

## Motor Vehicle Registry Information Bulletin

# CPV03 Guidelines - Fit and Proper Assessments and Disqualifying Offences - Commercial Passenger Vehicle Driver Licence and Operator Accreditation

Effective Date: 19 April 2006

## Background

Before granting a licence to drive a commercial passenger vehicle (h endorsement) or an 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:

1. a fit and proper person to hold a licence, and
2. has not been convicted of a Disqualifying Offence.

The 'fit and proper' assessment may include, but is not limited to, reviewing criminal history and traffic offence records, records of complaints, work history, rehabilitation and referee reports. Criminal history checks also assist in determining whether a person has a Disqualifying Offence.

The Director or Registrar can suspend a licence or accreditation if a person is charged with a Disqualifying Offence pending conviction by the Local Court if the charge is considered serious and the public safety is of concern.

## Fit and Proper Assessments

The Guidelines in **Table 1** are indicative of the assessment of offences, which may lead the Registrar or Director to not approve an application, or require an offence-free period before being satisfied that a person is 'fit and proper' to hold a commercial passenger vehicle licence or accreditation. This list is not exhaustive and provides assessment guidance only. The Registrar or Director must consider a person's pattern of committing offences in making a determination.

Notes:

1. Where a conviction (other than a Disqualifying Offence conviction) is identified that was not assessed during a previous application, the commercial passenger driving licence will remain in force until a 'fit and proper' assessment is completed.
2. Conspiracy to commit any offence carries the same weight of penalty as the actual offence.
3. A satisfactory psychiatric and/or rehabilitation assessment may be required prior to the granting or renewal of a commercial driving licence ('h' endorsement).
4. Prior to appealing to the Local Court, a person must first exhaust all appeal processes in the Department.

## Disqualifying Offences

Disqualifying Offences are prescribed in legislation and briefly listed in the accompanying **Table 2**. 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's 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.

Appeal provisions exist for Disqualifying Offences to the Chief Executive Officer of the Department of Planning and Infrastructure and subsequently the Local Court: refer to **Table 3**.

Notes:

1. Cancellation comes into effect 7 days from the date of the Registrar's or Director's decision on a Disqualifying Offence.
2. 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.
3. Disqualifying Offences do not apply if a person has been discharged without a penalty imposed for the conviction.

## The Application Process

The Application Process Flowchart outlines the process for assessing 'fit and proper' and Disqualifying Offences for both commercial passenger vehicle (CPV) driver licences and accreditations by the Department of Planning and Infrastructure. Appeal provisions exist for both 'fit and proper' and Disqualifying Offences.

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**TABLE 1 FIT AND PROPER ASSESSMENT**

