



# Fit and proper person policy

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Level 3, 200 Victoria Street, Carlton VIC 3053  
1300 372 842 (1300 EPA VIC) [epa.vic.gov.au](http://epa.vic.gov.au)

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EPA acknowledges Aboriginal people as the first peoples and Traditional custodians of the land and water on which we live, work and depend. We pay respect to Aboriginal Elders, past and present.

As Victoria's environmental regulator, we pay respect to how Country has been protected and cared for by Aboriginal people over many tens of thousands of years.

We acknowledge the unique spiritual and cultural significance of land, water and all that is in the environment to Traditional Owners, and recognise their continuing connection to, and aspirations for Country.



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### Purpose

Environment Protection Authority Victoria (EPA) is Victoria's environmental regulator.

As an independent statutory authority under the *Environment Protection Act 2017* (the Act), our role is to prevent and reduce harm to human health and the environment from pollution and waste. We do this by:

- working with the community, industry, business and governments to prevent and reduce the harmful impacts of pollution and waste on Victoria's environment and people
- taking proportionate regulatory action against those who fail to meet their obligations
- supporting all Victorians to understand their obligations under the law
- providing clear advice on the state of our environment so that people can make informed decisions about their health.

The purpose of this policy is to explain how EPA will consider whether a person is a fit and proper person under the Act.

This policy should be read together with the following EPA documents:

- [Permissions scheme policy](https://www.epa.vic.gov.au/about-epa/publications/1799-1) (publication 1799) (<https://www.epa.vic.gov.au/about-epa/publications/1799-1>)
- [Compliance and enforcement policy](https://www.epa.vic.gov.au/about-epa/publications/1798-1) (publication 1798) (<https://www.epa.vic.gov.au/about-epa/publications/1798-1>)
- [Accredited consigner code of conduct](https://www.epa.vic.gov.au/about-epa/publications/1945) (publication 1945) (<https://www.epa.vic.gov.au/about-epa/publications/1945>).

### Fit and proper person assessment

The Act requires that persons be fit and proper to perform certain activities regulated by EPA. This policy sets out EPA's requirements when it conducts a fit and proper person (F&PP) assessment.

The intent of the F&PP assessment is to ensure that only those people who meet appropriate standards of professional integrity, professional behaviour and professional capacity are permitted to undertake certain types of activities.

The overall objective of a fit and proper assessment is to:

- provide assurance for the community, government and businesses that a person is considered appropriately capable of performing an activity according to their regulatory obligations and social responsibilities to protect human health and the environment
- conduct assessments in a transparent, fair and consistent manner.

EPA may conduct a F&PP assessment throughout the lifecycle of an authorised activity. They may be independently conducted as part of an application assessment process and as a compliance function.

Assessing a person's status as a fit and proper person involves considering a range of relevant factors. These factors are assessed within the context of the proposed activity and that person's overall suitability to carry out the proposed activity. When determining whether a person can be considered fit and proper, EPA will consider all relevant matters under section 66 of the Act. This includes personal and financial probity requirements set out in sections 66(1)(a), 66(1)(b) and 66(2) of the Act.

At the conclusion of a F&PP assessment, the person will or will not be considered fit and proper to conduct an activity. An adverse outcome may result in a refusal, suspension or revocation of an application, existing permission or other approval.

### Who the test applies to

Those required to be assessed as a F&PP are the person or persons who have applied for the permission and who are directly responsible for the ownership, administration or management of the activity. The following is a guide to the related persons that EPA may consider in our overall F&PP assessment:

- a natural person
- a body corporate
- executive officers, directors and company secretaries
- partners or trustees
- an equivalent responsible company employee or employees directly responsible for the overall activity management or premises.

In instances where multiple persons are responsible for the activity, each person is required to be assessed.

Whether a person (as an individual) is determined to be a fit and proper person may be affected by the conduct and history of their associates. EPA relies on the applicant to nominate and make all reasonable enquiries of relevant associates, but we may conduct verification audits of the checks you have undertaken.

The circumstances when EPA conducts a F&PP assessment are defined under both the Act and the Environment Protection Regulations 2021.

The assessment may occur as a part of EPA's application or compliance procedures throughout the lifecycle of an activity. It will be made clear during application and compliance procedures when a F&PP assessment is required. As a guide a F&PP assessment will also be a part of the ongoing EPA compliance and regulatory functions relating to suspension and/or revocation of a permission. Refer to Table 1 below for an overview of the situations that require a F&PP assessment.

