

JULY 2024

Victorian Framework for Fit and Proper Tests

About this Framework

This Framework will help policy makers to determine the need for Fit and Proper Tests (FPTs) and guide their design where they are needed. It will also help regulators to administer FPTs efficiently.

A Fit and Proper Test (FPT) is a tool used by regulators to screen applicants for permissions including licences, permits and other approvals. FPTs can be undertaken before a permission is granted as well as during the life of a permission.

The goal of an FPT is to prevent unsuitable people from engaging in a regulated activity. An FPT should be used to objectively screen specific applicant characteristics which are directly related to increased risk of harm. In the highest risk cases, an FPT may be used to screen the character of an applicant, requiring a level of subjective assessment.

The FPT Framework (the Framework) is a best practice approach to using FPTs as a regulatory tool to manage risk of significant harms. FPTs are widely used by regulators but are often inconsistent and burdensome due to inappropriate design and application.

While FPT tests are useful tools to screen applicants, careful design is needed to make sure they aren't burdensome. Common issues associated with poorly designed FPTs include:

Inefficiencies causing **delays in administering** permissions

Confusion for applicants due to inconsistent requirements between similar licences

Ineffective prevention of risks

Discouraging of businesses opening in Victoria due to poorly designed FPTs

Unfair and discriminatory tests not well linked to regulatory outcomes

This document uses the terminology of a 'Fit and Proper Test' (FPT) to maintain familiarity and continuity. However, there may be opportunity to reconsider this terminology in the future as part of the broader reform program.

Definitions are provided in the **attachment**.

What is this Framework designed to do?

This Framework is designed to:

- reduce regulatory and administrative burden and costs for individuals and businesses applying for permissions
- improve regulatory efficiency and increase speed of assessing applications.

This Framework should be applied when:

- reviewing regulations and legislation relating to permissions and FPTs
- when considering the design of an existing or new FPT
- when decisions based on FPT have been repeatedly challenged and overturned
- when reviewing operational policies and procedures for FPTs.

The Framework contains principles and three stages to guide decision making. A separate Guide shows how and when to apply the Framework.

This Framework should be read in conjunction with the [Victorian Permissions Framework](#) and associated Guides and the [Better Permissions Playbook](#) that supports practices and digitisation.

When this Framework may apply

This Framework should be used in conjunction with the *Victorian Permissions Framework*. FPTs should only be used when the risk of harm from a regulated activity is high: Examples include:

- operating liquor and gambling venues
- working with children
- handling radioactive and other dangerous goods and substances.

In each case the risks of harm by a licence holder is high and cannot be easily or adequately remedied after the fact so that it is necessary to pre-screen all applicants for a licence to manage the risks.

What is a Fit and Proper Test?

An FPT is a feature of a permission which:

- is used to screen individuals and businesses for characteristics that affect their suitability to be granted a permission to undertake a regulated activity.
- allows regulators to prevent inappropriate applicants from undertaking regulated activities where they represent an unacceptable risk to the economy, environment or the public.

An FPT should be used when:

- Increased risk is clearly tied to identifiable objective characteristics.
- The level of burden imposed by an FPT is commensurate with the risk of harm being managed.

An FPT should not be used when:

- all applicants present the same level of risk.
- the level of risk is low and not commensurate with the additional burden imposed by an FPT.
- when less burdensome options for managing harm are available.

FPTs can include many components

FPTs can be used to test many different characteristics of applicants. Some components of FPTs include:

- Criminal history
- Financial capacity
- Affiliations
- Financial solvency
- Regulatory disqualifications
- Regulatory non-compliance
- Regulatory suspensions
- Misconduct
- Applicant health
- Associations

Best practice principles

FPTs are tools that allow regulators to screen applicants for characteristics that are linked to a high risk of poor conduct and undesirable outcomes from a regulated activity. FPTs impose burden on regulators and businesses and should only be used when this burden is commensurate with the level of risk being managed.

Three principles guide the best-practice design of FPTs.

Risk-based



- FPTs should only be included in permission design when the level of risk being managed is commensurate with the level of burden they will add.
- FPT design should be proportionate to the level of risk being mitigated. Higher levels of risk require greater stringency and evidentiary requirements.

Minimised requirements



- FPTs should impose the minimal necessary burden.
- FPTs should only target relevant areas where unacceptably high levels of risk have been identified and where the tests components are clearly related to these risks.