OFFENCE	CONVICTION STATUS		TO BE CONSIDERED FIT AND PROPER	
	<i>Charged or On Appeal</i>	<i>Convicted or Charges Proven</i>	<i>First and single offence</i>	<i>Two or more offences of a similar nature</i>
Manslaughter	Possible suspension of accreditation or CPV driver licence pending the outcome of a Court decision, or where a pattern of conduct indicated.	Cancellation or refusal of accreditation or CPV driver licence.	Not fit and proper	Not fit and proper
Assault resulting in a prison sentence of 6 months or more	Possible suspension of accreditation or CPV driver licence pending the outcome of a Court decision, or where a pattern of conduct indicated.	Cancellation or refusal of accreditation or CPV driver licence.	Offence free for 7 years from the conviction date or 2 years after any prison term, whether served or not, whichever is greater.	Offence free for 10 years from the conviction date or 2 years after any prison term, whether served or not, whichever is greater. In severe cases an offence free period longer than 10 years will be considered (eg. multiple offences on one occasion, repeat occurrences).
<ul style="list-style-type: none"> <li>• Drug trafficking or possession of trafficable quantity</li> <li>• Other assault</li> <li>• Theft</li> <li>• Deception</li> <li>• Fraud</li> <li>• Criminal damage</li> </ul>	Possible suspension of accreditation or CPV driver licence pending the outcome of a Court decision, or where a pattern of conduct indicated.	Cancellation or refusal of accreditation or CPV driver licence.	Offence free for 4 years from the conviction date or 1 year after any prison term, whether served or not, whichever is greater.	Offence free for 10 years from the conviction date or 2 years after any prison term, whether served or not, whichever is greater. In severe cases an offence free period longer than 10 years will be considered (eg. multiple offences on one occasion, repeat occurrences).
<ul style="list-style-type: none"> <li>• Drug related</li> <li>• Any other offence punishable by imprisonment</li> </ul>			Offence free for 2 years after conviction date or 1 year after any prison term, whether served or not, whichever is greater.	Offence free for 6 years after the conviction date or 1 year after any prison term, whether served or not, whichever is greater.
General offences, including traffic offences such as drink driving or speeding.	Possible suspension of accreditation or CPV driver licence where a pattern of conduct indicated.	Possible suspension, cancellation or refusal of accreditation or CPV driver licence.	<ul style="list-style-type: none"> <li>• For a Court imposed driver licence disqualification: offence free for a minimum period of 12 months, or time for time after licence reissue (eg. 1 year Court disqualification requires a 2 year offence free period), whichever is greater.</li> <li>• If the Court imposed driver licence disqualification is for an offence committed when driving a CPV: offence free period for 5 years from the conviction date.</li> <li>• For a conviction without disqualification: penalty appropriate to the pattern of offences and seriousness of the conviction.</li> </ul>	

