

# Suitable Persons Policy

## Accreditation Policy and Services

Compliance with this policy is **mandatory**.

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# 1 Commencement of this Policy

This policy is to take effect from the date of approval by the Director, Commercial Policy and Accreditation, Department of Transport and Main Roads.

## 2 Introduction

This policy is to be applied when considering applications for entry or renewal for the following accreditation schemes:

### Approved Inspection Station

An Approved Inspection Station ("AIS") is an establishment where persons accredited by Transport and Main Roads (Approved Examiners, AIS Proprietors and Nominees) inspect vehicles for the purpose of ensuring compliance to safety standards under the provisions of the *Transport Operations (Road Use Management) Act 1995* ("the Act") and associated regulations. Where a vehicle complies with the applicable standards, the AIS is authorised by Transport and Main Roads to issue an inspection certificate for that vehicle.

### Approved Person

The Approved Person Scheme accredits qualified individuals to carry out and/or certify vehicle modifications on Transport and Main Roads's behalf. They are accredited under the provisions of the *Transport Operations (Road Use Management) Act 1995*.

### Q-Ride

Q-Ride competency-based training and assessment is designed to provide an alternative program to obtain a competency certificate which will be accepted by Transport and Main Roads and used to endorse a motorbike licence. Training is provided by Q-Ride Registered Service Providers (RSP) accredited by Transport and Main Roads under the *Transport Operations (Road Use Management – Accreditation and Other Provisions) Regulation 2005*.

### General

Members of the public place a high degree of trust in people accredited by Transport and Main Roads to carry out the functions associated with an AIS, Approved Persons and Q-Ride.

This policy has been developed to ensure that public confidence in these accreditation schemes is maintained and enhanced. It provides a framework to inform the assessment of applications for accreditation where the applicant or other relevant person has been convicted of an offence that relates to the duties of an accredited person. This policy is to be used to assist in considering relevant criteria when determining if a person seeking accreditation is a suitable person to be accredited by Transport and Main Roads to provide services within these accreditation schemes.

Transport and Main Roads's role in the accreditation process is to be fair and equitable when considering applications. This is achieved by balancing the ability of the applicant or other relevant person to meet the accreditation requirements with the community's expectations of these accreditation schemes.

### 3 Definitions

Term, abbreviations and acronyms	Definition
Accreditation	means an approval granted by Transport and Main Roads to a person to carry out a function as an AIS Proprietor, Nominee or an Approved Examiner, an Approved Person or a Q-Ride Registered Service Provider.
Act	means the <i>Transport Operations (Road Use Management) Act 1995</i> .
Applicant	means a person applying for Accreditation as either an AIS Proprietor, a Nominee or an Approved Examiner, an Approved Person or a Q-Ride RSP.
Approved Examiner (AE)	means a person approved under the <i>Transport Operations (Road Use Management—Accreditation and Other Provisions) Regulation 2005</i> to inspect vehicles for the purpose of issuing inspection certificates.
Approved Inspection Station (AIS)	means a service station, automotive workshop, or a specialist repairer who has been approved to operate as an AIS under the <i>Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 1999</i> , this may also include a Mobile AIS.
Approved person (AP)	means an accredited person who can modify or approve a modification of a motor vehicle in accordance with Section 13(2) of the <i>Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 1999</i>
Conviction	includes: <ul style="list-style-type: none"> <li>• a court finding the person guilty, or accepting the person’s plea of guilty, whether or not a conviction is recorded; and</li> <li>• the person paying a penalty under the <i>State Penalties Enforcement Act 1999</i>.</li> </ul>
Criminal History	means: <ul style="list-style-type: none"> <li>• an applicant's criminal history as defined under the <i>Criminal Law (Rehabilitation of Offenders) Act 1986</i>, other than a conviction for which the rehabilitation period has expired but the conviction has not been revived as prescribed by Section 11 of that Act; and</li> <li>• despite the <i>Criminal Law (Rehabilitation of Offenders) Act 1986</i>, a charge made against the applicant for an offence <sup>1</sup>, whether in Queensland or elsewhere, other than a charge which has been finally disposed of without the applicant being convicted.</li> </ul>
CHC	means an applicant’s criminal history as provided by Queensland Police Service
Nominee	means a person who has been nominated by the proprietor or company which owns the AIS to operate the AIS on their behalf.
Nominated Person	means a person who is an accredited rider trainer, has been nominated by notice signed by the Registered Service Provider, given to the chief executive and the person has agreed to the nomination.
Policy	means this policy.
Proprietor	means: <ul style="list-style-type: none"> <li>• for an AIS for which a Nominee has been appointed—the Nominee; or</li> <li>• for an AIS for which a Nominee has not been appointed—the holder of the AIS approval.</li> </ul>

<sup>1</sup> Offence is defined to mean:

“an act or omission that renders the person doing the act or making the omission liable to punishment.”

