

JULY 2024

# Victorian Framework for Fit and Proper Tests

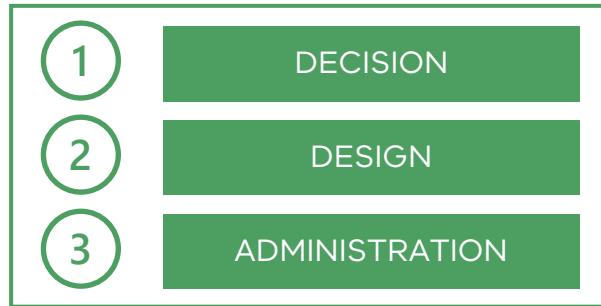
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Guide

# When and how to use this guide

This guide provides step by step guidance on applying the Victorian Fit and Proper Test (FPT) Framework (the Framework). This guide is intended for those seeking to shape the FPT policy settings and regulatory design.

## Framework stages



## Additional resources and preparation for using the guide

- Read the relevant sections of the Victorian Permissions Framework and its associated Guides and Better Regulation Victoria's guides to implementing 'better practice' permissions.
- Check the relevant legislation in your area for its direction on FPTs.
- Understand the risks of harm that to be managed.
- Assess whether there are links between a person's characteristics (such as education, age, criminal history), character and the risk of harms occurring.
- Keep in mind that there may be more efficient alternatives to FPTs which achieve the same objectives of harm reduction.

## The Victorian FPT framework is designed to:

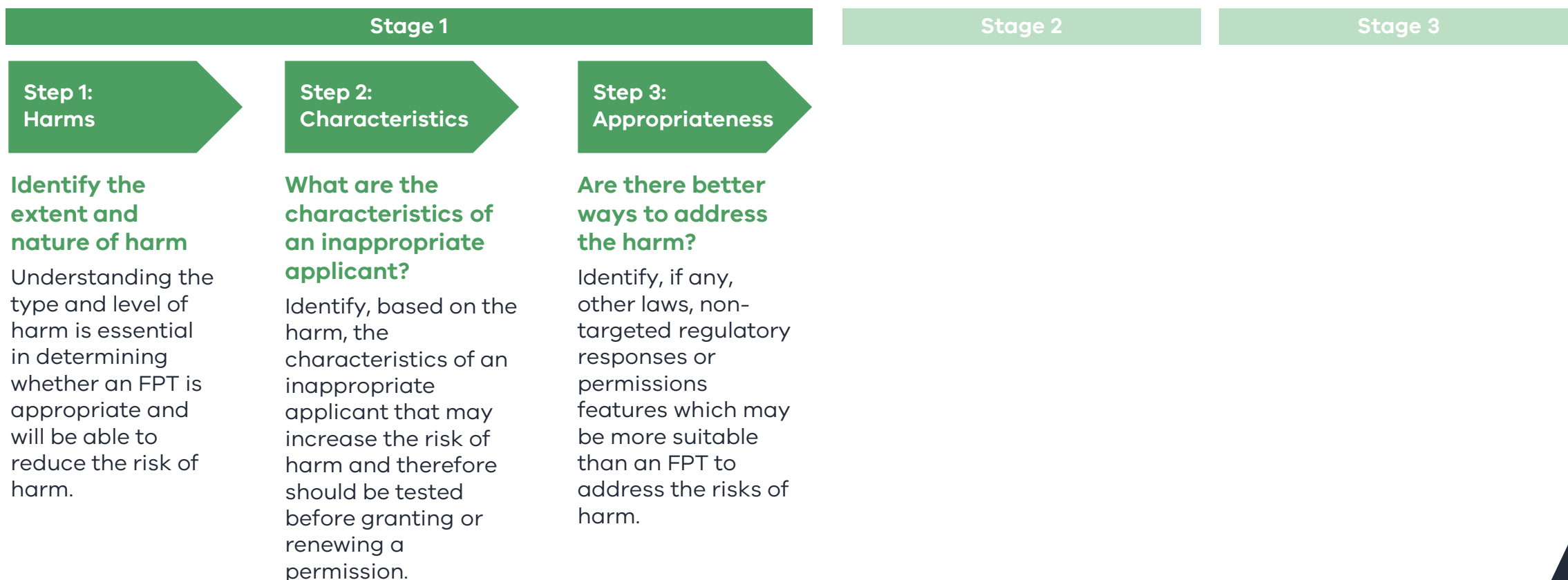
- Promote efficient and effective FPTs by guiding the design of standardised and objective FPTs, while also targeting the risk of harm
- Provide guidance on reducing regulatory burden when developing FPTs
- Ensure that characteristic tests are linked to the risk of harm to minimise unfair and unnecessary discrimination associated with character-based assessment

