

Operator Accreditation - Suitability Checks and Effect of a Disqualifying Offence

General

Legislation exists in Queensland to improve the public passenger transport system. The *Transport Operations (Passenger Transport) Act 1994* requires operators of public passenger services to be formally accredited in order to provide services in Queensland.

A person's suitability to hold operator accreditation, including criminal history checks, is assessed prior to the issue of an accreditation and may be re-assessed any time after issue. For corporations, this includes all directors listed on the certified list of current directors of the corporation and any other executive officers nominated on the operator accreditation application form. A person's past behaviour with respect to the operation of public passenger services can also be taken into account when assessing suitability to hold operator accreditation.

Separate information bulletins provide further information on operator accreditation for the different categories of passenger transport service. Please read these in conjunction with this bulletin.

What is a disqualifying offence?

There are four groups of activities that constitute disqualifying offences -

- The first group includes any serious criminal offence against a provision of the Criminal Code as mentioned in Schedule 1 of the *Transport Operations (Passenger Transport) Act 1994*. Examples include homicide, assault, kidnapping, dangerous use of vehicles, property offences, stealing offences, fraud and sexual offences.
- The second group includes any offences against the *Drugs Misuse Act 1986* or the *Weapons Act 1990* punishable by imprisonment for one year or more, even though a fine may be imposed in addition or as an alternative.
- The third group includes:
 - any offence against the *Transport Operations (Passenger Transport) Act 1994*, and/or
 - any offence against the *Transport Operation (Passenger Transport) Regulation 2005* for which the maximum penalty is 20 or more penalty points.
- The fourth group includes offences committed outside of Queensland that would be a disqualifying offence if committed in Queensland.

Criteria to amend, suspend, cancel, or refuse operator accreditation

The Chief Executive must be satisfied that the operator can operate a public transport service appropriately. That is, to provide a quality service, comply with vehicle design and safety requirements, exercise business management skills and fulfil all matters prescribed by regulation.

Applicants and operators (including individual partners and executive officers) are required to notify the Chief Executive, Department of Transport and Main Roads, when they are either charged with, or dealt with for committing a disqualifying offence. Similarly, when operator accreditation is held by a partnership, if a member of the partnership is charged with a disqualifying offence, or has a disqualifying offence dealt with, that person must inform the other member of the partnership. Failure to supply this information is a disqualifying offence.

Depending on the nature of the disqualifying offence, the Director-General, Department of Transport and Main Roads may -

- refuse to grant operator accreditation to an applicant, or
- amend, suspend, cancel, or refuse to renew an operator accreditation already held by an operator of a public passenger service.

Criteria used for assessing the acceptability of operators

The criteria outlined below are considered by the department with regard to disqualifying offences when considering a person's suitability to hold operator accreditation. This information is provided as a guideline only; each case is assessed on its own merits.

1. Where a person has been convicted of a disqualifying offence, the commencement of the waiting period and the duration of the waiting period imposed is dependent upon the severity and circumstances surrounding the offence(s). The Chief Executive or delegate may give personal consideration to an application prior to the end of the waiting period. The application may be supported by personal references in writing. Comments attributed to the court judgement should be supported by court transcripts supplied by the applicant.
2. For guidance in assessing a sufficient waiting period, the following standards will provide assistance. A person who has committed multiple offences may have a longer waiting time imposed than that suggested in the guidelines. A longer waiting period will depend on the seriousness of the offences and whether they indicate a predisposition towards (1) harming others or (2) jeopardising the confidence of public transport users.
 - I. For less serious offences: Up to a 3 year waiting period. Examples of less serious offences include: fraud, false pretences, common assault and first time drug convictions.
 - II. For serious offences: Up to a 5 year waiting period. Examples of more serious offences include stealing, burglary, break and enter, serious assault, assault with intent to steal, and second time (or more) drug convictions..
 - III. For offences a sexual nature or violence and multiple convictions (for certain offences): Up to a 15 year waiting period. Examples include: attempted rape, rape, sexual assault, assaults in company or with a weapon, attempted robbery, robbery, dangerous driving causing death, attempted homicide, homicide (murder), multiple convictions for stealing, burglary, break and enter, serious assault and other similar offences.
 - IV. For offences against passenger transport legislation (the *Transport Operations (Passenger Transport) Act 1994* and the *Transport Operations (Passenger Transport) Regulation 2005*): Up to a 5 year waiting period. For multiple offences a longer waiting period may be appropriate. The waiting period imposed will depend on the seriousness of the offence. For serious offences (such as providing a public passenger service without the required operator accreditation or service licence) or failure to comply with a section 100 notice relating to a vehicle safety standard) or multiple offences against the passenger transport legislation, a longer waiting period may be applied.
3. The waiting period applies as follows -