**TABLE 2 DISQUALIFYING OFFENCES**

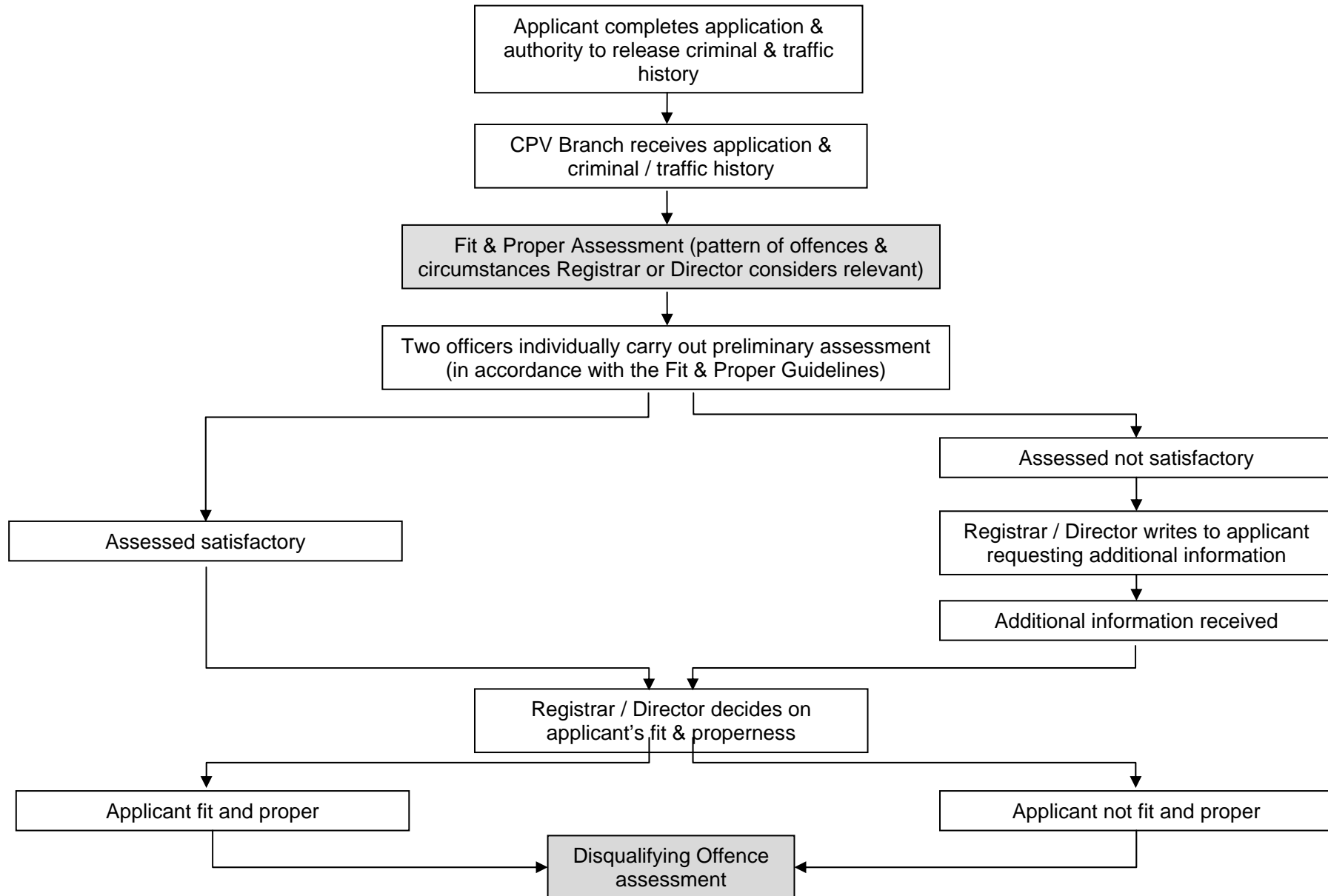
DISQUALIFYING OFFENCE	CONVICTION STATUS		DISQUALIFICATION PERIOD	REFERENCE
	Charged or On Appeal	Convicted or Charges Proven		
Sexual Offences as prescribed in legislation: <ul style="list-style-type: none"> <li>• Possession of child abuse material</li> <li>• Publishing indecent articles</li> <li>• Using child for production of child abuse material or pornographic or abusive performance</li> <li>• Sexual intercourse or gross indecency involving child under 16 years</li> <li>• Sexual intercourse of gross indecency involving child over 16 years under special care</li> <li>• Sexual intercourse or gross indecency by provider of services to mentally ill or handicapped person</li> <li>• Attempts to procure child under 16 years</li> <li>• Sexual relationship with a child</li> <li>• Indecent dealing with a child under 16 years</li> <li>• Incest</li> <li>• Sexual intercourse or gross indecency without consent</li> <li>• Coerced sexual self-manipulation</li> <li>• Sexual servitude</li> <li>• Conducting business involving sexual servitude</li> <li>• Deceptive recruiting for sexual services</li> <li>• Prostitution of infant</li> <li>• Abduction, enticement or detention of child under 16 years for an immoral purpose</li> </ul>	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.	Motor Vehicles Act and Commercial Passenger (Road) Transport Act and corresponding regulations.
Serious Offences as prescribed in legislation: <ul style="list-style-type: none"> <li>• Murder</li> <li>• Attempt to Murder</li> <li>• Acts intended to cause grievous harm or prevent apprehension</li> <li>• Grievous harm</li> <li>• Attempting to injure by explosive substances</li> <li>• Common assault if indecency applies</li> <li>• Kidnapping for ransom</li> <li>• Robbery</li> </ul>	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 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.	Consistent with the Criminal Records (Spent Convictions) Act and Anti-Discrimination Act

**TABLE 3 APPEAL PROVISIONS**

Appeal to	Grounds for Appeal	Requirements	Notification
Chief Executive Officer (CEO)	Exceptional Circumstances	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• An appeal to the CEO must be made in writing.</li> <li>• CEO assesses grounds of exceptional circumstances within a reasonable period of time.</li> </ul>	Applicant must request in writing that the CEO 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"> <li>• Where CEO confirms the Registrar's or Director's decision to cancel, refuse or suspend, the cancellation, refusal or suspension remains in effect.</li> <li>• A person has 28 days from date of receipt of CEO's decision to appeal to the Local Court.</li> <li>• An appeal to the Local Court can be made on the outcome of a 'fit and proper' assessment and a Disqualifying Offence decision.</li> </ul>	The CEO's decision will be given in writing with reasons.