## The guide will help you:

- Understand whether an FPT is the best regulatory tool to reduce the harms or if imposing permission conditions or other approaches after issuing a permission might be more effective
- Understand what characteristics are appropriate to include
- Design an FPT that is proportionate to risk
- Design an FPT with consideration of legislation and necessary levels of evidence

# Stage 1: Decision

The purpose of Stage 1 is to determine if an FPT is an appropriate measure to reduce the risk of harm. An FPT should only be considered when the burden it will impose on businesses and the regulator is commensurate with the risk of harm being managed.



\* See risk matrix in Fit and Proper Test Framework page 8.

# Step 1: Risks

Stage  
1

Step 1:  
Risks

## Key questions

- *What harm(s) are being managed?*
- *What is the likelihood of negative outcomes and the consequence if those outcomes occurred?*
- *Is the risk of harm from an inappropriate applicant being granted a permission so high that all applicants need to be pre-screened?*

## What is the nature and extent of harm and how is it related to an FPT?

Licences, permits and other permissions impose requirements to provide information and gain approval from regulatory authorities before a regulated activity is commenced.

Assess the likely harms that could occur from inappropriate applicants being granted permission. Use the risk matrix at Attachment 1.

Identify where the consequences are so difficult to remedy, remedies are inadequate or unduly costly or slow that the risk needs to be controlled before it happens.

Identify the detectability of harm. Harms which are difficult to detect can be difficult to remedy.

An FPT is only suitable where pre-screening and eliminating some applicants from being provided a permission reduces the risk of harm. If the risk of harm is high for all potential applicants, consider other regulatory controls in the Victorian Permissions Framework.

## Example

### Electrical work – high risk

There is a high risk of harm associated with electrical installation work. Faulty wiring can cause fire and give electrical shocks which can be life threatening. Appliances can also be damaged by power surges caused by faulty installations. Energy Safe Victoria licences and registers all electrical tradespersons in Victoria. The *Energy Safety Act 1988* sets out licence requirements which include both necessary experience and qualifications.

### Recreational fishing – low risk

Under the *Fisheries Act 1995*, a recreational fishing licence is required for all forms of recreational fishing in Victoria's marine, estuarine and inland waters. Recreational fishing involves a low likelihood of harm with relatively minimal consequences. The risk of harm to the environment and others in the community is low.

# Step 2: Characteristics

Stage  
1

Step 2:  
Characteristics

## Key questions

- *What characteristics does an inappropriate applicant have?*
- *Are any characteristics of the applicant closely connected with the risk of harm?*

## Are there any applicant characteristics closely linked to harm?

Assessing characteristics is the primary mechanism for an FPT. Characteristics may include:

- Past regulatory compliance
- Criminal history
- Financial capability
- Education and qualifications

All FPTs involve an Identity check. An identity check is not by itself an FPT but must be undertaken before other components of the FPT are considered.

Any characteristics assessed in an FPT should be closely linked to the risk of harm. Analysis should demonstrate the nexus or predictive ability of the characteristic to harm.

By focusing on characteristics this will make the FPT design undertaken in stage 2:

- objective and measurable
- able to be sourced digitally, where possible, and
- able to be transparently evaluated.

## Example

### Criminal history

Conducting gaming activities requires a licence under the *Gaming Regulations Act 2003*. Some gaming venues handle significant amounts of cash. An applicant for a gaming licence with criminal history would significantly increase the risk of harm that cash may be misused or involved in money laundering. The characteristic of having a recent criminal conviction related to financial fraud is closely linked to the risks of harm.

### Financial history

The *Education and Training Reform Act 2006* requires teachers to register with the Victorian Institute of Teaching to undertake teaching duties. This is to promote child safety and wellbeing. Whether the applicant has been insolvent or bankrupt is not directly relevant to the harms that this registration aims to control.

# Step 3: Appropriateness

Stage  
1

Step 3:  
Appropriateness

## Key questions

- *Could the harms be better addressed by other permission features or regulatory regimes? If so, what are they?*
- *Why is an FPT a more suitable option to address the harm compared to other mechanisms?*

## Is an FPT the best approach?

FPTs are not always the best methods of managing harm even when the risk is high and applicant characteristics are correlated with increased risk of harm. Alternative methods may be more cost effective and better achieve the required regulatory outcomes.

