

CPV02 – Disqualifying Offences

Effective Date: 8 March 2006

1. *What is a disqualifying offence?*

Disqualifying offences are prescribed in legislation.

Broadly, a disqualifying offence is a sexual offence or serious offence against an individual, committed in any jurisdiction at any time.

More specifically, a disqualifying offence is:

- a) an offence against a law of the Territory prescribed in the Regulations (refer page 4); or
- b) an offence against a law, or a repealed law, of the Northern Territory or another jurisdiction (including a jurisdiction outside Australia) that substantially corresponds to an offence referred to in paragraph (a) above.

2. *What is the effect of a disqualifying offence on an applicant for an 'h' endorsement or operator accreditation?*

A person who has been convicted of a disqualifying offence will not be considered by the Registrar or the Director to be 'fit and proper' to hold an 'h' endorsement or operator accreditation. This applies regardless of when the offence was committed.

A person who has a disqualifying offence and has subsequently had his/her application refused or an existing licence or accreditation cancelled can seek review of the disqualifying offence by the Chief Executive Officer (CEO) of the Department of Planning and Infrastructure on the grounds of exceptional circumstances.

Any request for the CEO to review a disqualifying offence must be made in writing and state the grounds for exceptional circumstances.

A person not satisfied with a decision of the CEO can subsequently appeal to the Local Court.

3. *Are there any provisions under which the above provisions regarding disqualifying offences do not apply?*

A conviction for a disqualifying offence will not by itself disqualify a person if:

- i) the person's criminal record for the conviction is a spent record within the meaning of the *Criminal Records (Spent Convictions) Act*, or
- ii) the person was discharged without any penalty being imposed for the conviction; or
- iii) the Chief Executive Officer of the Department of Planning and Infrastructure has decided after 8 March 2006 that the person may hold, or continue to hold, an 'h' endorsement or accreditation, despite the conviction; or
- iv) the Local Court has decided after 8 March 2006 that the person may hold, or continue to hold, an 'h' endorsement or accreditation, despite the conviction.



4. How will 'h' endorsement holders or accredited operators be affected if they have an existing disqualifying offence?

The Registrar or Director (as applicable) must cancel an 'h' endorsement or accreditation on becoming aware that the person has been convicted of a disqualifying offence. The Registrar or Director will give written notice to the 'h' endorsement holder or operator of the cancellation. The cancellation takes effect 7 days after the decision by the Registrar or Director to cancel the licence or accreditation. The lodging of an appeal against the conviction does not affect the cancellation.

However, the above does not apply if:

- a) the person's criminal record for the conviction is a spent record within the meaning of the *Criminal Records (Spent Convictions) Act*, or
- b) the person was discharged without any penalty being imposed for the conviction; or
- c) the Chief Executive Officer of the Department of Planning and Infrastructure has decided after 8 March 2006 that the person may hold, or continue to hold, an 'h' endorsement or accreditation, despite the conviction; or
- d) the Local Court has decided after 8 March 2006 that the person may hold, or continue to hold, an 'h' endorsement or accreditation, despite the conviction.

5. What is the consequence of a person being charged with a disqualifying offence?

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 (that is, a person may be fined up to \$11 000).

The Registrar or Director may suspend the 'h' endorsement or accreditation for the period the Registrar or Director considers appropriate. The Registrar or Director will give written notice of suspension and the suspension takes effect 7 days after the day of the decision by the Registrar or Director.

The Registrar or Director will consider the seriousness of the charge and implications for public safety in making a determination.

6. Are there any provisions to review mitigating circumstances in relation to a disqualifying offence?

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 Officer of the Department of Planning and Infrastructure 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.

7. What is the process after a review has been requested?

The Chief Executive Officer will provide a written notice of his/her decision and the reasons for it.

The Chief Executive Officer 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 Officer 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.

8. Can an appeal be made directly to the Local Court, prior to the review by the Chief Executive Officer?

No. Prior to appealing a disqualifying offence to the Local Court, the review process by the Chief Executive Officer must be exhausted.

9. Will I need to request an exceptional circumstance review at each renewal of my 'h' endorsement or accreditation?

No. Once a person has been found 'fit and proper' under the new regime, he/she is not required to request an exceptional circumstance review at each renewal of his/her 'h' endorsement or accreditation, provided there is no new disqualifying offence.

10. Where can I get more information on the above?

For more information on disqualifying offences, or for the mailing address of the Chief Executive Officer, Director or Registrar, please contact the Manager Commercial Passenger Vehicles at the contact details provided below.

IMPORTANT

This Information Bulletin is a guide only and contains general information and requirements for/in relation to Commercial Passenger Vehicles. This document should not be used as a reference to a point of law.

Contact Details	
Manager Commercial Passenger Vehicles	
Telephone	(08) 8924 7580
Facsimile	(08) 8924 7841
Email	mvr@nt.gov.au
Web	www.mvr.nt.gov.au
Postal Address	GPO Box 530 Darwin NT 0801

DISQUALIFYING OFFENCES

A disqualifying offence is an offence under the provisions noted below or an offence against a law, or repealed law of any jurisdiction that substantially corresponds to the offences listed below.

An offence against any of the following provisions of the Criminal Code:

1. Section 125B (Possession of child abuse material)
2. Section 125C (Publishing indecent articles) if the article is indecent because it portrays a child who is under, or who looks like he or she is under, 16 years of age
3. Section 125E (Using child for production of child abuse material or pornographic or abusive performance)
4. Section 127 (Sexual intercourse or gross indecency involving child under 16 years)
5. Section 128 (Sexual intercourse or gross indecency involving child over 16 years under special care)
6. Section 130 (Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person)
7. Section 131 (Attempts to procure child under 16 years)
8. Section 131A (Sexual relationship with child)
9. Section 132 (Indecent dealing with child under 16 years)
10. Section 134(2) or (3) (Incest)
11. Section 162 (Murder)
12. Section 165 (Attempt to murder)
13. Section 177 (Acts intended to cause grievous harm or prevent apprehension)
14. Section 181 (Grievous harm)
15. Section 182 (Attempting to injure by explosive substances)
16. Section 188(1) (Common assault) if section 188(2)(k) applies
17. Section 192 (Sexual intercourse and gross indecency without consent)
18. Section 192B (Coerced sexual self-manipulation)
19. Section 194 (Kidnapping for ransom)
20. Section 201 (Abduction, enticement or detention of child under 16 years for immoral purpose)
21. Section 202B (Sexual servitude)
22. Section 202C (Conducting business involving sexual servitude)
23. Section 202D (Deceptive recruiting for sexual services)
24. Section 211 (Robbery)

An offence against any of the following provisions of the Prostitution Regulation Act:

1. Section 13 (Causing or inducing infant to take part in prostitution)
2. Section 14 (Allowing infant to take part in prostitution)
3. Section 15 (Obtaining payment in respect of prostitution services provided by infant)
4. Section 16 (Entering into agreement for provision of prostitution services by infant)