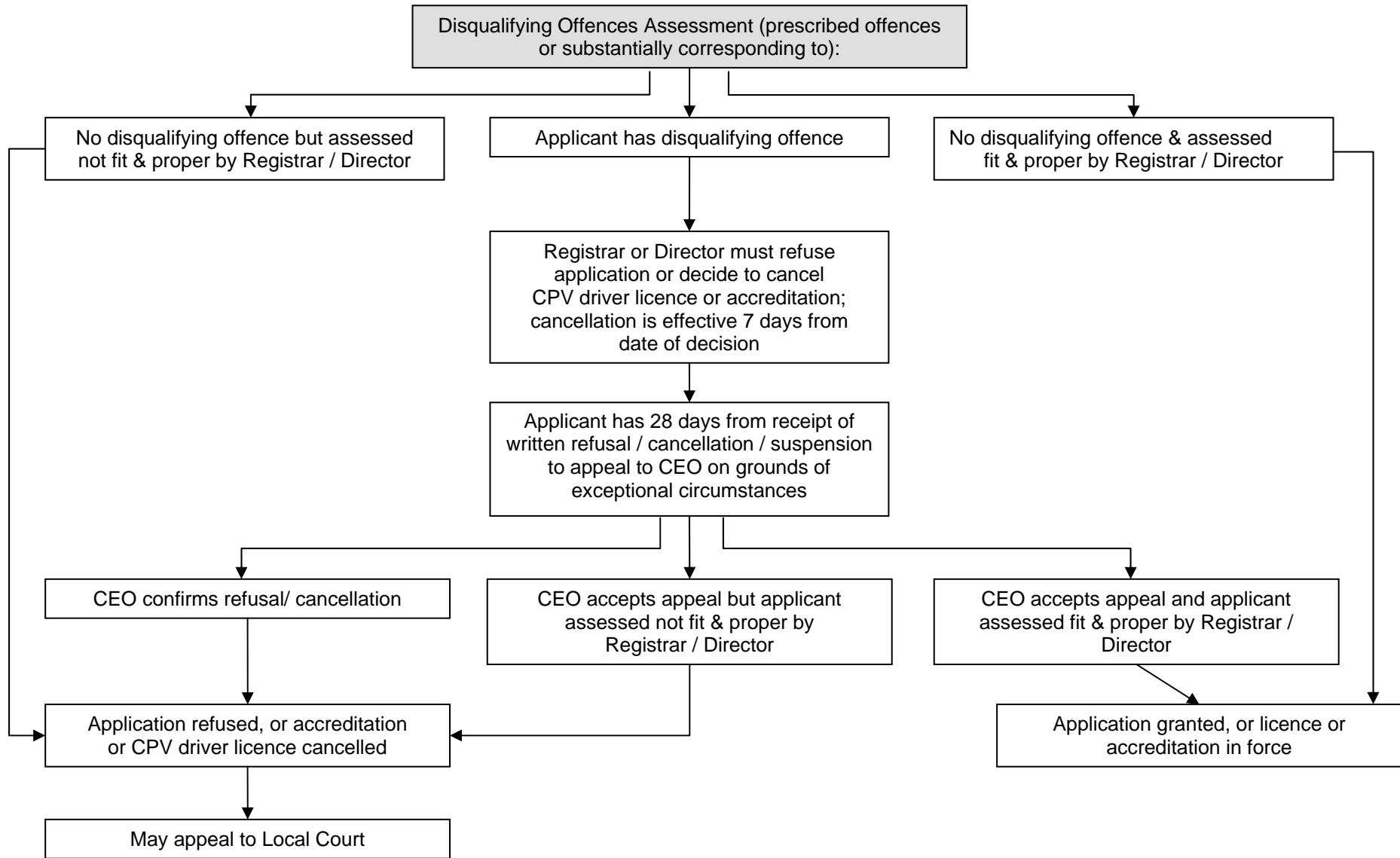
# APPLICATION PROCESS – CPV Driver Licence Accreditation

Flowchart 1 of 2



# APPLICATION PROCESS - Continued

Flowchart 2 of 2



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