Term, abbreviations and acronyms	Definition
Q-Ride	means the competency-based training and assessment scheme designed to provide an alternative program to obtain a motorbike licence
RSP	Registered Service Provider approved to provide Q-Ride training and assessment
Rehabilitation Period	<p>applies to convictions upon which—</p> <ul style="list-style-type: none"> <li>• the offender is not ordered to serve any period in custody; or</li> <li>• the offender is ordered to serve a period not exceeding 30 months in custody (including ordered by way of default), whether or not in the event the offender is required to actually serve any part of that period in custody (for example a suspended sentence); and</li> <li>• the offender was not dealt with as a child;</li> </ul> <p>and means:</p> <ul style="list-style-type: none"> <li>• in relation to a conviction upon indictment recorded against a person who in relation to that conviction was not dealt with as a child— <ul style="list-style-type: none"> <li>- a period of 10 years commencing on the date the conviction is recorded; or</li> <li>- where an order of a court made in relation to the conviction has not been satisfied within that period of 10 years—a period terminating on the date the order is satisfied;</li> </ul> <p>whichever period is the later to expire;</p> <p>or</p> </li> <li>• in all other cases — <ul style="list-style-type: none"> <li>- a period of 5 years commencing on the date the conviction is recorded; or</li> <li>- where an order of a court made in relation to the conviction has not been satisfied within that period of 5 years—a period terminating on the date the order is satisfied;</li> </ul> <p>which ever period is the later to expire.</p> </li> </ul>
Relevant Person	<p>a person is a relevant person for the applicant for or holder of an approval:</p> <p>(a) if the applicant or holder is a corporation and the person is an executive officer of the corporation; or</p> <p>(b) if the approval is an AIS approval and the person is a person who, under a regulation—</p> <ul style="list-style-type: none"> <li>(i) has been nominated by the applicant or holder to be a nominee for the applicant or holder; and</li> <li>(ii) has agreed to the nomination; or</li> </ul> <p>(c) if the approval is an approval as a registered service provider and the person is a person who, under a regulation</p> <ul style="list-style-type: none"> <li>(iii) has been nominated by the applicant or holder to sign declarations for the applicant or holder about another person's competency for riding a motorbike; and</li> <li>(iv) (ii) has agreed to the nomination.</li> </ul>
Waiting Period	means the period of time identified in Appendix A of this policy

## 4 Purpose

The purpose of this policy is to set out a framework for assessing a person's suitability for accreditation by Transport and Main Roads to work within these accreditation schemes. This policy will ensure all applicants and other relevant persons to the applicant with a criminal history who apply for accreditation:

- are assessed equally;
- are subject to similar waiting periods and eligibility criteria; and

- that natural justice principles are applied.

Transport and Main Roads has a broad discretion under the Act and associated Regulations when considering an application for accreditation. The *Transport Operations (Road Use Management—Accreditation and Other Provisions) Regulation 2005* provides the following in regard to refusing applications for accreditation:

*Part 2 Division 1*

*7 Refusing application*

*(1) The chief executive may refuse the application if—*

*(a) the applicant has been—*

*(i) convicted of a disqualifying offence; or*

*(ii) charged with a disqualifying offence and the charge has not been finally disposed of; or*

*(iii) convicted of an offence against the Act, or a corresponding law, within 5 years immediately before the application was made; or*

*(b) the applicant holds, or has held, accreditation that has been suspended or cancelled; or*

*(c) the chief executive is satisfied public safety is likely to be endangered if the application is approved; or*

*(d) the chief executive considers it necessary in the public interest.*

*(2) Subsection (1) does not limit the grounds on which the chief executive may refuse the application.*

*Editor's note—*

*See section 21(1) (Appointment of accredited persons) of the Act and sections 19, 22, 25 and 27 of this regulation.*

*(3) If the chief executive decides to refuse the application, the chief executive must give the applicant an information notice for the decision within 14 days after making the decision.*

For the purposes of issuing approvals under the Act, disqualifying offences are defined as:

*“(b) ... an offence against—*

*(i) the Criminal Code; or*

*(ii) a law of another jurisdiction, including a jurisdiction outside Australia, that substantially corresponds to an offence against the Criminal Code.”*

Transport and Main Roads has a broad discretion to refuse the application where the applicant has been:

- convicted of an offence against the Criminal Code or a corresponding law;
- charged with an offence against the Criminal Code or corresponding law that has not yet been disposed of; or
- convicted of an offence against the Act within five years of making the application.