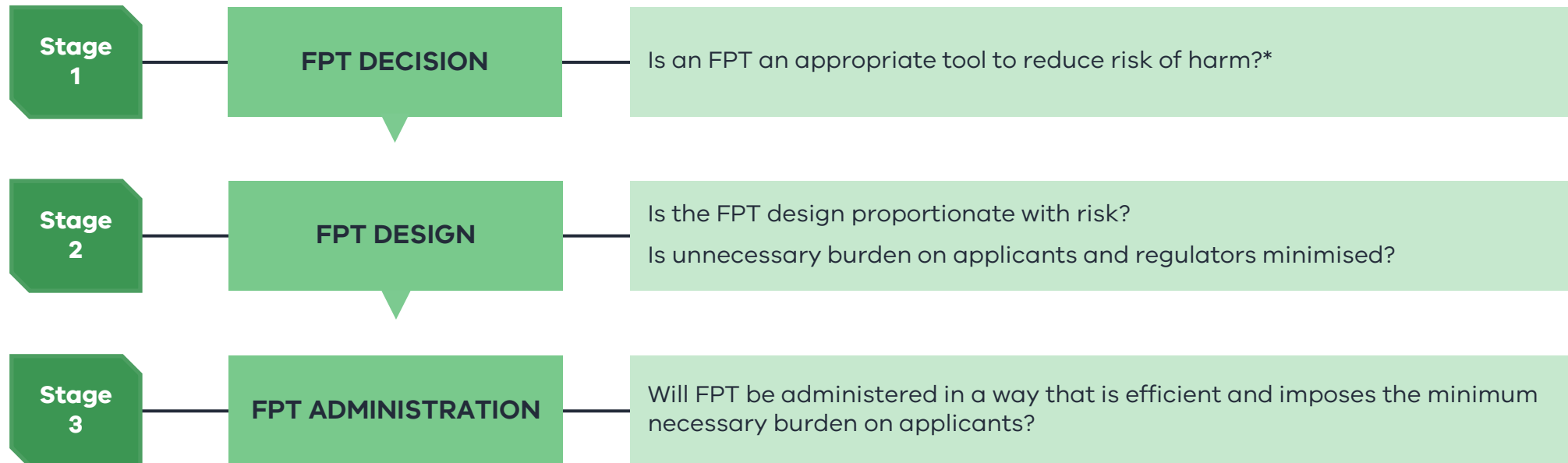
Standardised administration



- FPT components should be consistently administered.
- The minimum necessary evidence should be sought to satisfy requirements, e.g. in lower risk cases information provided directly from an applicant should be accepted.
- FPTs should reuse information that has been provided previously where possible.

The stages in this Framework

This Framework has three stages. Users can enter and exit the Framework at different stages and move between stages as needed. Each stage has key guiding questions which will be answered as users progress through the Framework.



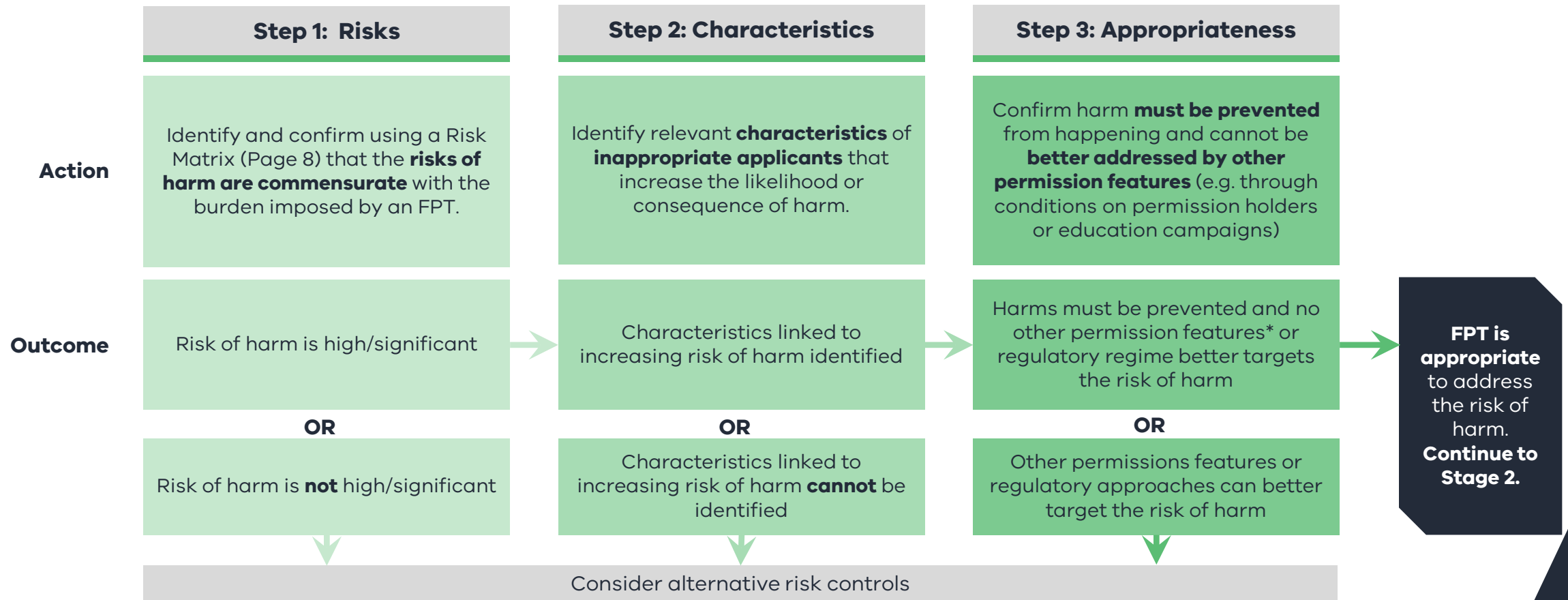
*Where an FPT is not the appropriate tool for managing the risk of harm, alternate or additional risk controls and/or compliance and enforcement risk controls identified in the *Victorian Permissions Framework* should be considered.

