

Commercial Passenger Vehicles Branch Information Bulletin

CPV03 –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 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, 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;
- 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 commercial passenger vehicles 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. A serious offence is never spent if a person has had a sentence of imprisonment imposed for more than 6 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

Appeal mechanisms exist for Disqualifying Offences to the Chief Executive Officer of the Department of Transport and subsequently the Local Court: refer to **Table 2**.

Notes:

- Cancellation of a licence and accreditation comes into effect 7 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.

The Application Process

Flowchart 1 identifies the process for fit and proper and Disqualifying Offences assessments. Appeal provisions exist for both 'fit and proper' and Disqualifying Offence assessments.

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.

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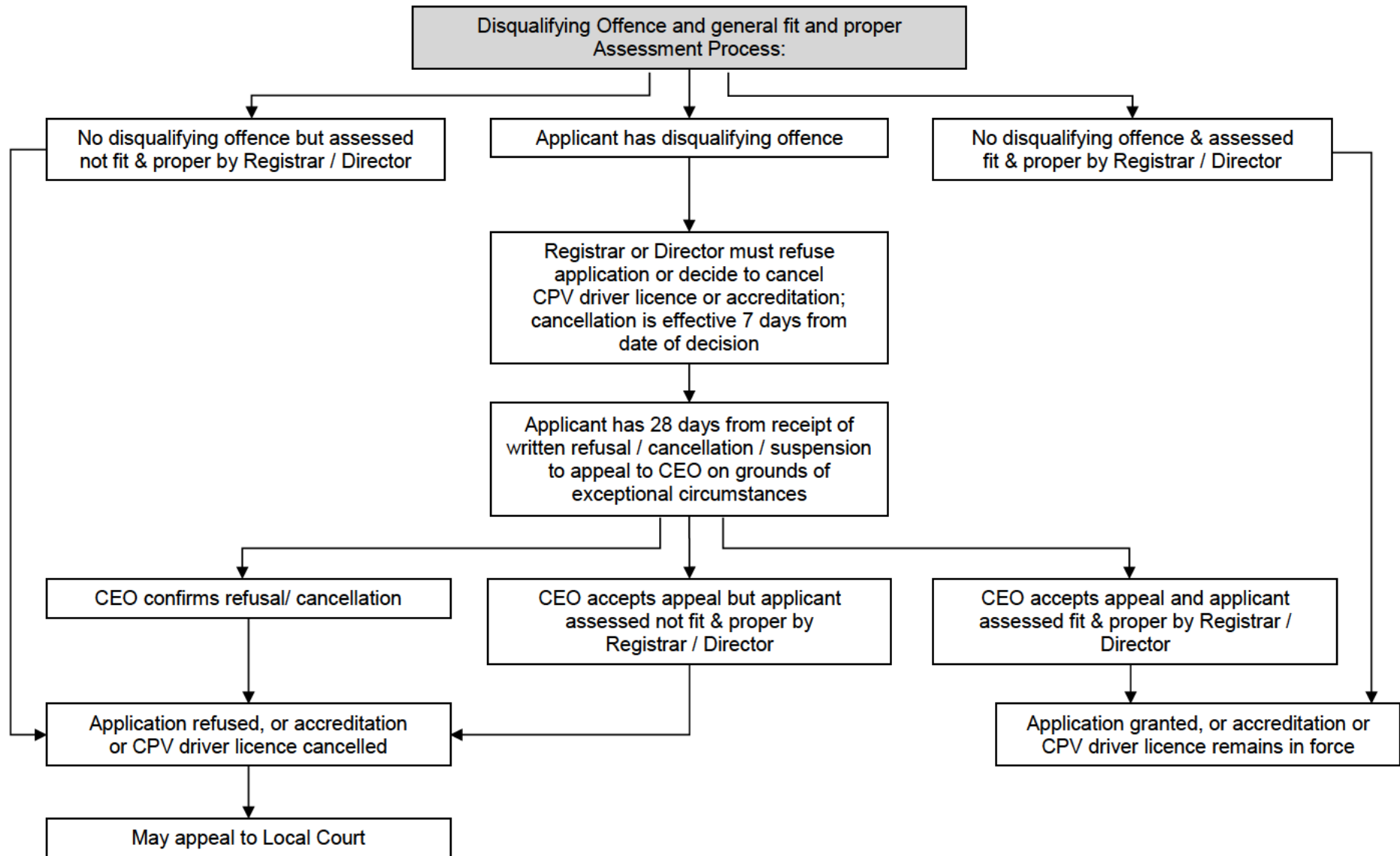
TABLE 1 DISQUALIFYING OFFENCES

DISQUALIFYING OFFENCE	CONVICTION STATUS		DISQUALIFICATION PERIOD	REFERENCE
	Charged or On Appeal	Convicted or Charges Proven		
<p>Sexual Offences as prescribed in legislation:</p> <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 	<p>Possible suspension of accreditation or CPV driver licence by Director or Registrar.</p>	<p>Cancellation or refusal of accreditation or CPV driver licence by Director or Registrar.</p>	<p>A sexual offence is never spent.</p>	<p>Motor Vehicles Act and Commercial Passenger (Road) Transport Act and corresponding regulations.</p>
<p>Serious Offences as prescribed in legislation:</p> <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 	<p>Possible suspension of accreditation or CPV driver licence by Director or Registrar.</p>	<p>Cancellation or refusal of accreditation or CPV driver licence by Director or Registrar.</p>	<p>A serious offence is never spent if a person has had a sentence of imprisonment imposed for more than 6 months. A serious offence is spent if a person has had a sentence of imprisonment imposed for 6 months or less, where the offender was a child and convicted in the Juvenile Court, upon expiry of a 5 year period, and for other cases, a 10 year period.</p>	<p>Consistent with the Criminal Records (Spent Convictions) Act and Anti-Discrimination Act</p>

TABLE 2 APPEAL PROVISIONS

Appeal to	Grounds for Appeal	Requirements	Notification
Chief Executive Officer (CEO)	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 7 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 CEO. • An appeal to the CEO must be made in writing. • CEO assesses grounds of exceptional circumstances within a reasonable period of time. 	<p>Applicant must request in writing that the CEO review a Disqualifying Offence decision on the grounds of exceptional circumstances.</p>
Local Court	Exceptional Circumstances and/or Fit and Proper	<ul style="list-style-type: none"> • Where CEO 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 CEO'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. 	<p>The CEO's decision will be given in writing with reasons.</p>

Flowchart 1 - Assessment Process



In addition to the above, an applicant for operator accreditation must be financially solvent.