



# Document information

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## Purpose Statement

1. The purpose of this policy is to:
  - a. provide guidance when the Combat Sports Authority of NSW (**Authority**) assesses whether an individual is a fit and proper person to be registered under the *Combat Sports Act 2013 (Act)*;
  - b. provide guidance to the combat sports industry on how fit and proper person assessments under the Act are made by the Authority and the Regulation team of the NSW Office of Sport (**OOS**) to ensure fairness and consistency;
  - c. promote and maintain public confidence in the combat sports industry by reducing the risk of exposure to conduct that would not be reasonably expected of a registered combatant, industry participant or promoter.
2. This policy does not impose binding obligations or rights. This policy clarifies the position of 'fit and proper' person requirements under existing legislation and case law.

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## Scope

3. This policy applies to:
  - a. all applications made for registration as a combatant, industry participant or promoter under the Act, whether a new registration or renewal; and
  - b. determinations about whether a ground for disciplinary action against a registered combatant, industry participant or promoter exists (registered person) in accordance with section 30(1)(d) of the Act.
4. This policy does not apply to determinations by the Commissioner of Police, NSW Police Force (**Commissioner**) regarding whether a person is a fit and proper person to be registered for the purposes of a security determination made under section 26 of the Act.

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## Legislative Framework

5. The following functions of the Authority involve the Authority considering whether a person is a 'fit and proper person':

### Grant registration or renewal of registration as a combatant

6. Under section 13(1)(b) of the Act the Authority may register an applicant as a combatant if the Authority is satisfied that the applicant is a fit and proper person to be registered as a combatant in the registration class(es) applied for. However, under section 13(2)(a) the Authority must refuse to register an applicant as a combatant if they are not satisfied that the applicant is a fit and proper person to be registered as a combatant in the registration class(es) applied for.
7. Sections 13(1)(b) and 13(2)(a) operate to the effect that the power to register an applicant may only be exercised where the Authority is positively satisfied that the applicant is a fit and proper person to be registered as a combatant in the registration class(es) applied for.

### Grant registration or renewal of registration as an industry participant or promoter

8. Under section 25(1)(b) of the Act the Authority may register an applicant as an industry participant or promoter if the Authority is satisfied that the applicant is a fit and proper person to be registered as an industry participant or promoter in the registration class(es) applied for. However, under section 25(2)(a) the Authority must refuse to register an applicant as an industry

participant or promoter if they are not satisfied that the applicant a fit and proper person to be registered as an industry participant or promoter of the class(es) applied for.

9. Sections 25(1)(b) and 25(2)(a) operate to the effect that the power to register an applicant may only be exercised where the Authority is positively satisfied that the applicant is a fit and proper person to be registered as an industry participant or promoter of the class(es) applied for.

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## Determining whether a ground for disciplinary action against a registered person exists

10. Section 30(1)(d) provides that a ground on which the Authority may take disciplinary action against a registered person is that the person is not a fit and proper person to be registered.

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## What is the fit and proper person test?

11. The decision as to whether a person is a fit and proper person will depend on the individual facts and circumstances of each case. The concept of "fit and proper" requires consideration of the conduct of the person and whether improper conduct has occurred or is likely to occur and whether the community have confidence that improper conduct will not occur.
12. The concept of a fit and proper person is not narrowly construed or confined, nor does it remain constant over time. The assessment of the factors listed above is made in a general or an overall sense, with all aggravating and mitigating circumstances considered.
13. All identified factors will be considered both individually and collectively on their merit to inform the assessment of an applicant's overall status as being a fit and proper person to be registered.

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## What factors may be considered?

14. Assessing a person's status as a fit and proper person involves considering their overall suitability to carry out a proposed activity having regard to the express objectives of the Act, at section 3. When assessing whether a person is a fit and proper person, the Authority and OOS staff (under delegation) will have regard to all relevant factors which can include, but are not limited to:
  - a. the particular registration class(es) applied for;
  - b. the applicant's knowledge of the duties and responsibilities of being a registered participant in the particular registration class sought;
  - c. the particular conduct of the applicant in question;
  - d. the applicant's character since committing the offence;
  - e. singular or repetitive patterns of unacceptable behaviours or offending;
  - f. the seriousness of previous unacceptable behaviours or offending (including resultant harms and penalties) and their connection to the type of registration sought by the applicant;
  - g. whether the offence or improper behaviour occurred in the course of their registered activity;
  - h. risk of reoffending (including reformed behaviours and insight into unacceptable behaviour or offending);
  - i. mitigating circumstances;

- j. time elapsed since the applicant committed the offence;
  - k. the nature of combat sports;
  - l. the objects of the Act in, including but not limited to, promoting the integrity of combat sport contests and maintaining public confidence in the combat sports industry.
15. It is important to note that the Authority or OOS staff will not consider factors that are not relevant to whether a person is fit and proper, such as:
- a. personal hardship caused by refusing or cancelling a person's registration;
  - b. personal characteristics such as rudeness during the application process; or
  - c. information that does not directly relate to the application such as their gender, sexual orientation or religious affiliation.

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## What is the process to be assessed as a fit and proper person?

16. Applicants are required to submit current and accurate information to inform the assessment of their status as a fit and proper person.
17. OOS staff will conduct a number of checks or inquiries and use its official record of previous dealings with the applicant to verify and inform the assessment of the applicant's status as a fit and proper person to be registered.
18. Any requests for further information will be sent in writing by email to the applicant. Applicants will be provided 7 days to respond in writing and given an opportunity to provide any supporting evidence.
19. As the Authority must be positively satisfied that the applicant is a fit and proper person to be registered, an application may be refused or a registration cancelled if an applicant fails to provide sufficient information to enable the assessment of whether they are a fit and proper person, despite requests for further information. While a negative inference will not be drawn from any failure to provide the further requested information, the assessment may result in an unfavourable determination in circumstances where the determination is assessed on incomplete or insufficient information.
20. Applicants will be informed in writing of any decision and the reasons for the decision with respect to their status as a fit and proper person to be registered. The notice of decision will outline any internal review or appeal rights that are available.
21. A prior failure to meet the fit and proper person test will not prejudice subsequent applications which will be assessed as at the time the subsequent application is made

