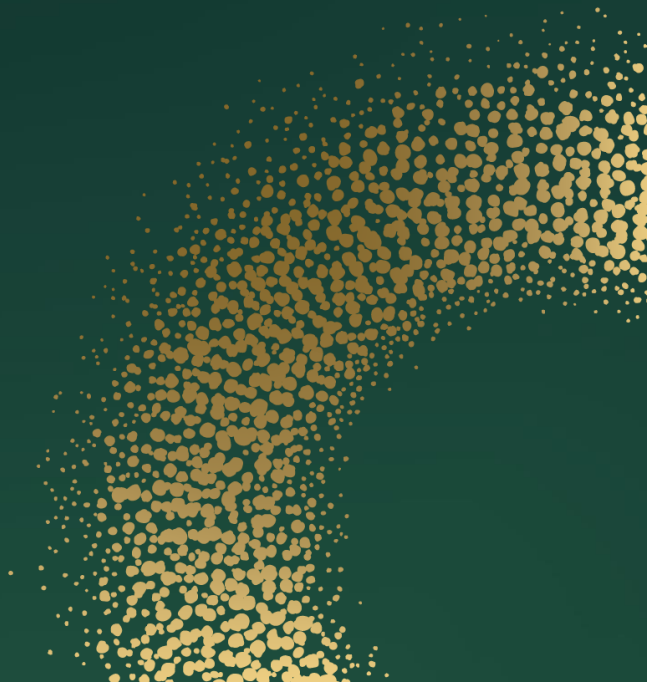
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Australian Government

Fit and Proper Person Policy Framework

2024



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Introduction and Purpose

The Simplified Trade System (STS) mandate is to simplify Australia's cross-border trade regulations. As part of this, Government identified Fit and Proper Person (FPP) tests as a priority area to reduce the regulatory burden for traders in complying with FPP regulations. This framework provides a whole of Government approach towards delivering and implementing FPP across Government and is a foundation to guide future reforms.

The Fit and Proper Person Policy Framework (the Framework) establishes guiding principles to implement a consistent cross-agency approach to administering trade related FPP assessments beginning with participating agencies, the Department of Agriculture, Fisheries and Forestry (DAFF), Department of Home Affairs (Home Affairs) through the Australian Border Force (ABF), and the Australian Taxation Office (ATO).

The Framework outlines principles for participating agencies and to align on common agency assessment criteria as far as possible and practicable.

The Framework has been developed through iterative consultation with the Simplified Trade System Implementation Taskforce (STS) and the participating agencies. Input was provided by the Department of Finance and the Treasury. Key FPP terminology is defined in Appendix 1 Glossary.

Scope

The Framework is intended to apply to all trade related FPP assessments conducted by the agencies under the *Customs Act 1901*, *Biosecurity Act 2015*, *Export Control Act 2020* and *Excise Act 1901*. Any future trade related FPP assessments for participating agencies created by decisions of Government will also be within scope.

A trade related FPP assessment is a regulatory tool to determine if a person is fit and proper to undertake a regulated activity related to the import or export of goods.

While a person does not directly apply for an FPP assessment, it may form part of an agency's consideration to allow or approve a person to undertake regulated activity.

Examples of regulated activities could be but are not limited to:

- applying for an export licence,
- registering an export establishment or proposing an export arrangement,
- being appointed as an authorised officer, approved assessor or approved auditor,
- being a licensed customs broker or an operator of a licensed warehouse or depot,
- being an operator of an Excise Equivalent Goods warehouse.

Appendix 2 sets out relevant sections of legislation.

The assessment may be applied, but is not limited to:

- the person
- company directors
- key people in management or control
- 'associates' of these people.

See Appendix 3 for the types of entities that agencies are seeking to align under a definition of 'associate'. The *Biosecurity Act* definition of 'associate' in Appendix 3 has been attached for use as model legislation only.