Examples of alternatives that may be more appropriate include:

- Existing law not specific to the industry e.g., fair trading laws to reduce false advertising
  - Helps promote consistency and reduce regulatory burden for the regulator and permission holder
  - Provides remedies after harm has occurred.
- 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
  - Consider if conditions could be better specified to reduce the need for an FPT or reduce the frequency or scope of the FPT required

Combinations of responses may also be helpful. It is important to consider other ways to manage risk to ensure FPTs are not carried out unnecessarily.

## Example

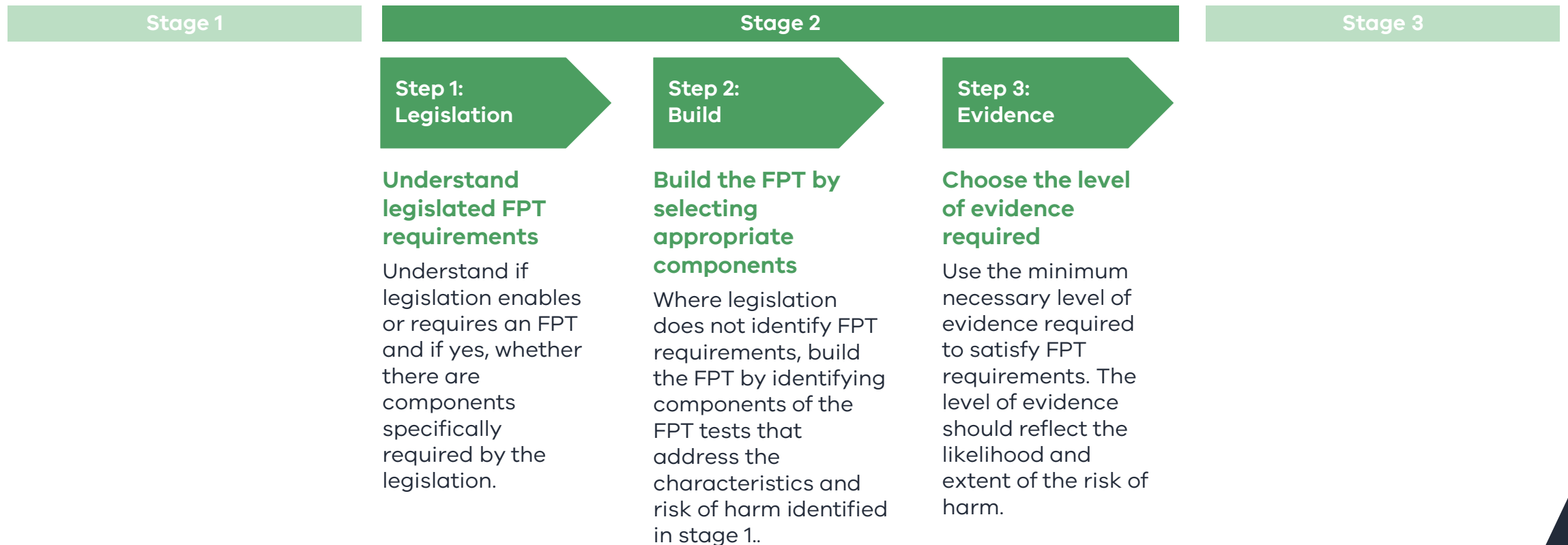
### Real estate licence

An applicant for a licence under the Estate Agents Act 1980 may only be approved if the Business Licensing Authority is satisfied that the applicant is 'fit and proper,' due to high risks associated with access to significant sums of other people's money.

It is important that all estate agents are financially responsible, trained and educated as well as removed from any criminal linkages to reduce these associated risks of harm. An FPT of all applicants is a reasonable way to ensure risks are managed effectively for this licence.

# Stage 2: Design

The purpose of Stage 2 is to determine the optimal design of the FPT. Only components which are directly related to the risk of harm should be included. Evidentiary requirements should be minimal to satisfy the level of risk being managed.



# Step 1: Legislation

Stage  
2

Step 1:  
Legislation

## Key questions

- Does legislation enable an FPT for the permission?
- Does the legislation specify the requirements that the regulator should consider when conducting an FPT?

## What does the relevant legislation say?

FPTs cannot be administered without a power in legislation. Examine legislation to understand if an FPT can be administered and, if so, what can be considered when undertaking the FPT.