Stage 1

FPT decision

Steps in Stage 1

This stage involves assessing whether an FPT is an **appropriate** tool to manage risk. It should be considered in conjunction with the *Victorian Permissions Framework* which provides guidance on alternative risk controls. This stage helps ensure the most appropriate method of managing risk is applied.



* See Page 24 for alternative permission features.

Step 1: Risks

Measuring the risk of harm requires an assessment of its likelihood and consequences.

Where the risk of harm is high or significant, the consequences of harm are difficult or costly to remedy, and when harms are difficult to detect, FPTs might be an appropriate risk management tool. Risk assessment is further discussed in the *Victorian Permissions Framework Guide 1* and the *Victorian Government Risk Management Framework*.

<p>Permanent or long-term serious harm with a large scale of impact e.g.</p> <ul style="list-style-type: none"> impairment or loss of ecosystem system function loss of human lives widespread exposure to harmful substances financial system failure 	Consequence	Severe	High	High	Significant	Significant
<p>Serious harm but limited duration or scale of impact e.g.</p> <ul style="list-style-type: none"> security of significant food source threatened severe economic costs for small set of consumers workplace injuries resulting in hospitalisation 		Major	Medium	High	High	Significant
<p>Medium level of harm over long period or with large scale of impact e.g.</p> <ul style="list-style-type: none"> local environment damage requiring remediation consumers unable to access essential services innovation will not be rapid 		Moderate	Medium	Medium	Medium	High
<p>Low levels of harm imposed e.g.</p> <ul style="list-style-type: none"> slight increase in wait times for some services 		Minor	Low	Low	Medium	High

Risk level	Description
Significant	Risks very likely to occur and have major or severe impacts.
High	Risks less likely to occur but have major or severe impacts or are almost certain to occur with lesser impacts.
Medium	Risks with minor to moderate impacts that have potential to occur.
Low	Risks unlikely to occur and will have minor impact.

Unlikely	Possible	Likely	Almost certain
Likelihood			
Not likely to happen	May happen at some time	Expected to happen at some time	Expected to occur often

Step 2: Characteristics

The primary basis for assessing FPT should be objectively identifiable **characteristics**. In exceptional circumstances, a subjective assessment of **character** may be appropriate.

Determining the characteristics of an inappropriate applicant

Regulators can use a wide variety of information to undertake FPTs. FPT components may be:

- characteristics-based e.g. identity, past regulatory compliance, criminal history, financial history
- character-based in limited circumstances e.g. honesty and integrity, associations and motivations.

FPTs must be applied objectively and fairly to all applicants or all applicants who meet a defined criteria to avoid issues of discrimination, regulator capture, and/or conflicts with the *Victorian Charter of Human Rights and Responsibilities*. Using objective characteristics where appropriate increases the likelihood of regulator decisions holding up in court if challenged.

Characteristics assessed for an FPT should be:

<p>Closely linked to the risk of harm</p>	<p>Objective and measurable</p>	<p>Able to be digitally sourced, where possible</p>	<p>Able to be transparently evaluated</p>
<p>Fraud conviction is linked to harms from misuse of public funds</p>	<p>Non-compliance in past five years with a specific Act</p>	<p>Online criminal history check</p>	<p>Requirements clearly communicated</p>

Step 3: Appropriateness

Controlling harms through an FPT is not always the best approach to managing harm.

