

Attachment 4: Fit and proper person test

Table 1: Examples of ‘fit and proper person’ or other comparable tests in other licensing schemes

Licensing scheme	Elements of test
<p>Gangmasters Licensing Authority (United Kingdom)</p>	<p>The factors the UK GLA will consider include, but are not limited to, whether the Principal Authority, directors or company officers (where the licence holder is a company), partners (where the licence holder is a partnership), members of the association (where the licence holder is an unincorporated association) and any person named or otherwise specified in the licence has:</p> <ul style="list-style-type: none"> - intentionally obstructed the GLA. This includes preventing an inspection being conducted without reasonable cause, - been convicted of any criminal convictions under the <i>Rehabilitation of Offenders Act 1974 (UK)</i>. Particular consideration will be given to offences of dishonesty, fraud, violence, forced labour, human trafficking, carrying offensive weapons, fire arms offences, intimidation, blackmail or harassment; - contravened any of the requirements and standards of other regulatory authorities, including the Department for Business, Innovation and Skills, Department for Work and Pensions, HM Revenue and Customs, Health and Safety Executive (including where the HSE issue a Prohibition Notice), UK Border Agency, Police, local authorities or overseas authorities; - been an owner, director or partner, or has been concerned in the ownership or management of a business that has gone into insolvency, liquidation or administration whilst the person has been connected with that organisation; - been investigated, disciplined, censured or criticised by a regulatory or professional body, court or tribunal, whether publicly or privately in matters relating to any business with which they have been involved; - been dismissed from, or asked to resign and resigned from, employment or from a position of trust, fiduciary appointment or similar; - been disqualified from acting as a director or disqualified from acting in any managerial capacity; - not been candid and truthful in all their dealings with any regulatory body and they have not demonstrated a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards. This includes deliberately under declaring turnover; or - been influenced by a third party who the GLA considers not fit and proper. <p>The GLA treats each case individually, taking account of the seriousness of, and circumstances surrounding the matter in question. The GLA will consider the explanation offered by the person to whom it relates, the relevance of any conviction, rehabilitation and evidence that the matter will not reoccur. Failure against this standard may lead to a licence being revoked with immediate effect.</p>
<p>Australian Securities and Investments Commission</p>	<p>To be a fit and proper person to engage in credit activities means that the person:</p> <ul style="list-style-type: none"> • is competent to operate a credit business (as demonstrated by the person’s knowledge, skills and experience); • has the attributes of good character, diligence, honesty, integrity and judgement; • is not disqualified by law from performing their role in a credit business; and • either has no conflict of interest in performing their role in the credit business, or any conflict that exists will not create a material risk that the person will fail to properly perform their role in the credit business.

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	<p>To demonstrate these attributes, the person will need to:</p> <ul style="list-style-type: none"> • identify the people involved in the management of the business (the 'fit and proper people'); • specify which of those people the business will rely on to demonstrate that they are competent to engage in credit activities (the 'responsible managers'); and • provide ASIC with information about each of those people, their role in the credit business and their past conduct, and, if they will be responsible managers, their knowledge and experience. <p>'Fit and proper people' are:</p> <ul style="list-style-type: none"> • if company or other body corporate—directors and secretaries, and any senior managers who will perform duties in relation to credit; • partnership or a multiple trustee: <ul style="list-style-type: none"> ○ the partners or trustees who will perform duties in relation to credit; and ○ if a partner or trustee is a body corporate—the directors and company secretaries of the partner or trustee; or • natural person—the natural person.
<p>Queensland Building and Construction Commission</p>	<p>In deciding whether a person is fit and proper to hold a contractor's license, QBCC considers:</p> <ul style="list-style-type: none"> • honesty and integrity in commercial and other dealings; • any failure to carry out commercial or statutory obligations and reasons behind the failure; • any Tier 1 defective work; • any failure to pay an infringement notice for an offence under the QBCC Act; • any other relevant factor (e.g. criminal history). <p>A person has a right to appeal a decision through the Queensland Civil and Administrative Tribunal.</p>
<p>Recruitment and Consulting Services Authority</p>	<p>The criteria is stated in the form of questions:</p> <p>Does the Employment Services Provider have a policy approved by its owners/managers about how it ensures that (1) its Service Network participants are fit and proper persons to undertake the roles assigned to them and (2) workers in its Service Network are free from unlawful exploitation?</p> <p>Does the Employment Services Provider have controls to ensure that (1) its Service Network participants are fit and proper persons to undertake the roles assigned to them and (2) workers in its Service Network are free from unlawful exploitation?</p> <p>Does the Employment Services Provider have controls to ensure, to a reasonable standard of confidence, that customers, workers suppliers and members of the public who have dealings with the Employment Services Provider are sufficiently informed about the role of the Employment Services Provider and the type of employment services it provides?</p>

