

# ***Fit and Proper Person Assessment – Operational Policy***

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## **1. Purpose**

This policy sets out:

- the purpose of the Fit and Proper Person assessment (FPP assessment);
- the Civil Aviation Authority's (CAA) approach to undertaking FPP assessments for issuing and amending aviation documents, and for senior person assessments;
- when adverse decisions may be made if a person is no longer a fit and proper person; and
- the key decision-making principles that guide the FPP assessment.

## **2. Context**

The Civil Aviation Act 2023 (CA Act 2023) requires the Director of Civil Aviation (the Director) to exercise control over entry into the civil aviation system through granting aviation documents. The CAA's approach to entry control into the civil aviation system is detailed in the Certification and Licensing – Operational Policy.<sup>1</sup>

Under section 75 of the CA Act 2023, the Director must ensure that each applicant for the grant or renewal of an aviation document is a fit and proper person to have control, hold, or continue to hold the document. It is a condition of any aviation document that the holder and any person having control over the exercise of privileges under the document continues to be fit and proper (s 77 of the CA Act 2023). Whether a person is fit and proper is determined on a case-by-case basis under section 80 of the CA Act 2023.

The CA Act 2023 also requires the Director to exercise control over exit from the civil aviation system. In situations where there is cause to believe a document holder may not meet the ongoing condition to remain fit and proper, the Director may impose conditions on, suspend or revoke the aviation document.<sup>2</sup> Any proposed adverse decision must be made in accordance with the relevant provisions of the CA Act 2023 and the Administrative Action – Operational Policy and any relevant procedures.

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<sup>1</sup> The Fit and Proper Person Assessment – Operational Policy falls under the Certification and Licensing – Operational Policy, and all FPP assessments must be undertaken consistently with the Certification and Licensing – Operational Policy

<sup>2</sup> The power to revoke an aviation document under section 98 of the CA Act 2023 must be exercised by the Director and cannot be delegated.

### 3. Scope

This policy applies to all CAA staff:

- carrying out FPP assessments for issuing and amending aviation documents or nominated senior persons; and
- involved in assessing whether a person is no longer a fit and proper person.

### 4. Definitions

**Adverse decision:** for this document, a decision of the Director to the effect that a person does not meet the test to be declared a fit and proper person under section 80 of the CA Act 2023.

**Aviation document:** any licence, permit, certificate, or other document issued under the CA Act 2023 to or in respect of any person, aircraft, aerodrome, aeronautical product, or aviation related service.

**Aviation participant:** a person who operates, maintains, services, or does any other act in respect of an aircraft, aerodrome, or aeronautical product. It also includes a person who provides an aviation-related service.

**Civil aviation legislation:** the CA Act 2023 and any secondary legislation (regulations, rules, transport instruments) made under this Act.

**Director:** the person who is the Director of Civil Aviation under section 31 of the CA Act 2023. It also includes an Acting Director appointed under section 33 and those delegated under section 460 of the CA Act 2023.

**Document holder:** in relation to any aviation document, a document holder includes any person lawfully entitled to exercise privileges in respect of that document.

### 5. Purpose of the fit and proper person assessment

- 5.1 The FPP assessment aims to provide assurance that an aviation document holder will be able to exercise their privileges in a way that maintains aviation safety and security. The FPP assessment also serves to protect public safety from the risks associated with conducting aviation-related activities.
- 5.2 The Director must ensure that each applicant is a fit and proper person to perform the functions and duties of the aviation document they have applied for, or the senior person position they have been nominated to hold.

## **6. Fit and proper person test**

- 6.1 The fit and proper person test is set out under section 80 of the CA Act 2023. When determining whether a person is fit and proper, the Director must, having regard to the degree and nature of the person's proposed involvement in New Zealand's civil aviation system, consider the following matters:
- a) the person's compliance history with transport (all modes) safety and security regulatory requirements.
  - b) the person's related experience (if any) within the transport industry.
  - c) the person's knowledge of the applicable civil aviation system regulatory requirements.
  - d) any history of physical or mental health problems or serious behavioural problems of the person.
  - e) the person's use of drugs or alcohol.
  - f) any conviction of the person for a transport offence or an offence under the Health and Safety at Work Act 2015.
  - g) any evidence that the person has committed a transport safety offence or has contravened or failed to comply with civil aviation legislation.