An FPT is not always the best regulatory approach to managing harm. FPTs can impose significant burden on applicants and regulators. When the risk of harm is not commensurate with the level of burden imposed by an FPT, alternative methods of harm management should be used.

Alternatives to FPT should always be explored. They can often manage risk of harm more efficiently while providing the same regulatory outcome. See the [Victorian Permissions Framework](#) for an overview of alternative approaches to harm management.

Existing law not specific to the industry



- May help promote consistency and reduce regulatory burden for both the regulator and permission holder.
- Provides remedies after the harm has occurred, may not be suitable if the harm needs to be prevented.

Targeted non-regulatory responses



- Non-regulatory tools include education and market-based incentives such as lower fees for people who have good compliance history.

Permission features



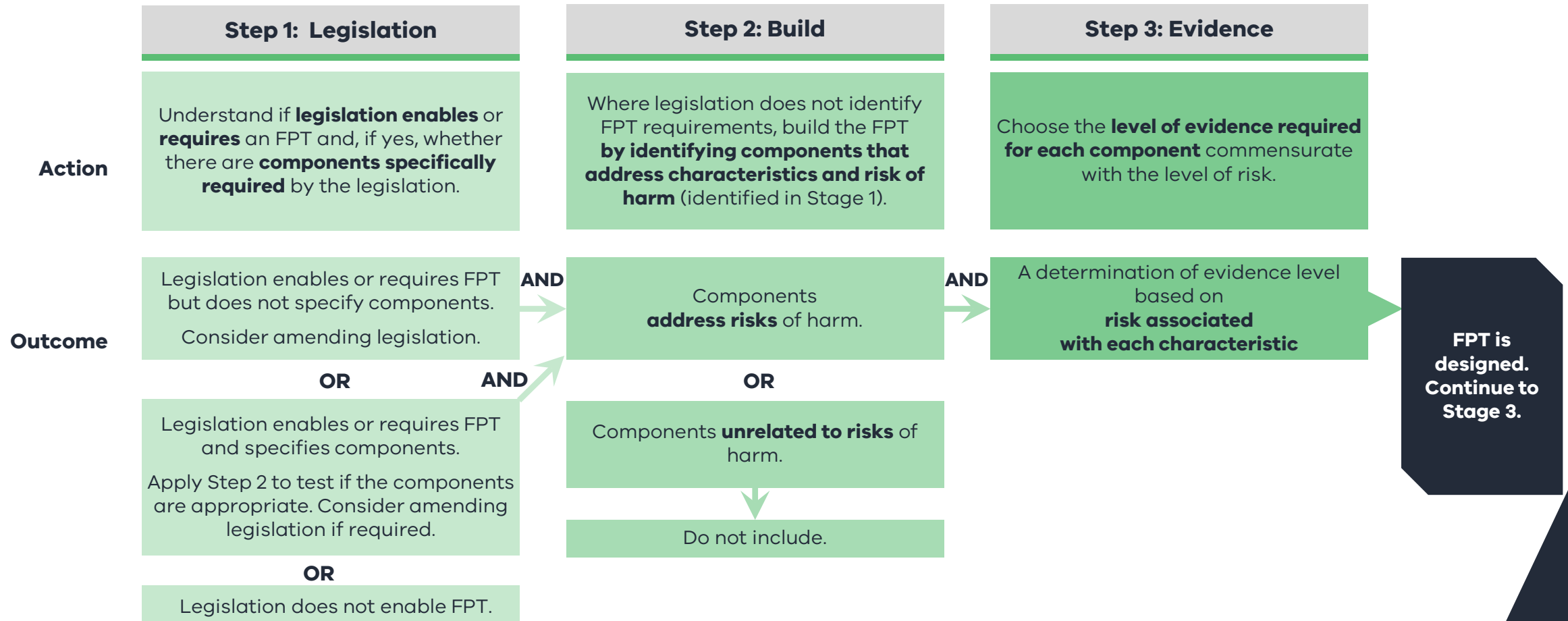
- Alter other aspects of permissions features to reduce need for an FPT (e.g. by imposing mandatory conduct rules)
- Reduce the scope of FPT required (e.g. by ensuring a close link of applicant characteristics to risk of harm).
- Increase conditions on licence holders to undertake or report activities in a way that can be enforced without need for an FPT.

Stage 2

FPT design

Steps in Stage 2

The purpose of Stage 2 is to ensure FPTs are designed efficiently, with minimal regulatory burden and in proportion to the risk of the license. This stage is applicable when a new FPT is being introduced, and when an existing FPT is being reviewed.