Guiding Principles

1. FPP assessments aim to **mitigate risks** applicable to the regulatory activities, programs and schemes to which a person is seeking entry or are applying for.

2. FPP assessments are **proportionate to the risks being treated** and avoid being unnecessarily complex or restrictive.

3. **Supplementary Checks** may be applied where there is a requirement to meet a specific participating agency regulatory objective.

4. The FPP assessment process considers limiting **burden to industry** while balancing the management of risk.

5. There is **enhanced transparency** in the FPP assessment process. Industry will be advised of the application processes. The person may be provided with reasons for adverse decisions where permitted.

6. Subject to ICT infrastructure being implemented, agencies may **share information related to the FPP assessment** to increase efficiency of the FPP process. Information sharing must be lawful, access must be controlled, and information collected should be reliable and standardised.

7. **Agencies retain autonomy** and control over their own FPP assessments, FPP determinations, and decisions in relation to authorisations, and related processes.

8. FPP assessments and FPP determinations are **evidence-based** and reviewable.

9. Persons are required to update agencies of **changes in circumstances** as required by legislation or policy.

Risks

The objective of FPP assessments is to prevent organised crime syndicates and actors unwilling or unable to comply with legislative requirements from entering the trade system.

FPP assessments aim to mitigate key risks such as:

- Risk of organised crime, criminals or other insider threats in the relevant sector.
- Risk to Commonwealth revenue: Some FPP assessments aim to protect Commonwealth revenue by checking for unpaid debt to the Commonwealth, bankruptcies or considering other financial information.
- Reputational risk: Some FPP assessments aim to mitigate the risk to Australia's international reputation as a reliable and safe trading partner.
- Other risks: FPP assessments can include considerations that are specific to a participating agency, or regulated activity, scheme or program for which the participating agency is responsible.

Core Criteria

This Framework applies to any trade related FPP assessment establishing an initial participating agency baseline assessment against common core criteria. The information required is standardised where possible across the participating agencies. Common information sources used by agencies for FPP assessments may also be established to achieve consistency.

In addition to meeting participating agency common core criteria, agencies may conduct Supplementary Checks beyond the core criteria to meet specific regulatory objectives. Further information on Supplementary Checks is detailed under the Supplementary Checks section.

The FPP assessments will be conducted on any person required to be fit and proper and may involve consideration of the following:

- Criminal history, including whether the person has been convicted of a criminal offence, or ordered to pay a pecuniary penalty for a criminal offence, under any applicable Australian or foreign law and/or
- Intelligence, including intelligence on the person or an associate who has an identifiable link to the person and/or
- Compliance history (beyond convictions), of the person up to 4 years (including penalties imposed by agencies under administrative penalty schemes) and/or

- Financial history, including current or previous instances of bankruptcy or insolvency of the person and/or current or previous debts to the Commonwealth of the person (but not including penalties imposed by agencies under administrative penalty schemes) and/or
- Supplementary Checks may also be conducted specific to the policy of each participating agency.

Supplementary Checks

To appropriately manage different risks in the end-to-end cross-border trade environment, agencies may use Supplementary Checks explicitly for FPP, as necessary to meet specific participating agency regulatory objectives. These cases will be risk-based and proportionate.

Supplementary Checks need to be a proportionate response to a risk identified by a particular participating agency and are not designed to be anti-competitive in nature, or to exclude the person from conducting legitimate trade across Australia's border.

The addition of new Supplementary Checks will follow the proposed governance structure below:

1. Updates will be registered as soon as possible.
2. Updates will be reviewed periodically as described in the Governance section of this document.

A list of existing Supplementary Checks is provided in Appendix 4.

Information and Information Sharing

Collecting FPP Information

Agencies will seek and obtain consent from the person where appropriate, to collect, store and use their FPP information in accordance with the *Privacy Act 1988* and the agencies' own legislation. It should be noted however, consent is not needed under some agencies' legislation if it expressly authorises the collection and use of information.