- I. A fine – to begin from date of conviction,
 - II. A term of imprisonment – to begin from the end of the original (full) sentence. If parole applies, the waiting period will begin from the end of the parole period. It is accepted policy that a person cannot be granted operator accreditation while on parole,
 - III. Probation, good behaviour bond, suspended sentence, intensive correctional order or a community service order granted – to begin from date of completion of penalty/order.
4. Where a person who holds operator accreditation is charged with a disqualifying offence in terms of the Criminal Code, the *Drugs Misuse Act 1986*, or the *Weapons Act 1990*, the usual procedure is to await the outcome of the charge. However, in exceptional circumstances where it is considered inappropriate for a person to operate a public passenger service that person's accreditation may be immediately suspended under section 12 of the *Transport Operations (Passenger Transport) Regulation 2005*.

Consideration of a person's past behaviour

Section 11 of the *Transport Operations (Passenger Transport) Act 1994* states that the purpose of operator accreditation is to encourage the high quality operation of public passenger services by— (a) raising standards and awareness of operators in the areas of safety, service delivery and business acumen; and (b) ensuring public passenger service operators are held accountable for complying with appropriate standards.

Operator accreditation can be refused, suspended or cancelled if it is considered that a person has behaved in a way:

- that has damaged the reputation of public passenger services or accredited operators; or
- otherwise is contrary to the encouragement of the high quality operation of public passenger services as mentioned in section 11 of the Act.

When considering an application to grant or renew operator accreditation, the department will take into account the applicant's past behaviour with regard to the provision and operation of public passenger services. This helps to ensure the public are provided high quality services.

Where applicable, the incidence of any previous non-compliance with passenger transport legislation will be examined. Refusal of an application will be considered for applicants whose compliance histories indicate repeated failure or serious failure to comply with operator requirements. A person's history of compliance with relevant vehicle requirements under the *Transport Operations (Road Use Management) Act 1995* and its subordinate legislation will also be reviewed - for example, maintaining current registration and certificates of inspection for public passenger vehicles.

An application to grant or renew operator accreditation can also be refused if the applicant has previously held an accreditation that has been suspended or cancelled. As a guideline, a waiting period of up to five years may be considered for applicants who have previously held an operator accreditation that has been cancelled or suspended. However a longer waiting period may be considered appropriate where there were serious grounds for the cancellation or suspension (for example, when public safety was put at unreasonable risk). Longer waiting period may also be considered appropriate for persons who have a history of repeated non-compliance with operator requirements.

Reviews of decisions affecting operator accreditation

If a person is dissatisfied with the decision regarding their application or driver authorisation, they may request an internal review of the decision. If the person is not satisfied with the outcome of the review then the person may appeal to the Queensland Civil and Administrative Tribunal (QCAT) for an external review. For more information please refer to the information bulletin *Reviews of Decisions affecting Operator Accreditation and Driver Authorisation*.

Additional information

The information contained in this bulletin has been produced as a guide to assist in the understanding of the legislation and policy. Clarification of any information in this bulletin may be obtained from the Department of Transport and Main Roads by contacting your local Passenger Transport office of the Department.

This bulletin is an interpretation of the relevant Acts, Regulations and Standard should not be used as a reference to a point of law.

Copies of the *Transport Operations (Passenger Transport) Act 1994*, *Transport Operations (Passenger Transport) Regulation 2005* and *Transport Operations (Passenger Transport) 2010* can be purchased from GoPrint.

The legislation may be viewed on the internet at www.legislation.qld.gov.au. Additional information about public passenger services is available on the Department of Transport and Main Roads internet site at www.transport.qld.gov.au/information_bulletins.