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	<p>If sole trader, does the sole trader have (1) appropriate work rights, (2) an ABN that matches its supply terms and (3) GST registration?</p> <p>If partnership, (1) is the partnership agreement in evidence and current, (2) does the partnership agreement permit carrying on of relevant business in state or territory where services are supplied, (3) do all partners working in Australia have appropriate work rights, (4) does the partnership have an ABN that matches its supply terms and (5) is the partnership registered for GST?</p> <p>If corporation (1) is the corporation registered, (2) are its returns and reports current, (3) does the corporation have an ABN or ARBN that matches its supply terms, (4) is the corporation registered for GST, (5) does the corporation's constitution permit carrying on of relevant business in state or territory where services are supplied?</p> <p>Does the Employment Services Provider have reliably accessible business premises or virtual premises?</p> <p>Does the Employment Services Provider provide reliable means of contacting a responsible owner/manager or consultant during working hours, as well as outside working hours in case of emergency?</p> <p>Is the Employment Services Provider suitably licensed to carry on relevant business in state or territory where services are supplied and not otherwise disqualified from doing so? Any there any conditions attaching to carrying on relevant business? Are conditions attaching to carrying on business being complied with? Are conditions attaching to carrying on business suitable transparent? Is the Employment Services Provider under expulsion or suspension restriction from applying for membership by RCSA or similar industry association?</p> <p>Are all owners or managers, who are actively participating in the business, consultants, free of any circumstance of disqualification? Do all owners or managers, who are actively participating in the business have a reasonable degree of professional knowledge relating to the business and its regulatory environment?</p> <p>Are all customer or worker facing administrative staff free of any circumstance of disqualification? Do all customer or worker facing administrative staff have a reasonable degree of professional knowledge relating to the business and its regulatory environment?</p> <p>Does the Employment Services Provider have controls to assure to a reasonable standard of confidence that its Service Network participants are free of any circumstances of disqualification with regard to their legal entities, owners/managers, consultants, or customer/ worker-facing administrative staff? Does the Employment Services Provider have controls to assure to a reasonable standard of confidence that workers in its Service Network are not disqualified from working due to (1) absence of a right to work (2) failure to comply with any condition attaching to a right to work, (3) lack of security clearance and (4) enforceable contractual restraint.</p> <p>Does the Employment Services Provider have controls to assure to a reasonable standard of confidence that workers in its Service Network are fit and competent to perform their work safely and without undue risk to themselves or others?</p>
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Queensland Liquor Licence	<p>In considering whether a person is a fit and proper person to hold a liquor licence or permit, the Commissioner will have regard to:</p> <ul style="list-style-type: none"> - whether the applicant demonstrates knowledge and understanding of the obligations of a licensee or permittee of the relevant kind under this Act - whether the applicant is a person of good repute who does not have a history of behaviour that would render the applicant unsuitable to hold the licence or permit applied for; and - whether the applicant demonstrates a responsible attitude to the management and discharge of the applicant's financial obligations; and - whether the applicant has been convicted of a prescribed offence; and - if the applicant is, or has been, the subject of a control order or registered corresponding control order—the terms of the order.
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Table 2: Comments from submissions to Issues Paper re ‘fit and proper person’ test