Information collected from respective participating agencies will be differentiated between information collected directly from persons upon application, and participating agency intelligence information. These different information types may be subject to differing participating agency legislation, security classifications, collection and sharing processes, and according to relevant risks.

Information Sharing Between Participating Agencies

Subject to future Government ICT investment, FPP assessment information may be shared between the agencies, as permitted by legislation. ATO has limited ability to share information (without legislative amendment) as per Division 355 of the *Taxation Administration Act 1953* (TAA).

Where required, consent to store and share information between participating agencies will be sought in accordance with Australian law. Agencies will adhere to the Australian Privacy Principles (APP) contained in Schedule 1 of the *Privacy Act 1988*, which includes how Commonwealth agencies must manage personal information and any other applicable legislation with respect to sharing information.

Common Information Sources

Agencies will aim to use common information sources where appropriate for the core FPP criteria to improve consistency and deliver efficiencies.

Security Classification of FPP Information

Where relevant and appropriate, the security classification of FPP assessment information will be harmonised across the agencies to facilitate information sharing.

Some intelligence holdings may require higher security classification and clearance, in accordance with government requirements, including the Protective Security Policy Framework.

Information Sharing Principles

The Framework establishes the commitment from participating agencies to share intelligence information with each other subject to ICT investment and implementation, in line with the following principles:

1. **A legitimate and lawful purpose to use this data asset should always be identified** – Only data that enables a lawful and legitimate function to be undertaken should be shared.
2. **Data that is restricted by legislation from being shared, or received, will not be shared.**
3. **Data assets must be classified** in line with Australian Government information classification standards, so that the classification of data assets is well-understood.

4. **The requestor's environment is appropriately managed to protect the data asset.**

This approach aligns with the STS Whole-of-Government Cross-Border Trade Data Sharing Framework, in addition to the internationally recognised 'Five Safes'[1] data sharing risk management framework.

Obligation to Update Participating Agencies on Changes in Circumstances

Where required by relevant legislation or policy, a person must notify the participating agency of any specified changes in their circumstances. Agencies will inform the person about when, how, and what information must be notified, including consequences of failing to notify.

Agencies will ensure there is a method for persons to notify participating agencies of changes to their circumstances, where it is required.

FPP Determinations

Where applicable, each participating agency retains the power to decide FPP assessments and determinations about persons independent of other participating agencies.

Where an FPP determination is made in a discrete administrative process under the applicable legislative framework, such a determination will establish the FPP status of the person at the point in time when the determination is made. FPP determinations will be made by an appropriate decision-maker under the applicable participating agency legislative framework.

Where FPP determinations are made in a discrete administrative process, they will be provided to relevant decisionmakers to inform decisions about, but not limited to, whether:

- a particular authorisation should be granted, suspended or revoked for a person
- a person is fit and proper to undertake a regulated activity
- any other regulatory or court-based action should be taken against a person.

Where agencies are not required to determine a person's FPP status under the applicable legislative framework, the FPP criteria that are considered for the person will be recorded at the point in time when the FPP assessment is undertaken.

[1] Five Safes framework | Australian Bureau of Statistics (abs.gov.au)

Persons have a right to seek internal, administrative and/or judicial review of FPP determinations and adverse decisions regarding applications for approval or authorisation to undertake or participate in regulated activities, schemes and programs.

Governance

In accordance with Australian Government requirements, a governance process will be maintained between participating agencies to ensure the Framework remains fit for purpose and underpinned by concepts such as integrity, transparency and accountability.

The governance process will oversee reviews and consultation on the Framework. It will also review terms of reference, responsibilities, roles, accountabilities, capabilities and capacities of the governance process and its members. Where practicable, the Framework governance process will use existing interagency governance structures and business arrangements.

Major changes to the Framework will be escalated and consulted upon, for approval by an appropriate decision-maker within each participating agency. The addition, removal or alteration of Supplementary Checks are at the discretion of each participating agency.

