

- a fit and proper person to hold a licence or accreditation; and
- has not been convicted of a disqualifying offence.

Fit and proper assessments should be conducted with reference to an applicant's intended role in the industry with reference to the guiding principles.

Guiding Principles used in Fit and Proper Assessments

Under the *Motor Vehicles Act* and *Commercial Passenger (Road) Transport Act*, the Registrar or Director shall not grant a licence to drive a commercial passenger vehicle (CPV), identity card or operator accreditation unless the Registrar or Director is satisfied that the applicant is a fit and proper person. Furthermore, a person holding such authorities must continue to be fit and proper.

In determining whether a person is fit and proper to hold, or continue to hold the above authorities, the Registrar or Director must give consideration to the person's:

- history of complaints, non-compliances and recorded criminal matters such as:
 - criminal convictions and charges,
 - general and industry specific fines, and
 - written warnings, suspensions, disqualifications and any other corrective actions taken to reform behaviour;
- the nature, seriousness and circumstances of any matter considered and whether the person has shown a pattern of committing offences;
- driving history – including driver licence suspensions, disqualifications and accrued demerit points;
- period of time since last offending;
- honesty, integrity, knowledge and ability as it relates to the specific role;
- efforts to rehabilitate after offending – includes admissions of guilt, demonstrated remorse and steps taken to ensure no re-offending occurs;
- whether a member of the public, having knowledge of the person's circumstances, would object to the person being considered suitable for that position in industry;
- the likelihood of reoffending – includes the person's potential for future reform;
- compliance with, and responsiveness to, Departmental requirements or instructions such as the accurate and timely response for information and complying with directions;
- reputation in the general community and industry; and
- respect for the rule of law governing the industry – including regulations, standards, codes of conduct and the regulator and its officials.

Disqualifying Offences

Disqualifying offences are prescribed in legislation and briefly listed in the accompanying Table 1. The Registrar or Director must not grant, must refuse renewal, and must cancel a licence to drive CPVs or operator accreditation on becoming aware of a person being convicted of a disqualifying offence.

Disqualifying offences include sexual and serious offences against an individual. A sexual offence is never spent.¹ A serious offence is never spent if a person has had a sentence of imprisonment imposed for more than six months.

The Registrar or Director may suspend a licence, identity card or operator accreditation if a person is charged with a disqualifying offence up until the matter is heard before a court if the charge is considered serious and the public safety is of concern.

If a person is charged with a disqualifying offence, the person is required to advise the Registrar or Director (as applicable) of the charge and of the subsequent outcome of the charge. If a person does not notify the Registrar or Director of the disqualifying offence charge, 100 penalty units apply.

Cancellation of a licence and accreditation comes into effect seven days from the date of the Registrar's or Director's decision on a disqualifying offence.

Cancellation of an identity card is immediate.

A disqualifying offence means:

- i) an offence against a law of the Territory prescribed by the regulations; or
- ii) an offence against a law, or a repealed law, of the Territory or another jurisdiction (including a jurisdiction outside of Australia) that substantially corresponds to an offence prescribed in the regulations.

Disqualifying offences do not apply if a person has been discharged without a penalty imposed for the conviction.

Refusal and Chief Executive Review

If a person's application for 'h' endorsement or operator accreditation has been refused, cancelled or suspended by the Registrar or Director because the person has been convicted or charged of a disqualifying offence, the person may request the Chief Executive of the Department of Infrastructure, Planning and Logistics (the Department) to review the decision to decide whether there are any exceptional circumstances that would allow the person to hold an 'h' endorsement or accreditation.

Such a request must be made within 28 days after the person receives notice of refusal, cancellation or suspension by the Registrar or Director and must state the circumstances the person considers to be exceptional in relation to the disqualifying offence. The Chief Executive will provide a written notice of the decision and the reasons.

The Chief Executive may accept the exceptional circumstances. In this case, the Registrar or Director's decision will be revoked and the licence or accreditation granted, provided that the Registrar or Director has already determined that the applicant is fit and proper, except in relation to the disqualifying offence.

If the Chief Executive does not accept the exceptional circumstances, the applicant may appeal to the Local Court. Generally the appeal must be lodged within 28 days, but the applicant will be advised of the specific appeal period that applies to his/her individual case.