Table 1. EPA processes which involve a fit and proper person assessment.

Type	Application assessment function				Compliance function	
	Transfer	Issue	Exemption	Renew	Suspend	Revoke
Development licence	✓	✓	✓	x	✓	✓
Operating licence	✓	✓	✓	x	✓	✓
Project pilot licence	✓	✓	✓	x	✓	✓
Permit	✓	✓	✓	✓	✓	✓
Registration	x	x	x	x	✓	✓
Prescribed roles - accredited signer	x	✓	x	✓	✓	✓

## How EPA conducts the assessment

F&PP assessments are undertaken by EPA using the principles of procedural fairness, natural justice and restorative justice.

To inform a F&PP assessment we have established two separate, but related questionnaires – a F&PP questionnaire and a Prohibited Person (PP) questionnaire. Both must be completed by the person who is being assessed and supported by any relevant justification, evidence or documentation.

## Fit and proper person questionnaire – what EPA considers

The F&PP questionnaire has been developed to facilitate information that EPA must consider about the permission applicant, during an application or compliance assessment. This includes:

- **Environmental compliance (section 66 (1)(a))** – compliance with the *Environment Protection Act 2017*, the *Environment Protection Act 1970*, the Regulations and environment protection legislation of the Commonwealth, another state or a territory.

- **Financial capacity to comply (section 66 (1)(b))** – whether the person has demonstrated to EPA or council that they have the financial capacity to comply with any obligations imposed by a permission.
- **Prescribed criteria (section 66 (1)(c))** – at the time of this publication there are no prescribed matters that are taken into consideration as part of an EPA fit and proper person determination. This may be subject to change and EPA will request any details relevant to a prescribed matter when performing its fit and proper person assessment.
- **Status as a prohibited person (section 66 (2))** – whether EPA considers the person to be a prohibited person and is seeking that EPA consider the public interest when determining the status as a fit and proper person for the activity. As a prohibited person, the Authority must not determine that you are a fit and proper person unless we are satisfied that it is not contrary to the public interest to do so. Section 88(1) sets out the relevant matters that make a person prohibited. The identification of anyone, or any combination of these matters, would make a person a prohibited person.

### Prohibited person questionnaire - what EPA considers

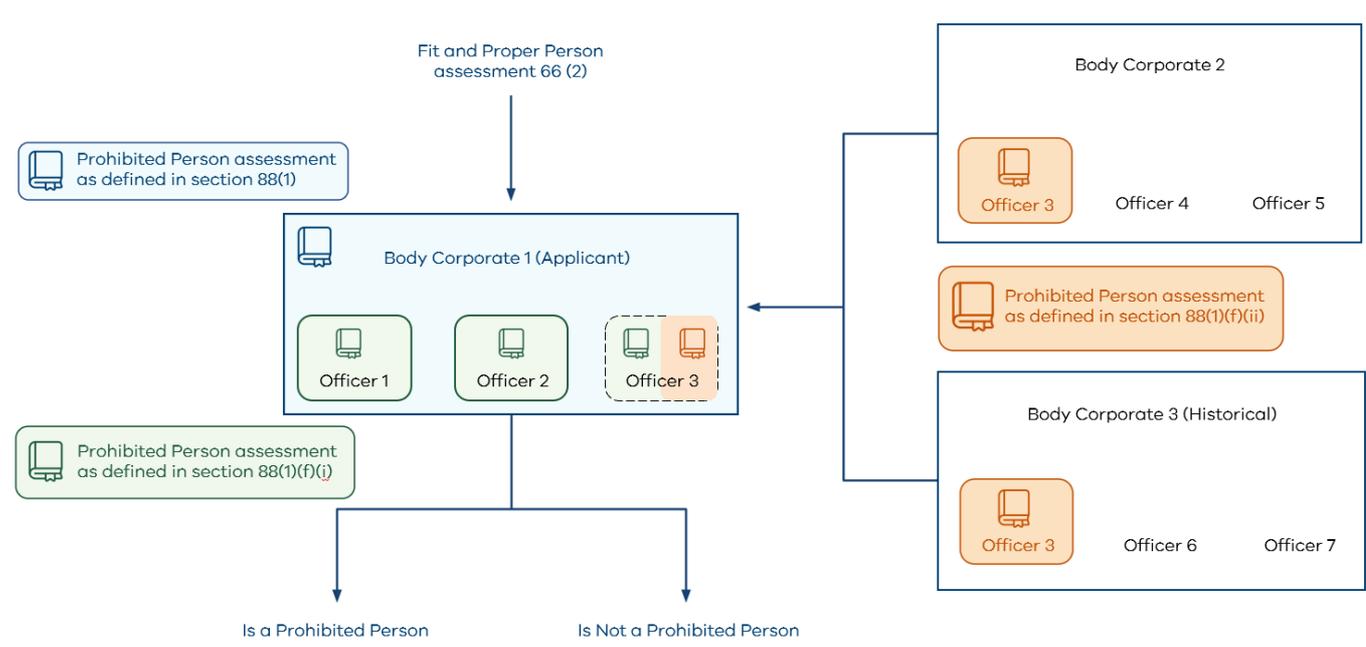
To facilitate the PP assessment, EPA has developed a prohibited person questionnaire to guide persons being assessed and to collect relevant information. Each criterion to determine if a person is a prohibited person is set out as a question and structured to ensure responses will make it clear to both an applicant and EPA when a relevant matter has been identified. The questions consider the following:

