

Fit and proper assessments

Under the *Liquor Licensing Act 1990*, a person must be fit and proper to be qualified to hold a licence or permit, or to be an associate of an applicant, licensee or permit holder. If an associate is not fit and proper, then the applicant, licensee or permit holder is not considered to be qualified to hold a licence or permit.

The Commissioner for Licensing determines whether a person is fit and proper and whether a person is qualified to hold a licence or permit. The Tasmanian Liquor and Gaming Commission may hear an appeal against a decision of the Commissioner regarding fit and proper. The Act requires that all decisions must be made by considering what is in the best interests of the community.

What does fit and proper mean?

Fit and proper means different things depending on the circumstances to which it is applied. Whether a person is fit and proper can depend on: the **activities a person will be performing** and the **ends to be served by those activities**; and **a person's previous behaviour**.

When authorising a person to become a licensee or permit holder, decision makers are concerned about whether the person knows and understands their legal obligations, and whether they have the ability and intention to act with honesty and integrity to minimise harm arising from the misuse of liquor.

What is considered when making an assessment?

Determining whether a person is fit and proper happens on a case-by-case basis, as every person's situation is different. It requires judgement and evaluation.

Considering a person's **character** and **reputation** are important parts of the assessment. Character is important as it reflects a person's moral qualities (their views about what is right and wrong) and suggests how they may act if they become a licensee, permit holder or an associate. Reputation is important as it reflects what a reasonably-minded member of the public thinks about the person's likely future behaviour, regardless of their character.

The Commissioner is able to make inquiries to assist the assessment, including requesting a report from the Commissioner of Police (although this is not always necessary). A national police check is always undertaken.

Matters of interest in a fit and proper assessment

- Any major convictions within a given period.
- A consistent pattern of convictions that suggest a disregard for the law or for public safety.
- Any convictions against the Act.
- Failing to discharge financial obligations or debts owing to the Crown under the Act.
- Good repute, integrity and character, no history of behaviour that would cause the person to be unsuitable to hold a licence or permit, or be an associate of a licensee or permit holder.

When would a person not be considered fit and proper?

A person would not be considered fit and proper if they are a member of a criminal organisation, or associated with a criminal organisation. Other examples of matters that would be closely examined under a fit and proper assessment include:

- prison terms;
- the committing of a serious offence, including violence, corruption or drug related offences;
- the committing of many smaller offences, such that a pattern of disregard for the law or for public safety is displayed;
- having been bankrupt, or entered into an arrangement or composition with creditors; and
- a history of non-compliance under the Liquor Legislation.

When are permit applicants and their associates subject to a fit and proper assessment?

The Commissioner has the discretion to apply a fit and proper assessment to permit applicants and their associates. Whether the assessment is applied depends on considering what is in the best interests of the community and the risk of harm from alcohol in connection with the application.

Permit applications where an assessment will occur

- The activities of the organisation are inconsistent with what the public might reasonably expect to have the authority to sell liquor, for example, an organisation or its members have been associated with crime.
- The compliance history of the applicant is unsatisfactory.
- Intelligence gathered from regulatory bodies is such that the Commissioner is obligated to apply the test.

Notifying the Commissioner of a change (See Fact Sheet: Notifying the Commissioner of a change)

Licensees and permit holders must notify the Commissioner in writing within 14 days of a number of changes including:

- contact details change, for themselves or any associates, such as name and address;
- a new associate is added; and
- they or an associate, is found guilty of an offence in Tasmania or any other jurisdiction, whether or not a conviction was recorded (traffic offences for which the maximum penalty is limited to a fine only are excluded).

If a person has been found guilty of an offence, it does not necessarily mean that their fit and proper status will change. This will be determined by the Commissioner.

What if a licensee, permit holder or an associate is no longer considered fit and proper?

The Commissioner is likely to consider taking disciplinary action, which may include the suspension or cancellation of a licence or permit.

For further information contact the Liquor and Gaming Branch.

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