

Fit and Proper

If you are in aviation you will have heard about the fit and proper person assessment. Here is some guidance on the process.

In simple terms, anyone holding or applying for an aviation document, or anyone who has control over the exercise of the privileges of an aviation document, must satisfy the Director that they are a fit and proper person to do so. This is a requirement of the Civil Aviation Act 1990, Section 9. An aviation document includes, for example, a licence, a rating, or an air operator certificate.

Fit and proper person assessments are made on a case-by-case basis. There is no 'one size fits all' universal standard to live up to in order to be deemed fit and proper. The Civil Aviation Act 1990, Section 10 (1), sets out the criteria to be considered by the Director when determining whether or not a person is fit and proper. The relevance and weight given to any particular matter (or information), however, may vary, depending on the document that has been applied for, ie the level of involvement in the aviation system. It is entirely possible that a person may be fit and proper for one level of involvement in the civil aviation system, for example to hold a private pilot licence, but not fit and proper for a higher level of involvement in the system, such as holding a commercial pilot licence or a senior person position.

The criteria for the fit and proper person test are:

- The applicant's conviction record for transport safety offences.
- The applicant's experience in the transport industry.
- The applicant's knowledge of aviation regulatory requirements.
- The applicant's history of compliance with transport safety regulatory requirements.
- The applicant's history of physical or mental health or behavioural problems.

The Director is not confined to considering the criteria specifically listed in Section 10 (1) and may take into

account any other relevant matters, and consider information obtained from any source. This means the Director may ask for a full criminal conviction history if this is deemed necessary and appropriate.

Criminal Convictions

An applicant's conviction history is only one of the many things that may be considered during a fit and proper person assessment. The circumstances under which the Director may require information relating to criminal convictions vary from case to case. For example, dishonesty convictions may be very relevant if the privileges being sought depend on accurate record keeping. It is important to note, however, that disclosing convictions will not necessarily mean you fail the fit and proper person test.

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There are people with previous criminal convictions, who have made an honest declaration to the CAA, and they have gone on to make great contributions to the aviation industry. Convictions may not be a major issue in several situations. It will depend on whether the convictions are deemed to be relevant to an applicant's safe participation in the civil aviation system.

The Director and CAA staff are bound by legislation to protect the confidentiality of information supplied by an applicant. This includes any information provided by an applicant in respect of previous convictions.

The fit and proper process is reliant upon applicants providing truthful and honest answers. On the other hand, providing false information, or failing to disclose information relevant to granting

an aviation document, is taken very seriously and is an offence under the Civil Aviation Act 1990, Section 49. The CAA takes a number of steps to verify the information given on application forms. If it is discovered that an applicant has been dishonest, there will be no hesitation in pursuing strong action. The maximum penalty that may be imposed for non-disclosure, or providing false information, is imprisonment for up to 12 months, or a fine of up to \$10,000. For a body corporate the maximum penalty is a fine of \$50,000. In 2005, the CAA prosecuted a pilot who failed to disclose a number of previous convictions when applying for senior person positions in an organisation. The pilot faced a total financial penalty in excess of \$3000.

The Obligation Continues

It is important to remember that, once an aviation document has been granted, participants in the aviation system must continue to satisfy the fit and proper person test – see Section 9 (3) of the Act. Failure to notify the Director of any information that could affect your fit and proper person status could call into question the validity of your licence or position. Honesty is the best policy. The fit and proper person system depends on your truthfulness and integrity.

If you have any questions when filling out an application form for an aviation document or a senior person position, do not hesitate to contact the CAA. We are happy to talk issues through with you. ■

You can see a CAA compilation of the Civil Aviation Act on the CAA web site, www.caa.govt.nz, under "Rules & more – Civil Aviation Act".

For all Government legislation refer to www.legislation.govt.nz.

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