

November 2023

## How we do fit and proper person assessments under the Health and Safety at Work (Hazardous Substances) Regulations 2017

### This policy's purpose

This policy explains how we decide if an applicant is fit and proper to hold a controlled substance licence or be a compliance certifier under the Health and Safety at Work (Hazardous Substances) Regulations 2017 (the Regulations).

We must be satisfied an applicant is fit and proper before we can authorise them to carry out this work. The fit and proper assessment provides us assurance the applicant can carry out their duties appropriately, safely, and lawfully.

This policy should be read with the:

- [Authorisations policy](#)
- [Fit and proper test technical guide](#)

### Who can apply

The applicant may be an individual or organisation. If the applicant is an organisation, a fit and proper assessment will be done for everyone who'll undertake work as a compliance certifier, each officer of the organisation, and the organisation itself.

### How we make our decision

#### What we consider

We must use the criteria listed in regulations 6.7 and 7.2 in our decision making.

These criteria cover criminal history, police information, and serious behavioural problems, including any history of violence, drug or alcohol abuse.

We have the discretion to consider other information that isn't listed if we think it's relevant to the application. This may include:

- infringement history
- terrorist and criminal organisation involvement
- providing false information
- health conditions, and
- whether the applicant has held other authorisations granted by WorkSafe (or a preceding regulatory agency).

We collect information from the applicant and from external sources such as New Zealand Police.

The assessment is forward looking but we use previous conduct to inform our view of how an applicant may act or behave in the future. We won't use information collected to hold an applicant to account for past misconduct. We can contact the applicant or external sources to ask for more information if we think we need it to make the decision.

We follow the principles of fair treatment and natural justice, including avoiding bias in our decision making. We manage conflicts of interest by using our *Identifying and managing conflicts of interest* policy.

We assess the applicant's relevant actions and behaviours (including criminal history and infringements). Certain actions or behaviours will be more relevant depending on the type of authorisation applied for.

For example, it's important that compliance certifiers are honest, have integrity, and a law-abiding approach. For a controlled substance licence where very hazardous substances are concerned, the public interest and safety are paramount considerations. Evidence of disregard for the law, violent behaviour, and acts related to the misuse of dangerous materials are particularly relevant to the assessment.

We assess relevance by looking at:

- when the event happened (recent events will generally carry more weight compared to a historical event)
- whether it's a one-off or a pattern of behaviour
- whether a behaviour is escalating over time, and
- whether the behaviour, action, or circumstance of the applicant may impact the safety of the applicant or others.

Once we've decided that the action or behaviour is relevant, we may look at:

- how serious it is (the more serious, the less likely the applicant will be found to be fit and proper)
- the rehabilitation efforts for all types of behaviour
- the circumstances of the applicant (we may ask an applicant to explain the circumstances of the behaviour), and
- health information if it's likely to affect the applicant's ability to undertake their work properly or safely (we may ask the applicant to provide information from their health care provider to ensure we make an informed decision).

We then decide, on balance, whether the applicant is fit and proper. Each decision is made on a case-by-case basis.

## When we have information that doesn't support finding the applicant fit and proper

If there's information that indicates an applicant may not be fit and proper, we'll give the applicant a reasonable opportunity to provide a comment (we may ask for a personal statement and supporting character references), however we won't disclose any information where it may endanger the safety of another person.

If we intend to rely on any information to decline the application, we must be reasonably confident the information is reliable and true, and relevant to the authorisation sought.

If the application is declined, we'll explain the reasons for our decision, taking into account the applicant's preference in how they want to engage with us.

## When we need information from overseas

If an applicant has lived in a different country for one year or more in the last five years, we need evidence of criminal history (or lack of) from that country or countries. If an applicant has legitimately tried to get the documentation but can't, we may consider the applicant's individual circumstances. We may also consider other options to determine whether they are fit and proper, such as whether an applicant had refugee status when they entered New Zealand.

## How we work with New Zealand Police

We work with Police to get information on an applicant's criminal, infringement, and behavioural history.

Police can object to the granting of an authorisation, but this doesn't mean we'll automatically decline the application. If there's an objection, Police will provide us with an explanation and we consider this in our decision making.

## Privacy

We gather and handle all information in line with the Privacy Act 2020 and our *Privacy policy*. This includes:

- storing all information in a secure way
- ensuring access to information is limited to those who need it, and
- only sharing information for purposes in connection with the application or with the applicant's permission.