



Draft Practice Guide

Fit and Proper Person Requirements

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Compliance Standards for NVR Registered Training Organisations – Schedule 1 Fit and Proper Person Requirements

What are the key concepts?

The following key concepts are covered in this practice guide:

Fit and Proper Person Requirements	
<ul style="list-style-type: none">• Application of Fit and Proper Person Requirements• Compliance with law• Management history	<ul style="list-style-type: none">• Financial record• Provision of information• Previous conduct and involvements• Additional considerations

Achieving the Requirements in practice

The following table provides guidance on meeting the Fit and Proper Person Requirements (FPPRs), as well as risks to mitigate or avoid. These should be considered within the context, size, and scale of your organisation.

Requirements	Example activities and other considerations for compliance
<p>Application of Fit and Proper Person Requirements</p> <p>The National VET Regulator must have regard to all matters it considers relevant that are specified in this Schedule when determining whether:</p> <ol style="list-style-type: none">a. an NVR registered training organisation;b. a governing person of an NVR registered training organisation;c. a person applying to become an NVR registered training organisation; ord. a governing person of a person applying to become an NVR registered training organisation, <p>is, or would be, a fit and proper person for the purposes of registration, renewing registration, or maintaining registration as an NVR registered training organisation under the Act.</p>	<ul style="list-style-type: none">• You recognise the FPPRs as a positive obligation upon your RTO requiring active and ongoing education and monitoring of your staff, especially your 'governing persons'.• You can demonstrate the due diligence you undertake to assure yourself that your RTO staff are fit and proper in respect of the public being able to have confidence in their suitability to be involved in VET delivery - for example, referee checks, police checks.<ul style="list-style-type: none">◦ Where you have third party arrangements in place, you apply this due diligence to staff delivering VET on your RTO's behalf.• You ensure that your RTO's governing persons submit a full and frank Fit and Proper Person Declaration to ASQA upon commencement and at any other time when there is a change in circumstance that may impact upon their fitness and propriety.• You have evidence demonstrating how you educate your RTO's governing persons on the

Compliance with law

1. Regardless of whether a conviction has been recorded, the National VET Regulator may have regard to whether the person has been found guilty of an offence against, or ordered to pay a pecuniary penalty under, a law of the Commonwealth or a State or Territory.
2. The National VET Regulator may have regard to the seriousness of, and the time elapsed since the offence, conviction, or matter to which the pecuniary penalty relates occurred.
3. The National VET Regulator may have regard to whether the person is currently involved in proceedings before a court or tribunal.
4. The National VET Regulator may have regard to whether the person has been found guilty of a foreign offence (within the meaning of section 85ZL of the *Crimes Act 1914*).

Management history

1. The National VET Regulator may have regard to whether one or more of the following has been cancelled, revoked, suspended or rejected:
 - a. the person's registration as an NVR registered training organisation;
 - b. the person's application for registration or renewal of registration as an NVR registered training organisation;
 - c. the person's approval as an approved course provider (within the meaning of the *VET Student Loans Act 2016*) or VET provider (within the meaning of the *Higher Education Support Act 2003*);
 - d. subsidy funding arrangements with a State or Territory for the provision of education services by the person.
2. The National VET Regulator may have regard to whether the person has:
 - a. breached a condition of registration as an NVR registered training organisation; or
 - b. had a condition imposed by way of sanction on a registration, approval or arrangement mentioned in subsection (1) and has breached such a condition.
3. The National VET Regulator may have regard to whether the person has ever been a manager or director of a registered higher education provider (within the meaning of the *Tertiary Education Quality and Standards Agency Act 2011*) or registered provider (within the meaning of the *Education Services for Overseas Students Act 2000*) during a period in which the registered higher education provider or registered provider was determined to have breached a condition of its registration under the:
 - a. *Education Services for Overseas Students Act 2000*; or

FPPRs, and the legal obligation on them to declare a change in circumstance where relevant. This includes declaring all legal matters that the governing person is involved in regardless of:

- the seriousness of the matter
- whether the matter is resolved or ongoing
- in the case of a legal charge, whether it resulted in a conviction being recorded or not
- whether the matter is being appealed
- whether the matter relates to an overseas jurisdiction.
- Where a disclosure made by a governing person raises concerns, you retain documentation on your assessment of this information, and how you determined the person's suitability or unsuitability as a governing person under the FPPRs.