¹ A spent conviction means a criminal record which is spent in accordance with Part 2 of the *Criminal Records (Spent Convictions) Act*.

Resources

Listed below are resources that may provide assistance to you.

Commercial Passenger Vehicle Information

Information Bulletins and Forms: www.nt.gov.au/driving/industry/cpv-information-bulletins-and-forms
 Legislation: www.legislation.nt.gov.au

Motor Vehicle Registry Information www.nt.gov.au/driving

General Information

National Police Certificate: <https://forms.pfes.nt.gov.au/safent/>

Important

This Information Bulletin is a guide only and contains general information and requirements relating to commercial passenger vehicles. This document should not be regarded as a strict interpretation of Northern Territory law.

Contact Details	
Commercial Passenger Vehicles Branch	
Telephone	08 8924 7580
Email	cpv.admin@nt.gov.au
Web	www.nt.gov.au/driving
Postal Address	GPO Box 2520 Darwin NT 0801
Office Location	Level 2, Energy House 18-20 Cavenagh Street, Darwin NT 0800

Table 1 – Disqualifying Offences

Disqualifying Offence	Conviction Status		Disqualification Period	Reference
	Charged or on Appeal	Convicted or Charges Proven		
Sexual Offences as prescribed in legislation: <ul style="list-style-type: none"> • Possession of child abuse material • Publishing indecent articles • Using child for production of child abuse material or pornographic or abusive performance • Sexual intercourse or gross indecency involving child under 16 years • Sexual intercourse of gross indecency involving child over 16 years under special care • Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person • Attempts to procure child under 16 years • Sexual relationship with a child • Indecent dealing with a child under 16 years • Incest • Sexual intercourse or gross indecency without consent • Coerced sexual self-manipulation • Sexual servitude • Conducting business involving sexual servitude • Deceptive recruiting for sexual services • Prostitution of infant • Abduction, enticement or detention of child under 16 years for an immoral purpose 	Possible suspension of accreditation or CPV driver licence by Director or Registrar.	Cancellation or refusal of accreditation or CPV driver licence by Director or Registrar.	A sexual offence is never spent.	<i>Motor Vehicles Act and Commercial Passenger (Road) Transport Act and corresponding regulations.</i>
Serious Offences as prescribed in legislation: <ul style="list-style-type: none"> • Murder • Attempt to Murder • Acts intended to cause serious harm or prevent apprehension • Serious harm • Attempting to injure by explosive substances • Common assault if indecency applies • Kidnapping for ransom • Robbery 	Possible suspension of accreditation or CPV driver licence by Director or Registrar.	Cancellation or refusal of accreditation or CPV driver licence by Director or Registrar.	A serious offence is never spent if a person has had a sentence of imprisonment imposed for more than six months. A serious offence is spent if a person has had a sentence of imprisonment imposed for six months or less, where the offender was a child and convicted in the Juvenile Court, upon expiry of a five year period, and for other cases, a 10 year period.	Consistent with the <i>Criminal Records (Spent Convictions) Act</i> and <i>Anti-Discrimination Act</i>

Table 2 – Appeal Provisions

Appeal to	Grounds for Appeal	Requirements	Notification
Chief Executive (CE)	Exceptional Circumstances	<ul style="list-style-type: none"> • Where Registrar or Director decides to cancel, refuse or suspend an application for accreditation or CPV driver licence – the cancellation, refusal or suspension takes effect seven days after the decision date. • A person has 28 days from the date of receiving the letter from the Registrar/Director advising of the decision to cancel, refuse or suspend, to appeal to the CE. • An appeal to the CE must be made in writing. • CE assesses grounds of exceptional circumstances within a reasonable period of time. 	Applicant must request in writing that the CE review a Disqualifying Offence decision on the grounds of exceptional circumstances.
Local Court	Exceptional Circumstances and/or Fit and Proper	<ul style="list-style-type: none"> • Where CE confirms the Registrar’s or Director’s decision to cancel, refuse or suspend, the cancellation, refusal or suspension remains in effect. • A person has 28 days from date of receipt of CE’s decision to appeal to the Local Court. • An appeal to the Local Court can be made on the outcome of a ‘fit and proper’ assessment and a Disqualifying Offence decision. 	The CE’s decision will be given in writing with reasons.