Step 1: Legislation

FPTs must be enabled by legislation. Best practice FPTs are clearly set out in legislation and have a transparent operational policy aligned with this Framework outlining how it is applied.

FPTs should only be legislated when necessary

FPTs must be enabled through legislation and regulators must follow legislated requirements when administering. Best practice legislation should identify the minimum necessary and stable components a regulator must assess for the FPT.

If legislation does not enable an FPT and one is determined to be necessary using stage 1 of this framework, or if changes to an FPT are required to bring it in line with best practice, legislative reform should be considered. Policy makers should consider adopting the Office of the Chief Parliamentary Counsel and the Department of Treasury and Finance Model Legislative Provisions (See page 15).

Example: The *Labour Hire Licencing Act 2018* lists clear criteria which prevent an applicant being considered Fit and Proper.

In contrast, the *Environment Protection Act 2017* provides the regulator with a range of characteristics that must be considered when determining an applicant's Fit and Proper.

Operational policy should supplement legislation

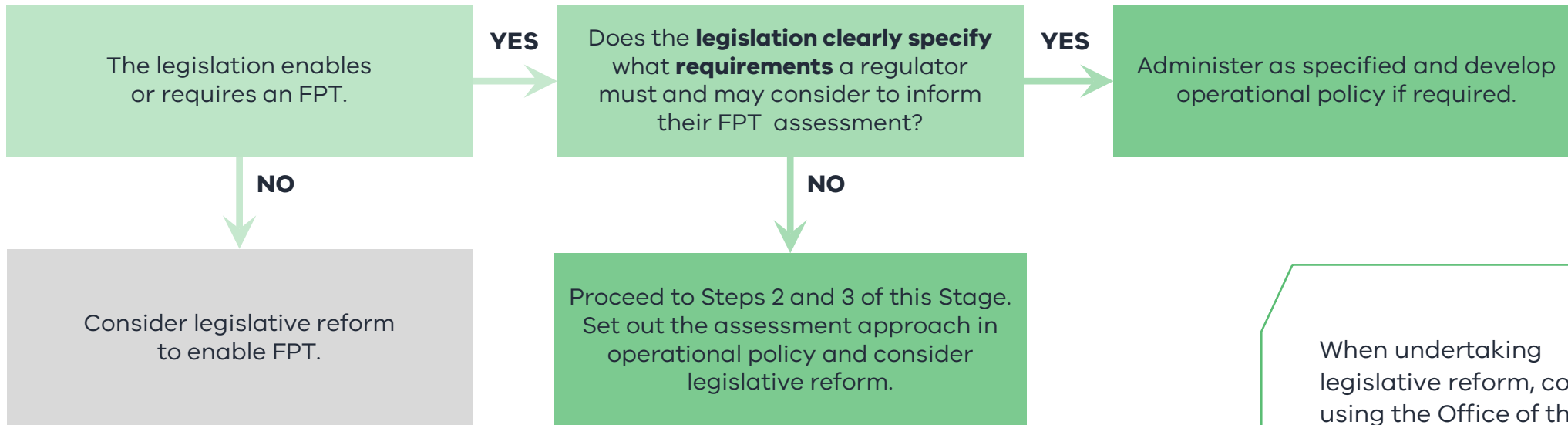
Where legislation enables FPT but does not specify components, the FPT approach should be clearly defined in the regulator's operational policy.

Operational policy should outline specific FPT components, and the level of information required to satisfy them. It should also allow regulators to adjust the amount of information needed for individual applicants, enabling them to respond effectively to relevant insights into an applicant's risk profile. This ensures that even when legislation is broad or lacks detail, the operational policy provides clear guidelines for the FPT process.

Example: The Environment Protection Authority's 'Fit and proper person policy' indicates what and how the matters specified in the Victorian *Environment Protection Act 2017* will be considered and enables the regulator to seek further information or evidence as needed.

Step 1: Legislation

Processes and questions to consider if an FPT is considered appropriate after Stage 1. These steps are laid out in more detail over the following pages.



When undertaking legislative reform, consider using the Office of the Chief Parliamentary Counsel Model Legislative Provisions (see page 15).

Legend

- Stop FPT design
- Proceed with FPT design

Step 1: Legislation

Model Legislative Provisions for Fit and Proper Tests.

DTF has partnered with the Office of the Chief Parliamentary Counsel to develop model legislative provisions for FPTs. These model provisions are designed to be easily adoptable and reflect the most modern and effective version of a regulatory provision. DTF has produced supporting guidance to assist agencies in adopting model provisions and customise them to reflect the level of risk being managed. The Model Provisions prioritise the use of objective criteria for both the application and conduct of assessment.