- Convictions or findings of guilt within the preceding 10 years for:
  - an offence involving fraud, dishonesty or violence that was punishable by a term of imprisonment of 3 months or more (section 88 (1)(a)(i)). Or an offence that, if committed in Victoria, would constitute such an offence (section 88 (1)(a)(iii))
  - an indictable offence under the *Environment Protection Act 2017* or *Environment Protection Act 1970* (section 88 (1)(a)(ii)). Or an offence that, if committed in Victoria, would constitute such an offence (section 88 (1)(a)(iii))
  - an indictable offence under the *Dangerous Goods Act 1985*, the *Equipment (Public Safety) Act 1994*, the *Occupational Health and Safety Act 2004* or the *Planning and Environment Act 1987* (section 88 (1)(a)(iv)).
- The revocation of a permission on one or more grounds set out in section 61(1) of the Environment Protection Act (section 88 (1)(b)). This criterion considers whether the person's prior conduct has led EPA or a council to revoke a permission to perform an activity. The revocation decision is made under a process that is independent of the prohibited person process. However, the consequence of a relevant revocation is that the person would also be considered a prohibited person.

The grounds for revocation under section 61 can include any, or a combination of, the following matters:

- belief on reasonable grounds that the holder of the permission has contravened the Act or the regulations
  - the permission holder is not considered to be a fit and proper person to engage in the permissioned activities
  - belief on reasonable grounds that the holder of the permission has given materially incorrect or misleading information or that the permission was obtained or renewed because of materially incorrect or misleading information
  - the permission holder has not paid any fee payable in relation to the permission
  - any prescribed matter relevant to section 61 of the Act that would revoke a permission.
- The revocation of a licence or permit equivalent to a permission, issued under the law of another state or territory, for grounds equivalent to one or more of those set out in section 61(1) of the Act (section 88 (1)(c)).
  - The person is an insolvent under administration (section 88 (1)(d)).
  - The person is an externally administered company under the Corporations Act (section 88 (1)(e)).
  - The compliance against sections 88(1)(a), (b), (c) and (d) of each officer of a body corporate (section 88 (1)(f)(i)). This criterion allows EPA to consider the conduct of individual persons who hold officer positions within the corporate organisational structure. This makes an individual person's conduct within the organisation relevant to whether the body corporate is a prohibited person.
  - The compliance against sections 88(1)(a), (b), (c) and (d) of each officer that is or was an officer of another body corporate (section 88 (1)(f)(ii)). This criterion allows EPA to consider the conduct of individual persons who currently or previously held officer positions in another corporate's organisational structure. This makes a person's conduct outside the organisation as an officer of another organisation, whether current or historical in nature, relevant to whether the body corporate is a prohibited person.

It is important to note for applications made by a body corporate the Environment Protection Act also imposes specific considerations on the officers of the body corporate when undertaking a PP assessment. Officer has the same as that meaning as under section 9 of the *Corporations Act 2001* (Cth). Section 88(1)(f)(i) applies the PP assessment criteria to each officer within the organisational structure. Section 88(1)(f)(ii) extends the PP assessment criteria to each officer within the company if they are currently or were previously an officer of another corporate structure. In both cases under section 88(1)(f), the assessment outcomes for the body corporate can be affected by the conduct of its officers. The key PP assessment relationships of this section are visually represented below.



