

Driving Instructors and Assessors 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 a licence as a driving instructor or acting on behalf of Roads and Maritime as an Assessor (or any other form of driver or rider tester) are considered 'fit and proper', of 'good repute' and of 'good character'. In this context, a person may be considered 'fit and proper' if they possess the necessary inherent characteristics, moral fibre, good repute, good character, honesty, values and reputation to enable Roads and Maritime to give effect to the objects of the *Driving Instructors Act 1992* ('the Act') and to perform its functions as a government agency enabling safe and efficient journeys.

This policy notes that fitness and propriety good repute and good 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 and medical fitness which are also required to be considered.

2. Scope and coverage

This policy is for use by Roads and Maritime staff administering any regulatory program in which a regulatory program participant:

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

This includes the following regulatory programs:

- Driving Instructor Licensing Scheme,
- Heavy Vehicle Competency Based Assessment,
- Motorcycle Rider Training,
- Older Driver Assessors, and
- Safer Drivers Course.

Under Section 18 of the Act, Roads and Maritime must refuse to grant a driving instructors licence where it is not satisfied that a person is fit and proper of good repute or of good character. Similarly, Section 26 of the Act requires Roads and Maritime to cancel a Driving Instructors Licence where Roads and Maritime is satisfied that the holder is no longer fit and proper of good repute or of good character.

This policy is intended to provide guidance for assessing fitness and propriety, good repute and good character with respect to regulatory program participants, incorporating:

- Applicants - both when applying for an instructors licence and applying for entry into the relevant regulatory program (where applicable), and;

- Participants - both when considering their fitness and propriety to remain within a regulatory program and/or to hold a driving instructor's licence generally.

3. Purpose and intended outcomes

Roads and Maritime administers third party 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 third party regulatory programs in NSW, Roads and Maritime considers all third party 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 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.

4. Policy

Roads and Maritime has an obligation to members of the public receiving driving instruction to ensure that instructors are both of both 'good repute', 'good character' and 'fit and proper' to participate in the regulatory program. 'Good repute', 'good character' and 'fit and proper' 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 driving instructors and assessors, conduct, character and reputation are scrutinised to provide assurance that instructors and assessors can participate in the regulatory program in accordance with the regulatory program objectives, which are:

- (a) to ensure that driving instructors meet minimum standards relating to competency in driving instruction, probity and character in order to protect the community and to benefit the driving instruction industry, and
- (b) to minimise the potential for corruption in the driving instruction industry and inappropriate behaviour by driving instructors, and
- (c) to promote the safety and protection of persons receiving driving instruction.

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

5. Considerations leading to Refusal, Suspension or Cancellation or other sanction

Any person seeking to be licensed by Roads and Maritime as a driving instructor or to act on behalf of Roads and Maritime as an assessor or driver tester must demonstrate that they can satisfy the considerations set out in this section before they can be considered fit and proper, of good repute or of good 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 objects of the Act 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' 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 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 to participate within a regulatory program.

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

- 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;
- 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;
 - x. Provision of false or misleading information, obtaining benefit by deception, vehicle or vessel rebirthing.

- Any interstate 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 good repute or of good 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.
- 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 with any offence committed in the context of driving 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 driving instructor or assessor
- 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, good repute or good character may be assessed as temporarily under question by suspending 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, of good repute or of good character under this policy if they have been the subject of repeated complaints by students or 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.

5.5 Working With Children Check

5.3.1 In order to be considered fit and proper, a regulatory program participant who is the holder of either a Class C (car) and/or R (rider) must hold current clearance under the *Child Protection (Working with Children) Act 2012* (a Working With Children Check).

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', of 'good repute' and of 'good 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).

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- 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*.

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 performing driving instruction or assessment must be established (*for instance a minor assault matter committed in the context of a domestic dispute will not be as relevant or concerning to a decision maker as the same assault committed in the context of driving instruction*)

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 of good repute, of good character and/or fit and proper.

7. Irrelevant Considerations

The following factors should not be considered when determining if a person is of good repute, of good 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 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 and Director, Enrolment 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 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.

Manager, Enrolment Services is responsible for the application of this policy when decision making to ensure that all persons holding a licence as a driving instructor are considered 'fit and proper', of 'good repute' and of 'good character'.

9. Evaluation

The policy will be reviewed every two years to determine whether it still meets Roads and Maritime's obligations. The review should focus on including additional criteria which may identify regulatory program participants 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 regulatory program participants who have been refused or removed from the regulatory programs relevant to this policy. These should be assessed for common themes leading to the administrative sanction taken and any such themes considered for inclusion into the policy.

10. Definitions

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.

Public Official – A 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

Regulatory Program participant – a person who is an applicant for, or the holder of, a Driving Instructor Licence under the *Driving Instructors Act 1992*, or who is an applicant for, or the holder of, an appointment or other arrangement to act as an Assessor or Driver Tester of any sort on behalf of Roads and Maritime.

Third Party Regulatory Program – A Third Party Regulatory Program is any service administered by Roads and Maritime which is then provided by an accredited regulatory program participant on Roads and Maritime's behalf.

11. Related information

Reference documents: None.
Contact details: Policy Officer, Program Management
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