Guidance is being developed and will be published later in 2024. The principles underpinning the Model Provisions are outlined below.

Clear purpose

- FPTs should only be legislated when it is necessary and appropriate.
- FPT should be applied to all potential applicants.
- Legislation should state where a regulator must have consent before conducting FPT checks..

Streamlined structure

- Standard FPT components should form basis of provision (See page 18)
- A selection of bespoke components should be used when necessary to respond to risk.

Proportionate

- Model Provisions reflect a graduate scale of evidence requirements.
- Regulators should accept attestations where the risk of harm is relatively low.
- Regulators must have applicant consent to conduct FPT checks themselves.

Objective

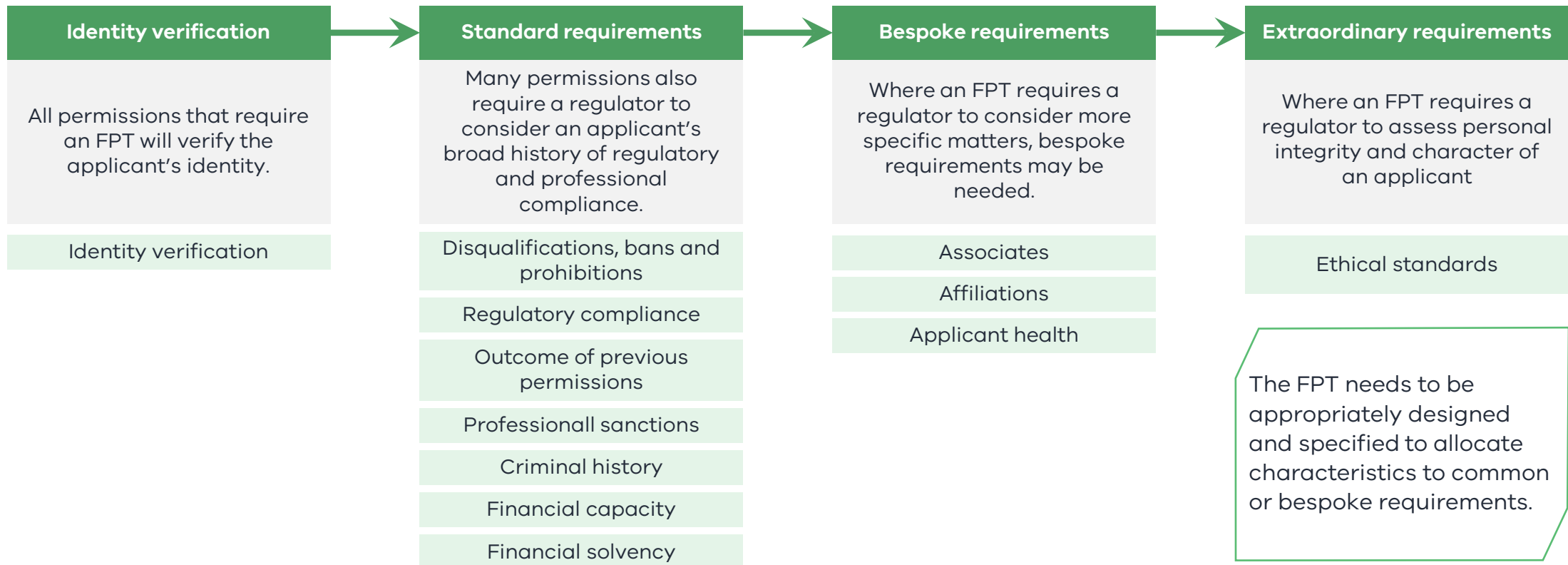
- Criteria contained in legislation should be objective to allow for a consistent and fair approach.

Step 2: Build

FPTs should only include components which directly respond to the harm being managed.

Many FPT requirements have broad applicability across many types of permissions. Identity verification is a baseline FPT requirement. Bespoke requirements can be used to address risks that are permission-specific. Additional requirements should be added if they are necessary to manage the risk of harm. Extraordinary requirements are generally only for use in situations of exceptionally high risk.

When building an FPT, policy makers must determine who they will be applied to (e.g. only the permission holder or any office holder). FPTs should only be applied to individuals when doing so directly reduces the risk of harm.



Step 2: Build

Examples of standard FPT components.