Framework Monitoring and Review

The Framework will be reviewed upon request from any participating agency, or at the end of each 3 year period from the date of its implementation, unless the agencies mutually determine in writing that such a review is not necessary. Separately to reviews, discussions to monitor the ongoing effectiveness of the Framework and related FPP processes and arrangement may be organised between agencies from time to time.

The objective of reviewing the Framework is to ensure that the information and guidance in the Framework remains fit for purpose, accurate, compliant with legislation, regulations, reflects advancements in technology and practice, and does not have unintended, negative implications for government or industry.

The governance review process will include a focus on improvement of the experience for business, identifying opportunities for simplification and alignment as they arise. Future developments in technology and trade reforms will be evaluated for additional opportunities for ongoing FPP assessment process modernisation. The Framework will be adapted through the review process to enable agencies to modernise FPP assessment processes in an aligned way where opportunities arise.

Consultation between participating agencies will inform decisions regarding public consultation. If public consultation is required, it will be primarily through established industry engagement forums and communication channels.

Administration

At a minimum, a current version of the Framework will be maintained in a digital format, and a summary made externally available on participating agency websites.

The governance process will operate administratively and functionally in a manner to be expected of such a body. Similarly, agendas and minutes will cover content in a manner to be expected, such as meeting details, attendees, agenda items, decisions or recommendations, and an executive summary. Additionally, risks, sensitivities, opportunities, deficiencies and challenges, opposing or disparate views, and financial considerations and legal considerations, where appropriate and applicable should also be reflected. This is with the exception of legal considerations that may be subject to Legal Professional Privilege or other sensitive information that should not be published.

Appendix 1: Glossary

Term	Definition
Application	A formal request by a person to obtain an authorisation from a government body to undertake a regulated activity or participate in a regulated scheme or program under the applicable legislative framework.
Authorisation	A permit, licence, approval, accreditation, registration, notification, or some other form of authority obtained from a government body under the applicable legislative framework which allows the holder of the authorisation to engage in regulated activity or participate in a regulated scheme or program.
Bankruptcy	A financial state of a person who cannot pay outstanding debts to creditors.
Compliance	Adhering or conforming to requirements and obligations under a relevant legislative framework.
Conviction	A formal finding by a jury or judge that a person is guilty of a criminal offence.
Core Criteria	The checks on the person that may involve consideration of criminal history, intelligence, compliance history and financial history, as described in this Framework.
Debt	Money that is owed by a person to a government body that regulates activity undertaken by that person.
Decision	The conclusion reached by a decision-maker under the relevant legislative framework to approve, suspend or revoke an authorisation or to impose conditions on an authorisation.
Decision-maker	The delegate of a participating agency who makes a FPP determination or decision under the relevant legislative framework where FPP criteria are considered.

Term	Definition
Fit and Proper Person (FPP)	A person who is fit and proper to undertake a regulated activity or participate in a regulated scheme or program under the relevant legislative framework.
FPP assessment	The process of considering FPP criteria under the applicable legislative framework.
FPP determination	The outcome of a FPP assessment by the relevant decision-maker that a person is fit and proper to undertake a regulated activity or participate in a regulated scheme or program.
FPP status	The application of the decided FPP determination on a person regarding whether or not that person is a Fit and Proper Person.
Information sharing	The practice of providing or accessing information between government bodies, to enhance the ability to administer the legislative frameworks for which they are responsible.
Insolvency	A financial state of a company that cannot pay its debts when they are due and payable.
Legislative framework	The legislation that applies to a particular regulated activity, scheme or program.
Participating agencies	Department of Agriculture, Fisheries and Forestry (DAFF), Department of Home Affairs (Home Affairs) through the Australian Border Force (ABF), and the Australian Taxation Office (ATO).
Penalty	A fine or consequence imposed by a government or court on a person for committing an infringement or offence.
Person	The term used to describe who is subject to FPP assessments specified in respective participating agency instruments, which may also include, for example, an individual, company, entity, partnership, sole trader, trust or unincorporated association.
Regulated activity	Conduct, act or behaviour that is covered under a legislative framework.

