

# Policy – Fit and Proper Person Assessment (Criminal History)

## GOVERNANCE

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## CONTEXT AND BACKGROUND

The Property Agents Board (the Board), is the statutory authority responsible for property agents in Tasmania.

Amongst other things, the functions of the Board are:

- to administer the licensing system for property agents established by the *Property Agents and Land Transactions Act 2016* (the Act), and
- to maintain the Board's Register of Property Agents.

## OBJECTIVE

The objective of this policy is to guide members of the Property Agents Board (the Board), and officers with powers delegated by the Board, in order to make consistent assessments of the police histories (including criminal records) of applicants for property agent licences.

Each year the Property Agents Board licenses approximately 1,600 people. This policy sets out the Board's fit and proper persons criteria. It provides consistency and transparency so that any person wishing to become licensed will know the Board's licensing requirements as to how they relate to being a fit and proper person and they will be able to make informed decisions based on those requirements.

## SCOPE

This policy applies to all applications made for a licence under the *Property Agents and Land Transactions Act 2016* (the Act) or *Mutual Recognition Act 1992* (Mutual Recognition).

## POLICY PRINCIPLES

The Board may exercise its discretion to depart from this policy as appropriate to the circumstances of any particular application for the issue or renewal of a licence.

The Board may change policies at any time. However, the property agents industry will be notified of all amended policies which will be published on the Board's website to ensure that property agents are aware of any change in requirements.

Pursuant to Section 18 of the Act, before granting or renewing a property agent licence the Board must be satisfied the applicant is a fit and proper person to be licensed.

To inform itself about the propriety of an applicant of a licence, the Board requires each applicant to:

- Answer questions about their history of disciplinary proceedings and qualifications in relation to any licence or registration;
- Submit a National Police Certificate (NPC) as required; and
- Inform the Board of any changes to the NPC since the NPC was submitted to the Board.

## TERMS USED

|                   |   |
|-------------------|---|
| Police history    | As is evidenced by a National Police Certificate or police record that is issued by Tasmania Police (or another state or territory police authority). |
| Matters disclosed | Refers to entries on a police history.  |

**Submission** Refers to an applicant's submission informing the Board about matters disclosed on an NPC and showing cause or explaining why the Board should consider the applicant a fit and proper person to be licensed.

### **APPLICATION FOR THE GRANT OR RENEWAL OF A LICENCE**

When assessing a police history submitted with an application or upon renewal, the Board or its delegate will note matters disclosed or will request a submission in accordance with the attached Table.

In implementing this requirement, the Board may require a licence holder to provide a NPC at renewal.

### **MATTERS SPENT**

When determining an application for the issue or renewal of a licence the Board or its delegate will not further consider spent convictions shown on an NPC.

### **MATTERS PENDING**

When determining an application for the granting or renewal of a licence, the Board may either through a disclosure by the applicant or by other means become aware that criminal matters are pending for an applicant. In these circumstances, the Board may defer a decision on the application until the outcome of those proceedings is known.

### **MATTERS SUBJECT TO SUBMISSIONS**

The Board or its delegate in assessing an application for the issue or renewal of a licence where the tendered NPC includes matters shown as "for submission" in the attached Table, will request the applicant to make a submission to the Board. The submission must state whether the matters subject to the submission were committed in the context of carrying out property industry related work and should explain why the Board should not refuse the application on the ground that the applicant is not a fit and proper person to hold a licence.

### **MATTERS TO BE CONSIDERED ON INDIVIDUAL MERITS**

Each application will be considered on its individual merits. An applicant's criminal record may be relevant to that consideration. In making a decision in respect of an applicant with a criminal record, the Board or its delegate will take the following circumstances into account.

#### **Number, frequency and timing of convictions**

The greater the number, the higher the frequency or the more recent the convictions against the applicant, the more it will impact on the eligibility of the applicant.

The seriousness of each offence leading to a conviction will affect the applicant's eligibility for a licence. Examining the penalty on the conviction can give a general indication of the seriousness of the offence. A suspended sentence of 12 months or less or a fine of not more than \$1,000 may be considered relatively minor, but greater penalties or imprisonment terms (whether or not suspended) need to be taken into account when making a decision on an application.

#### **Nature of offence**

Certain types of offences are more relevant to the Board or its delegate's discretion than others.

#### **Honesty**

Criminal convictions regarding the honesty of an applicant are likely to prevent a person from being eligible to become licensed.

Theft offences include armed or unarmed robbery, stealing from a person, shop stealing, stealing things sent by post or in transit, stealing from a house, stealing from any other specified building, stealing by conversion or by a trick, stealing stock and stealing as a servant.

Handling stolen goods offences include receiving stolen goods, possession of property suspected stolen; possession, receiving or disposal of tainted property (including money laundering); and bringing stolen goods into Tasmania.

Extortion offences including demanding property or any benefit or service with threats with intent to extort, and other extortion (not elsewhere classified).