Component	Summary	Characteristics assessed	Example of when to use
Criminal history	Has been involved in relevant criminal activity.	Prior and current criminal convictions or offences.	An individual with multiple convictions for fraud offences is seeking to enter the gambling industry.
Financial solvency	Does not have sufficient funds to undertake a regulated activity on an ongoing basis.	Past bankruptcy and current solvency.	A builder is seeking to commence a long-term, capital-intensive project and the project's risk is not managed by insurances.
Financial capacity	Does not have sufficient financial capacity to meet the obligations of a permission.	Appropriate financial circumstances, including insurances.	A large-scale industrial waste storage facility does not have or financial capacity to meet clean-up responsibilities.
Regulatory disqualifications	Has been disqualified, banned or prohibited from undertaking a regulated activity.	Disqualifications, bans or prohibition from undertaking an activity or holding a position.	An individual is disqualified from managing corporations and is seeking permission to register as a building practitioner.
Regulatory non-compliance	Has previously demonstrated non-compliance with regulation.	Previous compliance with regulation.	An individual has evidenced previous non-compliance with Work Health and Safety regulations and is seeking permission to work in construction.
Regulatory suspensions	Has previously been deemed unsuitable to perform a regulated activity.	Suspensions or cancellations of previous permissions.	An individual has previously had relevant permissions refused or revoked because they were determined not to be a fit and proper person.
Misconduct	Has faced previous disciplinary action in response to prior misconduct.	Disciplinary action in response to misconduct.	An individual has had their authorisation in relation to other health services suspended and is seeking permission to work in disability support services.
Skills and experience	Has the necessary skills and/or experience to undertake regulated activity.	Education and experience	An individual applying for a firearms licence must satisfactorily completed firearms safety training.

Step 2: Build

Examples of bespoke and extraordinary FPT components.

Sometimes, bespoke and extraordinary components will be required. As with all FPT components, the selected requirements must directly respond to the risk of harm being managed by a permission. Assessments of character are generally reserved for circumstances of exceptionally high risk.

	Component	Summary	Characteristic assessed	Example of when to use
Bespoke	Applicant health	Has a physical or mental health issue that compromises their ability to undertake the activity within acceptable risk parameters.	Physical and mental capability to perform activity.	An individual seeking permission to provide a school holiday care program has a medical condition that may impair their ability to provide necessary care.
	Affiliations	Is negatively influenced by involvement or membership in an external group.	Memberships, group involvement.	An individual is a member of a declared organisation and is seeking to obtain a firearms licence.
	Associates	Is inappropriately influenced by an associate in a role of influence e.g. an executive officer, director, secretary, partner, trustee or manager of the business.	Information that identifies associates of an individual.	An individual seeking a permission for a gaming licence may be influenced by another person in a position of influence or control who is not fit and proper and may benefit from the activity.
Extra-ordinary	Ethical standards and conduct ('character')	Has previously acted unethically or against the rules or standards of a workplace.	Principles informing appropriate behaviour.	An individual seeking permission to practise in the onsite water industry has prior breaches of the Code of Practice for onsite wastewater management.

Step 3: Evidence

Stage
2

Step 3:
Evidence

Tailor the level of evidence validation to risk of harm

Risk*	Lower end	High	Higher	Extreme
When to use	For the lower 'high risk' permissions (e.g. an Electrician licence)	When the risk of harm is higher and assurance is required (e.g. Second-hand dealers and pawnbrokers).	When the risk of harm is higher and a greater level of assurance is required (e.g. medical licence)	For permissions when the risk of harm is extreme (e.g. gaming licence).
FPT components	Baseline and Standard	Baseline and Standard	Baseline, Standard and Bespoke	Baseline, Standard, Bespoke and Extraordinary
Consideration period	<ul style="list-style-type: none"> Applicant has not breached any FPT requirement (such as criminal history check) within the preceding three years. 	<ul style="list-style-type: none"> Applicant has not breached any FPT requirement within the preceding five years. Documentation is less than two years old. 	<ul style="list-style-type: none"> Applicant has not breached any FPT requirement within the preceding ten years. Documentation is less than one to two years old 	<ul style="list-style-type: none"> Applicant has not breached any FPT requirement within the preceding ten years. Documentation must be current.
Evidence requirements	<ul style="list-style-type: none"> Applicant provides attestation of their identity and that they meet FPT requirements. 	<ul style="list-style-type: none"> Applicant provides documentation to prove their identity and that they meet FPT Requirements. 	<ul style="list-style-type: none"> Applicant provides several layers of documentation and regulator may also check to verify applicants' identity and that they meet objective FPT requirements. 	<ul style="list-style-type: none"> Regulator verifies applicants' identity and other FPT requirements. Regulator also assesses character of applicant. Evidence is verified and more intensely interrogated.

