

# Fit and proper person

A recent court case has highlighted a little understood test often applied by regulators in areas like adoption, towing vehicles, registering a greyhound, being a tattoo artist and even borrowing a library book. So what does it mean exactly to be a “fit and proper person”?

## What is a “fit and proper person”?

There is no universal definition, as it is heavily dependent upon the industry the test is being used for. For example, in the *Library Regulation 2018* (yes, to get a library card) it is left completely undefined. However, in the Legal Profession Uniform Admission Rules 2015 (for being admitted as a lawyer in NSW), there are fifteen specific matters that must be considered.

While the actual standards can vary from industry to industry, generally speaking, a fit and proper person is someone of good character, exhibits good judgement, law abiding, honest, with sufficient knowledge and ability to fulfil the required responsibilities.

## Why is this test used anyway?

This test is typically used as a gateway to receive a permit, registration, licence or similar. It sets a clear expectation of the character of the person that would receive acceptance... and those that would not. To use an obvious analogy, you probably would not want your money in a bank that is run by a group of bank robbers.

Ultimately, it is a risk management tool used by regulators to minimise the likelihood of having to deal with continuing unacceptable behaviour from regulated persons and/or corporations.

## What has this to do with a quarry company?

Recently, the Land and Environment Court heard a matter ([Crush and Haul Pty Limited v Environment Protection Authority \[2023\] NSWLEC 1367](#)) that related to the use of the fit and proper person test. The NSW Environment Protection Authority intended to refuse to issue Crush and Haul Pty Limited a licence on the basis it was not a fit and proper person. Crush and Haul Pty Limited appealed the decision, leaving it for the Court to decide.

Under the legislation the EPA administers (*the Protection of the Environment Operations Act 1997*) there are twenty one considerations to assist in determining if someone is a fit and proper person to hold a licence.

The Court extensively considered these issues, and others presented. This included Crush and Haul Pty Limited being:

- convicted in 2022 of undertaking an activity without an EPA licence, and found to be reckless in committing this offence,
- receiving a penalty notice in 2016 for unlawfully using land as a waste facility, and
- receiving a penalty notice in 2016 for failing to comply with a Notice of Clean-up Action.

The former and current directors of Crush and Haul Pty Limited also had several convictions as directors of other companies that had been prosecuted for environmental offences, including one in 2012 for providing misleading information.

After considering all the arguments, the Court found that Crush and Haul Pty Limited **was** a fit and proper person to hold a licence. The Court considered that the discretion around the interpretation of the fit and proper person test had to be exercised with discretion reasonably and “with evident and intelligible justification”.

As with any case law, this now becomes the benchmark. It will be interesting to see how the Environment Protection Authority will apply it.

## Who can help me navigate a “fit and proper person test”?

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