Fraud offences include fraud, forgery, bribery and imposition offences. These may be computer fraud, fraud involving cheques, bank cards, credit cards, forge/utter, fraud involving stolen goods, fraudulent falsification of records, fraud on insurance companies, stealing as a servant, embezzlement by officers of companies, stealing by an agent or collector, and counterfeit currency offences. Such examples could include fraudulent behaviours relating to:

- Identity theft
- Bribery of a public officer
- Falsification of records
- Corruption
- Perjury
- Giving false evidence, fabrication or evidence, false attestations or giving false declarations
- Attempting to pervert the course of justice
- Forgery and uttering
- Failure to comply with a disclosure requirement.

### **Serious offences**

Convictions for other serious criminal offences (such as sexual offences, homicide, assault and firearms and drug offences) that have resulted in a prison sentence of longer than 6 months will be considered on a case-by-case basis.

Serious drug offences extending over a period of time are likely to prevent a person from being eligible to become licensed. Such examples could include:

- Possession and/or use of drugs
- Importation/exportation of drugs
- Supply or trafficking of drugs
- Permitting premises to be used as a venue to consume, manufacture or supply drugs
- Receiving/possessing property obtained from trafficking or supplying dangerous drugs.

Serious convictions involving drugs or alcohol extending over a period of time will require a statement from a clinical psychologist and/or general practitioner that the applicant has been rehabilitated from any dependency and must state the length of time the applicant has been rehabilitated.

### **Minor offences**

Minor convictions involving drugs or alcohol may be deemed to be of a lesser impact for the purposes of determining whether the person is eligible to become licensed.

### **OPPORTUNITY TO RESPOND**

The principles of natural justice require that where the Board or its delegate has formed the view that an applicant's criminal record provides grounds for the refusal of the application, the applicant will be specifically notified of that view and given the opportunity to respond.

### **NATIONAL POLICE HISTORY CHECK (NPC) CONDITION IMPOSED ON A LICENCE**

The Board may impose conditions on a licence requiring the licence holder to submit a NPC on or by a given date. A NPC tendered in compliance with a condition of a licence, which:

- is submitted by the due date and discloses no further offences will be noted by the Board's delegate who if empowered by the instrument of delegation, will remove the condition from the licence.
- is submitted by the due date and discloses any further offences will be submitted to the Board, which at its discretion, may remove, modify or retain the condition. If any further offences are considered sufficiently serious, the Board may consider further action to be taken against the property agent which may result in refusing to renew a licence or making an interim suspension of the property agent's licence.
- is not submitted by close of business on the due date will be submitted to the Board when received, which at its discretion, may remove, modify or retain the condition.

Any other variance to the condition will be considered on a case by case basis.

#### **POLICY IMPLEMENTATION AND AWARENESS**

The Executive Officer reporting to the Board will present recommendations with regard to NPCs in a manner that conforms to this policy.

**TABLE - APPLICATION FOR THE GRANT OR RENEWAL OF A LICENCE**

| <b>NATURE OF OFFENCE</b> |  | <b>BOARD OR DELEGATES ACTION</b>   |
|--------------------------|--|--|
| 1                        | <p>Driving offences (excluding those in 2)</p> <p>Typically, offences arising from momentary distraction or speeding that would be characterised as minor in nature</p>  | One or more offences disclosed - no action required  |
| 2                        | <p>Driving offences</p> <p>Offences manifesting a disregard for legislation such as driving under the influence or excessive speeding or any other offences that are of a more serious nature.</p>   | In the period of five years prior to the date of application, offences (other than those in 1) request submission. |
| 3                        | <p>Disorderly behaviour</p> <p>Typically, offences including but not limited to public drunkenness, vagrancy (begging and imposition), prohibited language and behaviour, public annoyance acts (behaving in a violent, riotous, offensive or indecent manner), disturbing the peace; committing a public nuisance; engaging in disorderly conduct), marking graffiti; possession of unlawful weapons.</p> | In the period of five years prior to the date of application request submission.                                   |
| 4.                       | <p>Drug Offences</p> <p>Including but not limited to drug possession, trafficking, cultivation, manufacture, sell and supply.</p>  | In the period of 10 years prior to the date of application request submission.                                     |
| 5.                       | <p>Offences to property</p> <p>Including but not limited to property damage, burglary, theft, motor vehicle theft, receiving/illegal use, arson, graffiti</p>  | In the period of 10 years prior to the date of application request submission.                                     |
| 6.                       | <p>Offences to persons</p> <p>Including but not limited to murder, attempted murder, manslaughter, aggravated sexual assault, non-aggravated sexual assault, aggravated assault, non-aggravated assault, affray, threatening behaviour, deprivation of liberty, robbery offences, breach of restraint order</p>  | In the period of 10 years from release or discharge of penalty request submission.                                 |
| 7.                       | <p>Offences of fraud or dishonesty</p>   | In the period of 10 years from release or discharge of penalty request submission.                                 |
| 8.                       | <p>Offences other than those in 1-7, offences with a prison sentence or a suspended prison sentence</p>  | In the period of 10 years from release request submission.   |