Known risks to compliance

- Failing to adopt governance structures, processes and procedures that ensure your RTO staff are, and remain, fit and proper in respect of their particular roles in VET delivery. For example, failing to undertake due diligence checks as part of your general recruitment or selection practices, and intermittently throughout their engagement/employment to ensure they do not pose a risk to the integrity of your operations as an RTO.
- Failing to understand the due diligence practices used by your third parties relating to the integrity of staff delivering VET on your RTO's behalf.
- Failing to identify all of your RTO's governing persons to whom the Fit and Proper Person Declaration applies – i.e. all people responsible for overseeing, directing or exercising a degree of control or influence over the management or operation of your RTO.
- Not adequately assessing any issues declared by a governing person in respect of whether the public is likely to have confidence in the person's suitability to be involved in the management or operation of the RTO.
- Not considering conflicts of interest as part of your assessment of a governing person's fitness and propriety for your RTO.
- Failing to retain copies of Fit and Proper Person Declarations submitted to ASQA by your governing persons.
- Failing to ensure a governing person submits an updated Declaration to ASQA because they dismiss an issue as minor – for example, a guilty verdict that did not result in a conviction being recorded being dismissed as 'only a fine'.

- b. *Tertiary Education Quality and Standards Agency Act 2011*.

4. The National VET Regulator may have regard to whether the person has ever been involved:
 - a. in the business of delivering courses or other services on behalf of a person that was the subject of regulatory action described in subsections (1), (2) or (3); or
 - b. with an entity at the time that entity was found to have breached a government training contract.
5. The National VET Regulator may have regard to whether the person has been disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*.

Financial record

1. The National VET Regulator may have regard to whether the person has:
 - a. been insolvent or bankrupt;
 - b. taken steps to take the benefit of any law for the relief of bankrupt or insolvent debtors;
 - c. compounded with one or more creditors;
 - d. assigned remuneration for the benefit of one or more creditors;
 - e. been under external administration (within the meaning of subsection 600H(2) of the *Corporations Act 2001*); or
 - f. outstanding debts to the Commonwealth.

Provision of information

1. The National VET Regulator may have regard to whether the person has provided false or misleading information to any of the following in circumstances where it is reasonable to assume the person knew the information was false or misleading:
 - a. a VET Regulator;
 - b. the Tertiary Education Quality and Standards Agency;
 - c. the TPS Director (within the meaning of the *Education Services for Overseas Students Act 2000*), including in the TPS Director's capacity as the VSL Tuition Protection Director under the *VET Student Loans Act 2016* and the Higher Education Tuition Protection Director under the *Higher Education Support Act 2003*;
 - d. the Minister, the Department or the Secretary; or
 - e. an authority of a State or Territory that deals with subsidy funding arrangements for education.

Previous conduct and involvements

1. The National VET Regulator may have regard to whether the person has previously been

<p>found not to be a fit and proper person for the purposes of one or more of the following:</p> <ol style="list-style-type: none"> the Act; the <i>Australian Education Act 2013</i>; the <i>Education Services for Overseas Students Act 2000</i>; the <i>Higher Education Support Act 2003</i>; the <i>Tertiary Education Quality and Standards Agency Act 2011</i>; the <i>VET Student Loans Act 2016</i>; subsidy funding arrangements with a State or Territory for the provision of education; or any other law of the Commonwealth or of a State or Territory. <ol style="list-style-type: none"> The National VET Regulator may have regard to whether the person has previously engaged in conduct that reasonably suggests a deliberate pattern of unethical behaviour. The National VET Regulator may have regard to any other matter relating to a person's previous conduct or involvement that the Regulator considers relevant. <p>Additional considerations</p> <p>The National VET Regulator may have regard to whether the public is unlikely to have confidence in the person's suitability to be involved in an organisation that provides, assesses or issues nationally recognised qualifications.</p>	
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Self-assurance questions

1	How do you ensure that you have identified all the 'governing persons' in your RTO to whom the Fit and Proper Person Requirements apply?
2	How do you ensure that persons within your organisation are supported to update their declaration when their circumstances change?
3	What due diligence do you do during your routine recruitment and performance management of your RTO staff to ensure that they are fit and proper for their role?
4	What escalation process do you have in place for assessing information/circumstances where one of your governing persons may no longer meet the FPPRs? What action would you take, and how would you report this to ASQA?
5	What education do you with your staff regarding their obligation to report concerns over the fitness or propriety of a colleague? What information do you make available within your RTO about ASQA's Tip-Off Line?