Best practice legislation sets out the requirements to establish fitness to hold a permission. Among other things, provisions should specify that providing false or misleading information will result in revocation or penalties. The *Rooming House Operators Act 2016*, for example, sets out detailed licence application and renewal disqualification criteria (s17 and s18), such as conviction within the preceding 10 years an offence involving fraud, dishonesty, drug trafficking and child pornography. The Act provides for penalties for giving false or misleading information.

Some legislation refers to a 'fit and proper person' without specifying what is to be considered in establishing this. In this case, regulators need to develop clear and transparent operational policy outlining their administrative interpretation of the legislation. In the longer term, consider legislative change to ensure legislation aligns with best practice.

Consult the Office of Chief Parliamentary Counsel/Department of Treasury for guidance on **Model Legislative Provisions** when considering legislative amendments. Guidance is being developed and will be published later in 2024.

## Example

The *Victorian Mineral Resources (Sustainable Development) Act 1990* provides an illustration of how legislation can direct regulators in their approach to FPTs

Applicants for exploration, retention, mining or prospecting licences must satisfy the Minister that they are a 'fit and proper person' to hold a licence.

The 'fit and proper' provisions set out in section 15(6)(a) must be met on a continuous basis for the duration of a licence. Under s16(3), other factors relevant to Act's purpose and objectives and the principles of sustainable development in the Act may also be considered in the assessment.

A licence must be cancelled if the licensee is no longer considered to be fit and proper. Similarly, an application to renew a licence must be refused if the licensee is no longer considered to be fit and proper.

Financial solvency is the only mandatory criteria to meet the test (s16(2)). Other factors listed in s16(3) are matters the Minister must have regard to.



# Step 2: Build

Stage  
2

Step 2:  
Build

## Key questions

- *What characteristics are being managed by the permission?*
- *What components of an FPT may be selected to screen applicants for these characteristics?*
- *Are any of the components of the existing or proposed FPT not necessary to control the risk of harm?*

## What components are linked to the risk of harm?

When designing an FPT, select from a range of potential FPT components such as

- Criminal history
- Financial history
- Education, qualifications and training

Components selected should be directly related to the risk of harm being managed by the permission and linked to characteristics as identified in stage 1.\* Components not directly and significantly relevant to reducing the risk of harm should be excluded from an FPT to reduce unnecessary regulatory burden and costs for both applicants and the regulator.

**Only the minimum necessary components should be selected.** Identity verification is a baseline requirement for all FPTs. Common FPT requirements include education and training and criminal history. Where FPTs require consideration of specific matters, bespoke components may be added. Assessment of personal integrity and character are generally only for use in situations of exceptionally high risk.

FPTs should only be applied to individuals when doing so directly reduces the risk of harm. For example, in some cases FPTs should be applied to more than just the permission holder, if those individuals (e.g. other office holders) represent a risk of increased harm.

## Example

### Financial history

In the building industry there have been repeated issues of illegal phoenixing (where a company goes into external administration to avoid paying creditors before re-emerging as a new entity run by the same individuals).

If registered building practitioners are not financially able to run a building related business, this may put creditors at a risk of financial harm. A test of financial history through an external administration test helps to directly reduce this risk of harm.

### Criminal history check

Electricians in Victoria must register through Energy Safe Victoria and provide evidence of experience, qualification and identity to obtain a licence.

Harm related to criminal behaviour has a low likelihood of being associated with this kind of licence. Therefore information on criminal history is not required for this licence.

\*See page 15 for further examples.

# Step 3: Evidence

Stage  
2

Step 3:  
Evidence

## Key questions

- *What level of assurance is needed when checking applicant characteristics?*
- *Is the level of evidence required by the FPT the minimum necessary required to satisfy each required element of the FPT and its level of assurance? How will audits complement this?*
- *Do operational policies clearly indicate the type and required level of evidence to satisfy each FPT component?*

## What is the minimum level of information validation needed?

Evidence requirements should be attuned to the level of risk of harm being managed. Policy makers must consider the type of evidence, the age of evidence and the consideration period.

- In lower risk cases, applicant attestation should be acceptable evidence that FPT requirements are met.
- When the risk is higher, the regulator should require evidence to be provided by the applicant.
- In the highest risk cases, evidence should be sourced directly from third-parties by the regulator.
- When accepting evidence provided by applicants, the age of acceptable documents should be attuned to the level of risk. The acceptable age of evidence should decline as risk increases. An audit program, tailored to risk, of applicant attestations and provision of information helps support permission integrity.