Submitter	Proposal or other comments in relation to ‘fit and proper person’ test
Apprentice Employment Network	Guidelines provided by ASIC may be appropriate (see above).
Queensland Council of Unions National Union of Workers	<p>Submitted that tests already exist for a range of licences and are usually associated with a person being charged with certain offences. In addition to offences which might ordinarily exclude an employee from being a fit and proper person, the QCU submits that the demonstrated compliance with employment and industrial law form part of the test. Non-compliance with the laws & obligations would justify the refusal of a licence. Submitted that licensing body should consider whether the applicant company meet the threshold capital requirement, identities of persons who have financial or operational decision making powers, demonstrated ongoing compliance with Fair Work Legislation and associated employment conditions.</p> <p>Further submitted that the test should be based on the requirements of obtaining a right of entry permit under the <i>Fair Work Act 2009</i> (Cth). However, proposed that the requirements should be extended to reflect the nature of running a labour hire business. Key features of the ASIC Fit and Proper Person should be incorporated into the test (see above). Further submitted that the licensing body should have regard to the conditions laid out in the issues paper, as well as whether the licence holder has carelessly or recklessly breached an industrial law and whether there are any inherent liabilities of the industry that the proposed licence holder seeks to operate in.</p>
Residential Tenancies Authority	<p>Establishment that the labour hire applicant:</p> <ul style="list-style-type: none"> - has not been declared bankrupt; - no major criminal convictions in the last 5 years; - no substantial convictions under the <i>Work Health and Safety Act 2011</i> (Qld) or any legislation applicable to the regulation of workers” accommodation;

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	<ul style="list-style-type: none"> - that they can demonstrate knowledge and understanding of licensing requirements, specifically relating to their obligations as a labour hire provider; - do not have a history of behaviour that would make the person unsuitable to hold a licence (determined by a police report i.e. a mandatory national and also international criminal history check and suitable referee check); and demonstrate a responsible attitude to managing and carrying out all their proper financial, employment and work health and safety obligations.
Anti-Discrimination Commission Queensland Lockyer Valley Regional Council	Submits that the GLA fit and proper person test should be adopted (see above).
Australasian Meat Industry Employee's Union	Supports QCU Submission. Further considered that the corporation should be the applicant rather than the individual and directors or persons involved in controlling the operations of the labour hire provider.
Independent Education Union of Australia Qld and NT Branch	Supported the introduction of a fit and proper person test for owners and directors of labour hire firms.
AiGroup	Did not support a licensing scheme but submitted that a licence should be available to those companies that can show, at the time of application, they do not engage in unlawful conduct, and that the condition should be an ongoing one.
Queensland Law Society	Submitted that the following should be considered; <ul style="list-style-type: none"> • that the applicant meets occupational health and safety obligation; • sufficient financial security; • whether the applicant or person in a position to influence or control the licence has been convicted for an offence against and industrial or corporations law and has been ordered to pay a civil penalty, and • whether any licence issued to labour hire provider has been revoked or suspended and any other matter.
Australian Manufacturing Workers' Union Qld & NT	The test should include the following matters: <ul style="list-style-type: none"> - satisfies the threshold capital requirement; - identities of all persons who are/would have any financial or operational decision making powers; and - whether the persons have been: <ul style="list-style-type: none"> o convicted of an offence against an industrial law, or carelessly or recklessly breaching an industrial law; o convicted of an offence involving entry onto premises, fraud, dishonesty, violence against another person or intentional damage or destruction of property; o ordered to pay a penalty under the Act or other industrial law; o whether the proposed licence holder has received appropriate training;