**In addition, Transport and Main Roads may always refuse an application for accreditation in the public interest.**

This policy is not intended to fetter or diminish in any way the discretion that Transport and Main Roads has under the Act and associated Regulation to refuse an application for accreditation. Rather, this policy is to be used as a guide to assist decision makers in the exercise of this discretion.

## 5 Application of this Policy

### 5.1 Application of Policy

This policy is intended for use by the Accreditation Policy and Services Unit of the Commercial Policy and Accreditation Team, Road System Management Division, Transport

and Main Roads and anyone else who from time to time may be given a delegation to grant or review an approval for an accreditation under these schemes.

It will apply to all applications for accreditation received by Transport and Main Roads after the date on which this policy takes effect in accordance with Section 1 of this policy.

## 5.2 Previously held accreditations

This policy will apply to all applicants for accreditation, including those applicants who have held an accreditation which has expired or been cancelled, either voluntarily or involuntarily and who apply for accreditation after this policy takes effect in accordance with Section 1.

It will not apply where the accreditation has been suspended or where the accreditation is ongoing.

# 6 Legislation

The following legislation governs AIS Accreditations, Approved Persons and Q-Ride:

## 6.1 Approvals Generally

[Transport Operations \(Road Use Management\) Act 1995 - TORUM](#)

This is the overarching legislation that contains the authority for appointment of an accredited person in Part 1A.

## 6.2 Approved inspection station

[Transport Operations \(Road Use Management - Accreditation and Other Provisions\) Regulation 2005](#)

Part 4A of this Regulation contains the authority to grant or refuse an application to become a Proprietor or Nominee of an AIS and grant an approval with reasonable and relevant conditions. Schedule 5A of this Regulation specifies the statutory conditions for appointment.

## 6.3 Approved examiner

[Transport Operations \(Road Use Management - Accreditation and Other Provisions\) Regulation 2005](#)

Part 2 of this Regulation contains the authority for an accredited person (including Approved Examiners). Schedule 1 of this Regulation specifies the statutory conditions for appointment and Schedule 2 of the Regulation contains the necessary expertise for vehicle safety inspections.

## 6.4 Approved persons

Approved persons for this scheme are appointed under Part 2 – Accredited Persons of the [Transport Operations \(Road Use Management – Accreditation and Other Provisions\) Regulation 2005](#). Schedule 1 of the Regulation sets out the statutory conditions for appointment as an approved person.

## 6.5 Q-Ride

Division 2 of the [Transport Operations \(Road Use Management – Accreditation and Other Provisions\) Regulation 2005](#) contains the authority to register an RSP.

## 6.6 Rehabilitation periods for certain offences

[Criminal Law \(Rehabilitation of Offenders\) Act 1986 - CL\(RO\)A](#)

This Act governs the Rehabilitation Periods for criminal history of an applicant.

## 6.7 Reviews of and appeals against decisions

[Transport Planning and Co-Ordination Act 1994 - TPCA](#)

This is the overarching legislation that contains the authority for reviews of and appeals against decisions in Part 5.

## 7 Waiting periods

### 7.1 Waiting Periods Generally

Waiting Periods apply to:

- offences against Queensland law contained in Appendix A; and
- offences of a similar nature to those included in Appendix A under a law in force in a jurisdiction other than Queensland.

Appendix A indicates maximum Waiting Periods that will generally be applied to the range of offences listed in that Appendix. It is not intended that the list of offences in Appendix A represent an exhaustive list of offences that may be relevant to the assessment of an application for accreditation. Rather, this list is intended to be used as a guide for decision makers. Depending upon an applicant's history and circumstances, there may be additional offences forming part of the applicant's criminal history that are relevant considerations when deciding an application for accreditation.

An offence is relevant when assessing the suitability of an applicant where the offence forms part of the applicant's criminal history at the time the application is lodged. An offence will remain part of a person's criminal history until any Rehabilitation Period relevant to the offence under the *Criminal Law (Rehabilitation of Offenders) Act 1986* expires<sup>2</sup>. Where no Rehabilitation Period is relevant to an offence, that offence forms part of a person's criminal history for the remainder of the person's lifetime.

