

# FIREARMS REGISTRY



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## The Fit and Proper and Public Interest Legal Tests

The *Firearms Act 1996* sets out the suitability criteria for people applying for or continuing to hold a firearms licence in NSW.

### Fit and Proper Test

People may be refused or have their licence revoked if they are not considered “fit and proper”. This is a legal term common across many laws and is used in many licensing schemes. For a person to be considered fit and proper they must be of good character, be law abiding, honest, and show good judgement. In the firearms scheme, it also extends to whether the person has demonstrated their ability to be trusted with firearms and to comply with the firearm laws.

The fit and proper test is a subjective test; but there is plenty of case law and legal examples to help Firearms Registry decision makers in making the right decision. The NSW Firearms Registry relies on a person’s application to assess if they are fit and proper and check the application against police holdings. This includes information held on the NSW Police Force database about a person’s interactions with police, for example, if they have been arrested, charged, or convicted.

For the NSW Firearms Registry to establish whether a person is fit and proper, decision makers consider whether the person’s history is concerning enough to prevent them from holding a licence (outside of the disqualifying offences and AVOs below).

For example, if a person has been convicted recently of a drug offence but with a small fine as the penalty, police have issued multiple warnings for drug possession, and there are validated intelligence holdings that the individual supplies drugs for known drug traffickers, this would likely see the application refused on fit and proper grounds.

Another example may be if an applicant is known to police as having attempted suicide or self-harm. In circumstances such as these, the Firearms Registry may ask for the applicant to attend a medical specialist for a risk assessment to make sure that the person is no longer a risk to themselves or the public.

### Public Interest Test

People may also have their licence refused or revoked if they do not meet the public interest test. This test involves a consideration of the interests of a part of or the whole community, not just the interests of the applicant. Public protection, public safety and confidence in the licensing system play a significant part in deciding whether issuing a licence meets the public interest test. Generally speaking, if the risk to the public outweighs the benefit to an individual, it would not be in the public interest for the person to have a licence. Also, the Firearms Registry decision makers must be satisfied that there is virtually no risk if the decision is to issue the licence.

An example of when a licence may be refused or revoked because of public interest is where police respond to a domestic incident, conduct a search of the premises and firearms were located unsafely kept and additional unregistered firearms were found in possession.

#### Where can I find more information?

The information provided in the FACT Sheet is for general guidance only. Applicants and licensees should familiarise themselves with the Firearms Act 1996 and the associated Regulation, which are available on the NSW Legislation website - [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

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## Disqualifying Offences - clause 5 of the *Firearms Regulation 2017*

There are a range of offences that will mean a person, if convicted, will be refused a firearm licence for at least 10 years. These are generally quite serious offences such as those involving violence, prohibited drugs, sex offences, and robbery, as examples. For certain offences, the decision to refuse can depend on whether a penalty was applied. For example, if a person is convicted of a drug offence but the penalty is a small fine, this may not result in a refusal.

## Apprehended Violence Orders

If a person is the subject of an apprehended violence order (AVO), their application for the licence will be refused for at least 10 years after the AVO has expired.

If a person is the subject of an interim apprehended violence order, their application for a firearms licence will be refused.

People who hold a firearms licence generally will have their licence revoked too if they are convicted of these offences and must have their licence revoked if subject to an AVO.

## Speeding fines and traffic offences

Ordinarily an applicant or licence holder will not be refused or revoked if they have one or even multiple traffic offences. However, if a person has multiple traffic offences and, for example, been convicted of some minor non-prescribed offences, the existence of traffic offences along with the other concerns, may suggest a wilful disregard for the law. This may be taken into consideration in deciding whether the person is a fit and proper person to hold a firearms licence.

## Further information / related information

- **Firearms Registry website:** [www.police.nsw.gov.au/firearms](http://www.police.nsw.gov.au/firearms)
- [Firearms Registry Decision Making Guidelines](#)