

# **NORTHERN TERRITORY BUILDING PRACTITIONERS BOARD**

<b>POLICY TITLE:</b>	<b>FIT AND PROPER</b>
<b>POLICY NO.:</b>	<b>BPB-015</b>
<b>EFFECTIVE DATE:</b>	<b>22 March 2017</b>

## **Purpose of Policy:**

The purpose of this policy is to provide guidelines for the Board in determining the 'fit and proper' requirements for all Building Practitioners under sections 24, 24B, and 24F of the *Building Act* ('the Act').

The 'fit and proper' requirement applies to applications for registration under the above sections of the Act and is an ongoing requirement for registration. Registered practitioners must continue to be a 'fit and proper person': section 34VA of the Act.

## **What does it mean to be fit and proper?**

The term 'fit and proper' is not defined in the Act, nor does the Act specify the matters that are to be taken into account in determining whether a person is a fit and proper person. Generally, it can be said that a person who is 'fit and proper' is of such good character as is appropriate for registration as a building contractor. A relationship does exist between the 'fit and proper' and competency requirements; however honesty and integrity are crucial concepts to the question of 'fit and proper'.

The Board will generally be guided by the following propositions when considering whether an applicant for registration is fit and proper:

- Any misconduct should be viewed in the context of its relevance to an applicant's fitness to practice as a building practitioner. It is not the Board's function to punish any applicant for previous actions. Its function is to protect the public in the context of the Act. The Board may look at personal misconduct as opposed to professional misconduct, but some personal misconduct may have little or no bearing on whether or not the applicant for registration as a building practitioner is fit and proper.
- An applicant's general conduct is an important factor in determining whether a person is fit and proper. A criminal conviction is not to be looked at in isolation and must be considered in light of its facts and circumstances, relevance or otherwise to the Act, and in conjunction with the person's general conduct.
- Ordinary community standards should be applied in being satisfied of the 'fit and proper' requirement.
- The purpose or object of the Act to provide consumer protection must be kept in mind.
- The question of 'fit and proper' may be assisted by having regard to a person's reputation, and any specific acts of the applicant.
- Issues such as bankruptcy or insolvency do not automatically impact on the character of a person. However, if the bankruptcy or insolvency came about as the result of a person's dishonest or inappropriate dealings, those dealings will be relevant to the question of fit and proper.
- The nature of the misconduct, the subsequent attitude of the person towards it, the behaviour of the person since the misconduct, and the passage of time itself, are all

factors which will be relevant in determining whether the Board should be satisfied that a person is fit and proper.

**Policy:**

The determination as to whether a person is fit and proper will include (without limitation) the following information:

1. Have you ever been convicted in the past of a criminal offence or are there any charges pending against you? Note: There is no requirement to reveal a 'spent' conviction under the law of the relevant jurisdiction.
2. Are you currently, or have you ever been, bankrupt or have you entered into a Part IX agreement or Part X arrangement or agreement under the Bankruptcy Act 1966?
3. Have you in the last 5 years been a Director, Secretary or a person in a position to control or substantially influence a company's conduct or affairs (such as a shareholder with a significant shareholding, a financier or a senior employee) within 12 months of that company being placed in receivership, administration, official administration, under a deed of company arrangement, in liquidation or wound up for the benefit of creditors?
4. Are you currently, or have you been, disqualified from managing a corporation or banned from being a director of a corporation?
5. Have you ever been refused or disqualified from holding an occupational licence or certificate, or had an occupational licence or certificate cancelled or suspended (including interstate licences, certificates or registrations) or had any disciplinary penalty imposed by a professional, regulatory or statutory body?
6. Are you currently the subject of disciplinary proceedings – or investigation that might lead to disciplinary proceedings - by a professional, regulatory, statutory or other body?

If a practitioner or an applicant for registration answers "yes" to any of these questions they will be required to provide more information about the nature of their individual situation.

The requirements do not diminish in any way the applicant's obligation to disclose any matter that may bear upon their fitness for admission or continuing registration.

A failure to answer each question truthfully and completely or to disclose a relevant matter may lead to a determination that the applicant is not a fit and proper person.

If after considering an application for registration, the Board proposes to refuse the application on grounds that it is not satisfied the applicant is a fit and proper person, the Board will:

- Notify the applicant in writing that it proposes to refuse the application and set out its reasons for the proposed refusal.
- Give the applicant a reasonable opportunity to respond to the Board's proposed decision and reasons for decision, and invite the applicant to respond to the proposed refusal by expressing their views and/or providing further information to support their application.

Adopted by the Building Practitioners Board.




---

Paul Nowland  
Chairperson

19 June 2019