### 7.2 Application of Waiting Periods

Where an offence against the *Criminal Code Act 1899* (or a corresponding law in another jurisdiction) or the Act (or a corresponding law in another jurisdiction) forms part of an applicant's criminal history, Transport and Main Roads has discretion to refuse an applicant's application for Accreditation. The waiting periods indicated in Appendix A are intended to be used as a guide in the exercise of that discretion.

These waiting periods are generally the maximum length of time that should lapse between conviction for a particular offence and approval by Transport and Main Roads of an application for Accreditation. Once the waiting period in Appendix A has expired, the relevance of the conviction as a consideration for Transport and Main Roads in deciding the application for accreditation is likely to have diminished. However, in exceptional circumstances, the public interest may require that the fact of the conviction still be taken into consideration notwithstanding that the waiting period identified in Appendix A has passed.

Only those convictions that remain part of an applicant's criminal history may be taken into consideration by Transport and Main Roads when deciding an application for accreditation.

Transport and Main Roads may refuse an application for accreditation where the applicant has been charged with an offence under the *Criminal Code Act 1899* (or a corresponding law in another jurisdiction) or the Act (or a corresponding law in another jurisdiction) and the charge has not yet been finally disposed of. If the applicant is not convicted of the charge once it is finally disposed of, the fact that the charge was laid will not form part of the applicant's criminal history and cannot be taken into consideration when assessing any subsequent application for accreditation lodged by the person. Where the applicant is convicted of the charge, the relevant waiting period will apply to any further accreditation applications lodged.

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<sup>2</sup> A Rehabilitation Period will apply to all convictions where the person was not ordered to serve any period in custody or was ordered to serve a period in custody not exceeding 30 months.

Where the waiting period prescribed in Appendix A for a particular offence or type of offence has not expired or a charge has not yet been finally disposed of, the discretion to approve an application for accreditation is to be exercised in accordance with the principles set out in Section 8 of this policy.

### **7.3 Duration of waiting periods**

The waiting periods provided in Appendix A have been determined with reference to:

- the seriousness of the offence
- the nature of the offence
- the impact that the offence is likely to have on public confidence in these schemes.

### **7.4 Commencement of waiting periods**

Waiting periods commence on the date of the conviction for the offence.

### **7.5 Provision of Criminal History Information**

An applicant will be requested to provide information about all relevant convictions that remain part of their criminal history as part of an application for accreditation. How the applicant chooses to provide this information is a matter for the applicant.

Transport and Main Roads will request information about an applicant's criminal history from the Queensland Police Service under Section 17C of the Act to confirm the details provided with the application. The applicant will be required to pay for this check.

Where an applicant discloses a criminal history, it is likely that Transport and Main Roads officers will contact the applicant to seek further information about the facts and circumstances of the offence – whether or not this is done will depend upon the quantity and quality of the information provided about the criminal history with the initial application. This further information may include:

- bench charge sheet/s
- transcript/s of hearing/s
- Magistrates written reasons for decision/s
- witness statement/s
- victim impact statement/s
- character witness statements from people with knowledge of the conviction.

It is entirely a matter for the applicant what further information, if any, is provided. No adverse inference will be taken where an applicant chooses not to provide further information. However, the decision maker will be restricted when making the decision to a consideration of the information available to them.

Transport and Main Roads may choose to conduct a face to face interview with the applicant in some circumstances. The purpose of this interview would be to allow the applicant the opportunity to make oral submissions to Transport and Main Roads and to allow Transport and Main Roads the opportunity to verify and clarify details of the applicant's criminal history. The applicant may be accompanied to this interview by such support persons as the applicant chooses (including legal representatives).

The failure of an applicant to disclose a conviction that is part of their criminal history may result in the making of a statement that is false and misleading in a material particular. This may constitute an offence under sections 52 and/or 53 of the Act, *"False or Misleading Statements"* which may lead to the application being refused. Additionally, under section 18 of the Act, this may constitute a ground for amending, suspending or cancelling an existing accreditation.

### **7.6 Criminal History Check Expiry**

CHCs expire three months from the date of issue by the QPS.

## 7.7 Waive Criminal History Check

Transport and Main Roads may waive a CHC for new AP, AE, or AIS Approvals or Q-Ride Accreditation in limited circumstances. For example, where an applicant's appeal is upheld by QCAT but the process has taken four months to complete the applicant's CHC may expire through no fault of the applicant. In this instance the requirement for a further CHC may be waived.