### Finalising the assessment process – what EPA considers

The final assessment process will start once EPA has reviewed both questionnaires and any supporting information submitted for completeness. Each question is an opportunity to provide relevant information for EPA to consider.

Where there is uncertainty, EPA recommends disclosure. A person's failure to disclose a matter that may be relevant to an assessment could adversely reflect on that person's F&PP status. There are also offence provisions relating to the provision of false or misleading information.

The questionnaires are just one part of what EPA will consider during the assessment. Before reaching a determination, EPA may consider all relevant matters including (but not limited to):

- any prior history of conduct which indicates a disregard for the obligations under environmental law
- any past history of contraventions of the Act and/or Regulations, the nature of any offence, the seriousness of the offence, when the offence occurred and any penalty imposed
- any licence, approval, certificate or other authorisation under any relevant legislation that was suspended or cancelled for any reason
- whether the matter of conduct is part of a sustained or repeated pattern of behaviour and/or the impact of the conduct on any victim, community, employee or the environment
- whether the matter has been fully, voluntarily and truthfully disclosed
- whether there has been a failure to disclose a relevant matter that later becomes known to EPA
- whether the applicant has provided any false and misleading information.

As part of our assessment, we may independently verify any response or information provided as part of the process by seeking our own information from other agencies or courts. We may also undertake additional investigation during an assessment and request the provision of further information or evidence. You will be advised if you need to supply further information and what the timeframes are for this. This will pause the progress of your application.

The assessment of the factors listed above is made in a general or an overall sense, with all aggravating and mitigating circumstances considered. Any identified matters will be considered on their individual merit when assessing an applicant's status as being fit and proper to perform the activity.

Further, the person who is making the application must provide a declaration that they have made all reasonable enquiries regarding submitted responses and that the information is true and correct to the best of their knowledge. Giving false or misleading information is a serious offence. The person making the declaration may be liable to a criminal or civil penalty for giving false or misleading information. You should seek clarification from EPA if you have any concerns.

If you have been assessed as a F&PP within the previous 12 months, EPA may consider whether it's necessary to repeat the assessment in a subsequent application. You should contact EPA for verification and advice.

### Relevant matters identified during the assessment

When determining whether the person can be considered fit and proper, EPA considers all the circumstances relating to a relevant matter, including (but not limited to):

- whether the conduct is relevant to activities they will be undertaking and the attitude of the applicant in relation to the conduct
- any further instances involving the same or similar conduct by the applicant
- how recently the conduct occurred
- any other relevant or mitigating factors.

Answering 'yes' to any of the questions posed in the questionnaire should be supported by any relevant information that you believe should be considered by EPA.

In most cases, a single matter will not automatically result in a determination that the applicant or permission holder is not fit and proper but will likely require further review.

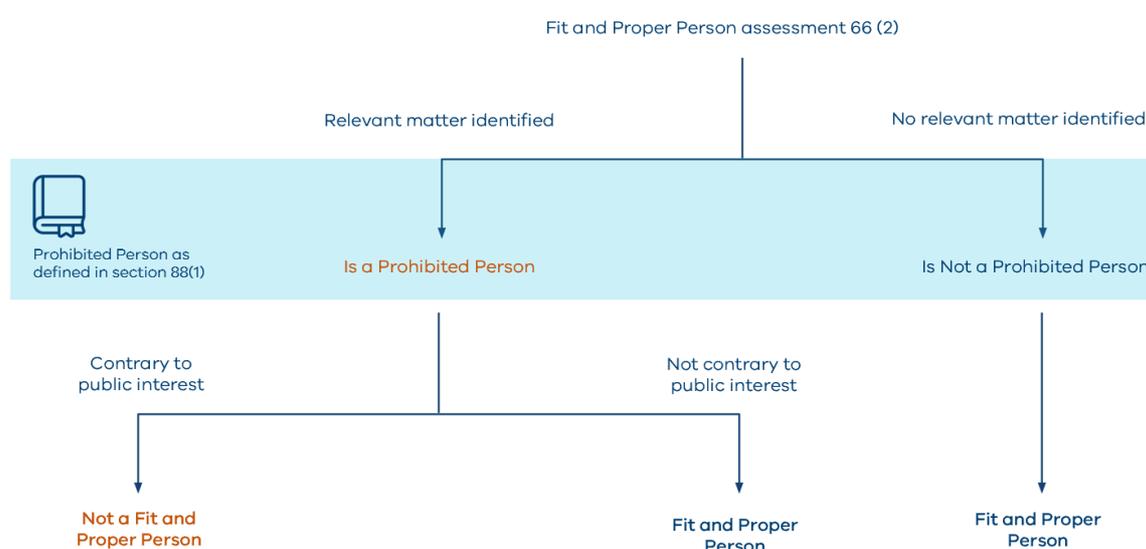
When an applicant or permission holder completes a PP questionnaire and identifies a relevant matter that would make them a prohibited person, the Act requires:

- *66(2) If a person is a **prohibited person**, the Authority or a council **must not** determine that the person is a **fit and proper person** for the purposes of this Chapter **unless** the Authority or council is satisfied that it is **not contrary to the public interest** to do so.*

An application made by a PP is not precluded but will have additional requirements to determine whether the person is also a F&PP to perform an activity. The applicant who is a prohibited

person may request the EPA assess their case further. EPA must be satisfied that it is not contrary to the public interest for the PP to be considered fit and proper to hold a permission. An applicant or permission holder will need to provide the necessary arguments and evidence that demonstrates how it is **not contrary to the public interest**, while prohibited, to be considered a F&PP. A prohibited person is not required to demonstrate that undertaking an activity promotes a public interest, rather that it is 'not contrary to' the public interest.

The following diagram represents the key assessment processes involved in this determination process (in a scenario where there are no other concerns associated with being a fit and proper person under section 66(1)).



### Determination that a person is not fit and proper

If at the conclusion of a F&PP assessment, EPA determines the applicant is not a fit and proper person, EPA:

- must refuse to issue, transfer or exempt a licence or permit
- must refuse to renew a permit
- must refuse to issue approval of a prescribed role (for example accredited consigner)
- may suspend a licence, permit or registration
- may revoke a licence, permit or registration.

At the conclusion of a F&PP assessment, EPA will:

- notify the person in writing that it proposes to refuse, suspend or revoke the application or permission or other approval and set out its reasons.

### Refusal of an application

If EPA decides to refuse the application on grounds that it's not satisfied the applicant is a fit and proper person to be a permission holder in Victoria, EPA will notify the applicant in writing that their application has been refused and set out its reasons for the decision. The notice will include the applicant's review rights. These include the right to apply for a review of the decision.

#### **Review of a decision**

The applicant can apply to VCAT to review the decision made by EPA using the online or PDF form at [VCAT application for review of a decision](https://www.vcat.vic.gov.au/review-and-regulation/application-for-review-of-a-decision) (<https://www.vcat.vic.gov.au/review-and-regulation/application-for-review-of-a-decision>).

### Suspension or revocation of a permission or appointment

If EPA does not consider the holder of a permission or appointment to be a fit and proper person to engage in the prescribed activities it's authorised to engage in, we may suspend or revoke that permission or appointment.

All relevant factors in a F&PP assessment may be considered in determining whether the holder of a permission is considered fit and proper at any time of the life cycle of that permission or appointment.

## References

Resource type	Title	Description	Publication
Policy	<i>Permissions scheme policy</i>	Sets out EPA's approach to implementing the new permissions scheme, how we will exercise our regulatory powers and be held accountable for our decisions.	<a href="https://www.epa.vic.gov.au/about-epa/publications/1799-1">Publication 1799</a> ( <a href="https://www.epa.vic.gov.au/about-epa/publications/1799-1">https://www.epa.vic.gov.au/about-epa/publications/1799-1</a> )
Policy	<i>Compliance and enforcement policy</i>	Outlines EPA's approach, method and priorities for ensuring compliance with our Acts and carrying out our compliance and enforcement powers.	<a href="https://www.epa.vic.gov.au/about-epa/publications/1798-1">Publication 1798</a> ( <a href="https://www.epa.vic.gov.au/about-epa/publications/1798-1">https://www.epa.vic.gov.au/about-epa/publications/1798-1</a> )
Guideline	<i>Accredited consigner code of conduct</i>	Outlines the professional standards and conduct accredited consigners are required to meet in carrying out their appointed role.	<a href="https://www.epa.vic.gov.au/about-epa/publications/1945">Publication 1945</a> ( <a href="https://www.epa.vic.gov.au/about-epa/publications/1945">https://www.epa.vic.gov.au/about-epa/publications/1945</a> )