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	<ul style="list-style-type: none"> ○ whether a licence issued to the proposed licence holder has been cancelled, suspended or made subject to conditions; ○ whether the proposed permit holder has been disqualified from exercising or applying for a licence; and ○ whether a licence holder has the attributes of good character, diligence integrity and judgement.
<p>Maurice Blackburn Lawyers</p>	<p>Submitted that licence applications should be considered by the proposed licensing body. Further submitted that in deciding whether to grant or deny an application for a licence, the body should consider:</p> <ul style="list-style-type: none"> - whether the applicant meets the 'threshold capital requirement'; - the identities of those persons who are, or would be, if a licence was allocated to the applicant, in a position to influence or control the licence; - the business record of the labour hire provider; - the business record of each person who is, or would be, if a licence was allocated to the applicant, in a position to influence or control the licence; - the nature and manner in which work is performed in the industry or sector in which the licence applicant is expected to operate in; - the capacity of the applicant to meet its occupational health and safety obligations; - the financial security of the licence applicant and its capacity to meet its financial obligations to its workers; - whether the licence applicant, or a person who is, or would be, if a licence was allocated to the applicant, in a position to influence or control the licence: <ul style="list-style-type: none"> ○ has ever been convicted of an offence against an industrial law; ○ has ever been ordered to pay a civil penalty under the licensing scheme or any other industrial law; ○ convicted of an offence involving entry onto premises, fraud, dishonesty, violence against another person or intentional damage or destruction of property; ○ whether the proposed licence holder has received appropriate training; ○ whether a licence applicant has the attributes of good character, diligence integrity and judgement; ○ either has no conflict of interest in performing their role in the labour hire business, or any conflict that exists will not create a material risk that the person will fail to properly perform their role in the labour hire business; ○ whether the proposed licence holder has been, or is bankrupt; ○ whether a licence issued to the labour hire provider has been revoked or suspended previously; or ○ any other matters that the proposed licensing body considers relevant.
<p>Elsa Underhill</p>	<p>Proposed that it is reasonable to ensure those involved in phoenix companies are prevented from continuing activities through the imposition of minimum licensing standards. Noted the importance of compliance with the <i>Criminal Code Act 1889</i> (Qld) and civil obligations.</p> <p>Also noted the Gangmasters Licensing Authority scheme whereby a company or individual changes its legal status. As a result they must change their legal status and the Authority must review whether the old company is significantly in tax debt, and whether the change of status is an attempt to evade those responsibilities. Further suggested that a similar check could be</p>

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	applied in Queensland to ensure that the old company does not have outstanding wage debts, non-payments of superannuation and that the directors are not been declared bankrupt. Also noted that a test which is conditional upon compliance with civil and criminal obligations is necessary.
Queensland Horticulture Council	Broadly supported the criteria in Issues Paper. Noted the RCSA certification scheme which provides a mechanism to proactively monitor compliance against fit and proper standards.
Electrical Trades Union	Supported QCU submission and added that for a LHP that intends to employ people who will perform electrical work, compliance with their obligations under the <i>Electrical Safety Act 2002</i> (Qld) should be considered.
United Voice	Supports the QCU submission. Submitted that the operator should demonstrate a history of good practice in compliance with industrial, superannuation and tax legislation. Those who can demonstrate that they are a good operator should enjoy less stringent reporting and be subject to less compliance measures, and vice versa.
CFMEU	Supports QCU submission. Consider the test should be applied to any person who is an owner or director of a company applying for a licence as well as any other person who is engaged and or holds themselves out as an authorised representative of the labour hire company.
Master Builders Queensland	Does not support a licensing scheme but notes the QBCC fit and proper person test (see above).
RCSA	Notes the RCSA Certification Program that assess the owners/managers, consultants, customer facing administration staff and third party supplies in the supply chain for labour.
Association of Professional Staffing Companies	Noted the QAssure ICT business accreditation scheme that ensures that businesses meet thresholds financially and that all business compliance is established from a statutory perspective.