# 8 Exemptions

## 8.1 Exercise of Discretion

The person who has the delegation to consider applications for accreditation must exercise discretion when applying the waiting periods contained in Appendix A. Whether or not discretion is to be exercised when applying a waiting period is dependent upon:

- the facts and circumstances surrounding the applicant's criminal history
- the applicant's qualifications and work history
- the degree to which the accreditation of the applicant, notwithstanding the fact of the criminal history, is likely to adversely affect public confidence in these accreditation schemes
- any likely impact on the provision of services provided under the scheme that may result from the refusal of the applicant's application for accreditation
- whether or not conditions can be placed on the accreditation to mitigate the risk disclosed by the criminal history
- any other relevant facts or circumstances, for example, personal references provided by persons aware of the application.

The personal circumstances of the applicant, including any financial hardship that may result from the refusal of the application for accreditation will generally NOT be a relevant consideration when deciding an application for accreditation.

## 8.2 Provision of Supporting Information

Where an applicant seeks a relaxation of a waiting period contained in Appendix A, the applicant may provide additional information to establish the basis for the exercise of discretion.

Transport and Main Roads may request that the applicant provide additional information to assist in the decision making process. The applicant is not compelled to provide this information.

An application for accreditation must be decided only after full consideration of all additional information provided by the applicant in support of their application.

# 9 Statement of Reasons

An applicant must be provided with a statement of reasons for the decision taken in relation to their application for accreditation. In order to expedite any appeal processes, this statement of reasons must be provided with the notice of the decision given to the applicant.

A statement of reasons should state:

- the decision
- the provisions of the Act, Regulation and policy relied upon in making the decision
- findings of fact from that material or evidence on which the decision is based, including any offences taken into consideration
- the evidence or other material considered in reaching the decision, including criminal history
- the reasons for the decision

- applicant's rights for a review of and/or appeal against the decision.

A statement of reasons should ensure that the applicant is fully informed about the basis on which the decision was made so that the applicant can make an assessment of whether or not they should apply for a review of and/or appeal against the decision.

The decision maker must document their decision, the material relied on and the grounds or reasons for the decision on the departmental file. Such information must be included in the document management system file with the application and any other documentation relevant to the application.

## Appendix A – Waiting periods

### **G PERIODS - *Criminal Code 1899* –**

- IF CONVICTED ON INDICTMENT – TEN YEARS FROM DATE OF CONVICTION;
- ALL OTHER CASES – FIVE YEARS FROM DATE OF CONVICTION.

Chapter 16 – Offences relating to the administration of justice

Chapter 20 – Miscellaneous offences against public authority

Chapter 22 – Offences against morality

Chapter 26 – Assaults and violence to the person generally – justification and excuse

Chapter 28 – Homicide – suicide – concealment of birth

Chapter 30 – Assaults

Chapter 32 – Assaults on females – abduction

Chapter 33 – Offences against liberty

Chapter 36 – Stealing

Chapter 37 – Offences analogous to stealing

Chapter 38 – Stealing with violence – extortion by threats

Chapter 39 – Burglary – housebreaking – and like offences

Chapter 40 – Other fraudulent practices

Chapter 41 – Receiving property stolen or fraudulently obtained and like offences

Chapter 42 – Frauds by trustees and offences of companies and corporations – false accounting

Chapter 42A – Secret commissions

Chapter 49 – Punishment for forgery and like offences

Chapter 50 – Forgery and like offences punishable on summary conviction

Chapter 51 – Preparation for forgery
Section 534 – Intimidation of workmen and employers
Part 7 – (Chapters 55, 56 and 57) – Preparation to commit offences – conspiracy – accessories after the fact <sup>3</sup>
<b>WAITING PERIODS – <i>Transport Operation (Road Use Management) Act 1997</i> – FIVE YEARS FROM DATE OF CONVICTION.</b>
Section 52 – False or misleading statements
Section 53 – False or misleading documents – generally
Section 54 – Obstructing authorised officers or accredited persons
Section 55 – Pretending to be an authorised officer or accredited person
Section 56 – Using documents voided for non-payment
Section 79 – Vehicle offences involving liquor or other drugs
Offences under the <i>Transport Operations (Road Use Management—Accreditation and Other Provisions) Regulation 2005</i>
Offences under the <i>Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 1999</i>

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<sup>3</sup> Where the offence involved is listed in this Appendix