* FPTs are only appropriate for risks that are high or significant (see risk matrix on page 8). Risk starts at 'lower end' high risk and ranges through to Extreme.

- **Stage 3 focuses on efficient administration of Fit and Proper Tests.**
- **Stage 3 will be developed in 2024-25.**

Stage 3

FPT evidence administration

Appendices

**Appendix A: Definitions and key
information**

**Appendix B: Common permission
features**

Appendix A: Definitions and key information

Fit and Proper Test	Fit and Proper Tests (FPTs) (also called Fit and Proper Person Tests) are a method of pre-screening applicants to assess their suitability for undertaking a regulated activity. FPTs may also be performed during the lifetime of a permission to ensure necessary standards and conditions continue to be met.
Components	Components are elements of FPTs such as criminal history check used to assess an applicants suitability.
Characteristics	Objectively measurable features such as their training and qualifications, age or whether they have a criminal record.
Character	Qualities of an applicant that lead them acting ethically. Character can change over time and can be assessed through FPT components including criminal history, compliance history and affiliations.
Competence	The skills and capacity of applicants which are required to effectively manage risks associated with the activity. Competence can be assessed through Fit and Proper components including education, qualifications and training.
Identity verification	Identity verification is not an FPT in itself. However, ensuring someone's identity is an important first step in ensuring they are fit and proper.
Associates	Anyone in a position to control or influence the applicant in the conduct of an export activity. This can include a spouse, partner, other family members, consultants, advisers, an employer or employee of the person concerned, or a corporation in which the person holds shares..
Insolvency	When an individual or business can no longer meet their financial obligations.
Financial capability	Having access to sufficient capital to meet obligations arising from a licenced activity. For example, a business undertaking mining activities should have sufficient capital to meet environmental obligations.
Financial viability	The ability to generate sufficient income to meet operating payments and debt commitments. For example, someone selling motor vehicles should demonstrate the financial viability to honour warranties.
Model legislative provision	Consider using the Office of the Chief Parliamentary Counsel Model Legislative Provisions. Guidance is being developed and will be published later in 2024.
Permissions	'Permissions' refers to licences, permits, and other approvals.

Appendix B: Common permission features*

Key considerations
<ul style="list-style-type: none"> • Features in the table can be designed to support a permission scheme’s objectives. • Features can be combined in different ways to achieve objectives, including balancing the use of pre-screening and conditions. • Feature settings can interact with other elements of the regulatory regime – and regulators should account for these in determining their approach. • Iteration of options is useful to refine where to set different features to target coverage and risk control.

	Feature	Description	Examples
Risk control: pre-screening	Duration	Period for which permission is provided	<ul style="list-style-type: none"> • Frequency of renewal e.g. annual • Issued for 99 years
	Coverage - thresholds and exemptions	How is the permission applied to a market or geographic region	<ul style="list-style-type: none"> • Specific locations, specific species • Geographical boundaries • Business volumes or size
	Competency requirements	What the applicant must be able to do or demonstrate	<ul style="list-style-type: none"> • Qualifications, training, or experience • Tests, assessments, self-assessments
	Mandatory attributes	Characteristics the applicant must have	<ul style="list-style-type: none"> • Be honest and financially sound • Not have prior convictions • Hold another type of licence • Possess insurance
Risk control: conditions	Reporting	Information an applicant or holder must provide	<ul style="list-style-type: none"> • Mandatory information disclosure • Reporting
	Conduct rules/ operating requirements	What a permission holder must do or not do (outcomes, duty or process-based)	<ul style="list-style-type: none"> • Requirements for operations, activities, premises • Administrative obligations
	Quantity restriction	Limits on quantity, share, or units	<ul style="list-style-type: none"> • Limitations on the number of participants
	Compliance and enforcement powers and penalties	Specific powers tied to a permission, including to issue penalties tied to the permission	<ul style="list-style-type: none"> • Powers of entry • Pyramid – e.g. fines, increased regulatory obligations, revocation
	Fees and charges	Cost recovery and pricing as a signal	<ul style="list-style-type: none"> • Licence renewal fee

* This slide is from the [Victorian Permissions Framework, Attachment A2](#).

Document version control

The Fit and Proper Test Framework and Guide will be expanded and continuously improved over time.

Version	Date	Description of changes
1	July 2024	Initial publication

© State of Victoria 2024



You are free to re-use this work under a Creative Commons Attribution 4.0 licence, provided you credit the State of Victoria (Department of Treasury and Finance) as author, indicate if changes were made and comply with the other licence terms. The licence does not apply to any branding, including Government logos.

Copyright queries may be directed to information@dtf.vic.gov.au

dtf.vic.gov.au