Policy makers must also consider the length of time being considered. For example, in lower risk cases the history of the applicant over the previous three years should be assessed, rising to ten years in the highest risk cases.

## Example

### Building practitioners

In the building industry there have been repeated issues of illegal phoenixing (where a company goes into external administration to avoid paying creditors before re-emerging as a new entity run by the same individuals).

If registered building practitioners are not financially able to run a building related business, this may put creditors at a risk of financial harm. A test of financial history through an external administration test helps to directly reduce this risk of harm.

### Legal services

Under the Legal Profession Uniform Law (Vic) 2015, an applicant to practice law in Victoria must be admitted to the legal profession in Australia or hold a registration certificate as an Australian-registered foreign lawyer. All admissions are managed by the Victorian Legal Admissions Board. In keeping with the moderately high risk of harm of poor legal advice, applicants are required to disclose information.

# Common FPT components and case study examples

1. Identity verification
2. Criminal history
3. Financial history
4. Education, qualifications and training
5. Registration and accreditation

# 1 Identity verification: Case studies

**Is an identity verification test required? The requirements of an identity verification are increased for higher risk licences.**

## Yes: Registration of teachers

The Victorian Institute of Teaching (VIT) is an independent statutory body that regulates members of the teaching profession. It is a legal requirement for all teachers in Victoria to be registered with VIT. This includes school and early childhood teachers.

Verified identity ensures that other checks (such as criminal history) are undertaken for the right person. Applicants are required to provide five current identity including:

- 1 x commencement of identity document e.g. Birth certificate, Australian Visa
- 1 x primary use document e.g. Australian driver's licence, Passport
- 2 x secondary use documents e.g. Medicare or student card, AEC enrolment
- 1 x change of name documents (if their name has been changed at any time).

These documents are supplemented with an identity verification form to verify the applicants' identity through an authorised third party.

Conducting robust identity verification tests on teachers helps prevent identity fraud and helps to stop unqualified teachers and those linked to crime from entering schools and early childhood centres

## No: Recreational Fishing Licence

The Victorian Fishing Authority (VFA) requires all recreational fishers between 18 and 70 years of age (excluding some exceptions) to hold a recreational fishing licence.

The purpose of the licence is to raise funds for programs and initiatives to improve fishing in Victoria including infrastructure, access to waterways and new fishing reefs.

Applicants purchase the licence through Service Victoria. The applicant supplies minimal personal details including:

- Full name
- Date of birth
- Email and phone number

Applicants are not required to provide further documentation or evidence of identity as the purpose of the licence is to collect money and the risks associated with the licence is low. The level of assurance is below Service Victoria's Level of Assurance 1.

No further tests or documentation is required from an applicant to allow them to obtain a licence, this is proportionate to the risk of the licence. If a basic identity check is not needed, then it may be concluded that an FPT is not necessary.

**Is a criminal history test required? The requirements of a criminal history check are increased for higher risk licences. A criminal history check should only be used when criminal behaviour is directly relevant to risks associated with the activity.**

### Yes: Licences to operate gaming venues

In Victoria, gaming activities are primarily regulated by:

- *Gambling Regulation Act 2003*
- *Racing Act 1958*
- *Casino Control Act 1991*
- *Casino (Management Agreement) Act 1993.*

As many gaming venues also serve alcohol, the Liquor Control Reform Act 1998 may also be relevant.

The Victorian Gambling and Casino Control Commission issues licences to operate gambling venues. Gaming industry employees whose jobs involve functions related to the integrity of gaming machines or restricted monitoring units must be also licensed for that purpose. Casino employees who conduct or supervise gaming or betting, or monitor the movement, exchange or counting of cash or chips, and security and surveillance staff must also hold a licence.

Gaming can provide a range of positive economic and other benefits to the community. However, the misuse and abuse of gaming can have significant harmful effects on individuals, their families and the community and need to be regulated effectively to manage these risks of harm.

Among other risks, some gaming venues handle significant amounts of cash, and there are known issues around potential money laundering. There is a significant risk that providing a licence to an individual with a criminal history related to financial dealings would increase risk to the community. A criminal history check is an essential element of an FPT in this case, along with further interrogation if warranted and documentation of how the information provided in the checks is used in the regulator's assessment.

### No: Electricians licence

Electricians in Victoria who wish to carry out unsupervised work require an Electricians Licence (A Grade) to be registered with Energy Safe Victoria. The Electricity Safety Act 1988 sets out licence requirements.