## **7. Applying the fit and proper person test in an assessment**

- 7.1 The FPP assessment considers the relevant past and present conduct of a person to assess their suitability for future participation in the aviation system. The FPP assessment is not used to punish someone for their past actions, but rather uses available information and data to assess their ongoing attitude towards safety performance and compliance.
- 7.2 When assessing whether an applicant is a fit and proper person under section 80 of the CA Act 2023, the Director may also consider:
- if they have the appropriate qualification, training, experience, and skills needed to exercise the privileges under the document;
  - if they have the capability to fulfil the obligations and responsibilities associated with the privilege being conferred; and
  - their past behaviour. Repeated conduct or patterns of behaviour may provide an insight into the applicant's attitude and character, their likely future conduct, and whether the applicant has learned from past mistakes. For example, evidence of previous non-compliance with the law, such as criminal conduct or transport related offending, is highly relevant to the assessment.

- 7.3 Section 80(2) of the CA Act 2023 specifies that the Director is not confined to the matters set out in the FPP test (see [6.1](#) of this policy) and may consider other matters and evidence as relevant. This may include the Director:
- seeking and receiving additional information (such as a Summary of Agreed Facts); and
  - considering information obtained from any source, including other individuals or agencies. This may also include information obtained during current or open investigations.
- 7.4 When considering other information, the Director takes into account:
- the credibility of information;
  - the relevance and significance of the information; and
  - the source of the information.
- 7.5 The [Fit and Proper Person Assessment Handbook](#) provides detailed requirements and guidance for CAA staff making FPP assessments, including:
- the procedural steps to follow when conducting a FPP assessment;
  - how to gather and assess information for its relevance; and
  - how the information should be interpreted and weighted.

## **8. Exiting the civil aviation system**

- 8.1 At entry, the onus is on the applicant to prove they are fit and proper. At exit, unless the person is choosing to exit the system voluntarily, the onus is on the Director to provide the rationale for the determination that the person is not fit and proper.
- 8.2 A person's FPP status can be reviewed at any time if circumstances arise that bring into question the person's continued FPP status. This could be due to an accident, incident or other occurrence, or a combination of circumstances.
- 8.2.1 Where it is suspected that an individual no longer satisfies the FPP test, the Director or their delegate will initiate work to ascertain the facts. The Director deciding that a person is not fit and proper is defined as an adverse decision under section 82 of the CA Act 2023. Legal advice must also be obtained in all cases of a proposed adverse decision.

- 8.3 Any consideration of exit from the aviation system, or the imposition of conditions on an individual's aviation document, arising from concerns regarding their FPP status must be carried out in accordance with the relevant provisions of the CA Act 2023:
- Section 82 sets out the rights of persons affected by proposed adverse decisions. If the Director proposes to make an adverse decision in respect of any person, then the Director must follow the requirements set out in sections 82 and 83 of the CA Act 2023.
  - Under sections 96 and 97, the Director may suspend (in whole or in part) or impose conditions on an aviation document.
  - Under section 98, the Director may revoke (in whole or in part) or impose permanent conditions on an aviation document. The power to revoke an aviation document must be exercised by the Director and cannot be delegated.
- 8.4 The Administrative Action – Operational Policy and relevant procedure provides further details on when the powers mentioned in [8.3](#) may be exercised, and the process to be followed in the event of a proposed adverse decision.

## 9. Key decision-making principles

- 9.1 In making a decision, the Director must consider all the relevant information and the weight given to the information being considered.
- 9.2 To ensure that the FPP assessment is being applied consistently, and the decision-maker exercises good judgement when reviewing an FPP assessment, the following principles are applied:
- 9.2.1 Decisions are made fairly and impartially. This means that the decision-maker must:
- act without bias (actual or perceived), prejudice, and improper motive;
  - act independently and in the public interest;
  - only consider relevant factors;
  - act reasonably and in accordance with principles of natural justice, including by:
    - ensuring that the decision-making criteria is clear, explicit and transparent;
    - keeping participants informed during the decision-making process and providing clear reasons for the decision;
    - giving applicants a reasonable opportunity to comment on information that may be prejudicial to them (s 81(1) of the CA Act 2023); and

- giving adversely affected applicants a fair opportunity to comment before making a final decision (s 82 of the CA Act 2023). The extent of consultation will depend on the facts of the case, and the particular legal requirements.
  - not predetermine the outcome of any particular case; and
  - not handle cases posing a real or perceived conflict of interest.
- 9.2.2 The necessary information is gathered so the decision-maker can make an informed and timely decision.
- 9.2.3 Each case is considered on its merits, and the final decision is appropriate and proportionate to the circumstances of the case.
- 9.2.4 Statutory powers are exercised in good faith and consistently with the CA Act 2023.

## 10. Document Control

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<b>Author</b>	Andrea Simmons, Advisor, Operational Policy
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Revision	Date	Description of change
1	06/07/2015	Policy created
2	05/04/2025	Policy amended to reflect changes in Civil Aviation Act 2023.