There are several combinations of requirements to hold these licences which may include:

- Completion of Licensed Electricians Agreement
- Hold a Certificate III in Electrotechnology Electrician or equivalent
- Completed a 4 year contract as an apprentice
- A letter of confirmation of the completion of the apprentice
- Current holding of an Electrician (supervised) licence

The primary risk of harm from an electrician is harm to individuals if equipment is used or installed in a way that is unsafe. This would directly arise from lack of competence, so to manage this harm electricians are required to have appropriate qualifications and demonstrate competence.

Electricians typically do not handle large sums of money, and there is no evidence to suggest that potential harms to safety from tasks carried out by electricians are likely to be directly related to previous criminal history or unlawful dealings.

Therefore, while it is important to check for identity and require evidence of relevant qualifications and experience when conducting an FPT for an electrician's licence, the risk from criminal harm is low and this component of an FPT is unlikely to be required.

**Is a financial history check necessary? The requirements of a financial history check are increased for higher risk licences. A financial history check should only be used where financial history is directly relevant to risks associated with the activity.**

## Yes: Estate Agents Licence

Consumer Affairs Victoria (CAV) issues licences for individuals seeking to engage in the sale of real estate under the Estate Agents Act 1980.

The purchase of real estate is one of the most expensive purchase an individual will make in their life. Buying real estate generally requires the purchaser to provide a deposit, which is generally held by the seller's estate agent until settlement.

Real estate deposits can be significant. The misuse of this money by a real estate agent could result in significant financial loss to an individual.

CAV requires applicants for this licence to provide information related to their financial history proving they are not insolvent. The reason for this requirement is to minimise risk to consumers by preventing applicants who are in financial difficulty operating in the industry.

A Financial History test is appropriate as the risk of harm is directly increased by the financial history of applicants.

## No: Meat Processing Facility Licence

PrimeSafe issues licences for individuals seeking to operate a meat processing facility under the *Meat Industry Act 1993*.

Harms associated with operating a meat processing facility include food safety and worker exploitation.

Individuals applying for this licence are not required to provide information related to their financial history. While this might prevent individuals opening a facility which was not financially viable, which could result in increased risk of harm, the risk is not significant.

It is unlikely an applicant with a poor financial history would successfully secure the necessary funds to establish a meat processing facility, and therefore PrimeSafe requiring financial history checks would not make a significant impact on the level of risk arising from these activities.

**Are education, training or qualification components required? These components should be included when the risk of unqualified operators undertaking an activity is high.**

### Yes: Registered Veterinarian

In Victoria, all practicing veterinarians must register through the Veterinary Practitioners Registration Board of Victoria.

An applicant is considered qualified if they satisfy one of the following:

- Have been awarded a degree in veterinary science or medicine from a tertiary institution recognized by the Board
- Have a substantially equivalent qualification, in the opinion of the board
- Pass a qualifying examination provided by the Board
- Have a qualification in another State or Territory for the purpose of undertaking work of a similar nature.

The *Veterinary Practice Act 1997* requires the applicant to provide documentation as evidence of qualifications that entitle them to the type of registration applied for.

Veterinary practice involves a significant risk of harm associated with animal welfare. This risk of harm is closely related to the training and education of the applicant as veterinary practice requires specialized knowledge and skills to appropriately handle animals who are injured, sick or misbehaved. Additionally, as an occupation in the medical field, vets require training and knowledge of correct medication types and dosage to ensure animals are sufficiently cared for and are not placed in danger.

The risk of an unqualified applicant operating as a veterinarian is significant justifying the use of an FPT which assesses an individual's qualifications.

### No: Rooming house operators

Consumer Affairs Victoria issues licences for individuals seeking to operate a rooming house under the Rooming House Operators Act 2016.

A rooming house is a building or apartment with one or more rooms for rent, where four or more people can live (some of the rooms may be shared). A rooming house operator may be an individual or a corporate entity.

Rooming houses are associated with high levels of harm including anti-social behaviour, domestic violence, bullying, and abuse of disabled people. Additionally, rooming house operators are often responsible for managing money of low-income and vulnerable individuals.

To mitigate these harms, a rooming house operator licence requires an FPT with components including criminal history check, financial history check and previous licence disqualifications.

The FPT for this licence do not require an assessment of an applicant's qualifications as this is not directly linked to an increased risk of harm.

# Stage 3

## FPT evidence administration

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



# 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    |
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