Term	Definition
Regulated scheme or program	A scheme or program administered by a participating agency that is governed by a relevant regulatory legislative framework.
Revocation	The cancellation or withdrawal of an authorisation that was in place to allow an entity to undertake a regulated activity or participate in a regulated scheme or program.
Suspension	The temporary pause or withdrawal of an authorisation that was in place to allow an entity to undertake a regulated activity or participate in a regulated scheme or program.
Supplementary Check	The additional criteria specific to the policy of each respective participating agency to determine whether a person is a Fit and Proper Person, that are not part of the common Core Criteria.
Trade related	With reference to the *Customs Act 1901*, *Biosecurity Act 2015*, *Export Control Act 2020*, *Excise Act 1901*.

Appendix 2: Relevant Legislation and Administrative Decision Points

Participating agency	Legislation	Administrative decision(s)
Home Affairs	*Customs Act 1901* s67EB	1. Requirements for registration as a special reporter 2. Renewal of registration 3. Cancellation of registration as a special reporter
Home Affairs	*Customs Act 1901* s67H	4. Fit and proper person test 5. Varying etc. conditions of registration 6. Cancelling the registration of a re-mail reporter
Home Affairs	*Customs Act 1901* s77K, s77V	7. Requirements for grant of a depot licence 8. Granting of a depot licence 9. Variation of places covered by depot licence 10. Renewal of depot licences 11. Comptroller-General of Customs may impose additional conditions to which a depot licence is subject 12. Notice of intended cancellation etc. of a depot licence 13. Revocation of suspension of a depot licence 14. Cancellation of depot licences
Home Affairs	*Customs Act 1901* s81, s86	15. Requirements for grant of warehouse licence 16. Grant of a warehouse licence 17. Variation of the place covered by a warehouse licence 18. Comptroller-General of Customs may impose additional conditions to which a warehouse licence is subject

Participating agency	Legislation	Administrative decision(s)
		19. Comptroller-General of Customs may vary the conditions to which a warehouse licence is subject 20. Renewal of warehouse licence 21. Suspension of warehouse licences 22. Cancellation of warehouse licences
Home Affairs	*Customs Act 1901* s102BA	23. Meaning of fit and proper person 24. Comptroller-General of Customs may impose additional obligations 25. Comptroller-General of Customs may impose additional obligations 26. Directions to cargo terminal operators or cargo handlers etc.
Home Affairs	*Customs Act 1901* s183CC	27. Grant of licence 28. Requirements for grant of licence 29. Variation of licences 30. Licence granted subject to conditions 31. Comptroller-General of Customs may impose additional conditions to which a broker's licence is subject 32. Comptroller-General of Customs may vary the conditions to which a broker's licence is subject 33. Renewal of licence 34. Investigation of matters relating to a broker's licence 35. Interim suspension by Comptroller-General of Customs 36. Powers of Comptroller-General of Customs

Participating agency	Legislation	Administrative decision(s)
DAFF	*Biosecurity Act 2015* s530	37. Granting a permit to bring in or import goods 38. Varying or revoking conditions of, or imposing further conditions on a permit to bring in or import goods (stipulates optional FPP consideration) 39. Variation, suspension or revocation of a permit to bring in or import goods (stipulates optional FPP consideration) 40. Approving proposed arrangement 41. Varying approved arrangement 42. Suspending approved arrangement 43. Revoking approved arrangement
DAFF	*Export Control Act 2020* s372	44. Registration of an establishment 45. Renewing the registration of an establishment 46. Application to vary the registration of an establishment 47. Variations to the registration of an establishment 48. Suspension of the registration of an establishment 49. Revocation of the registration of an establishment 50. Approval of proposed arrangements 51. Renewal of approved arrangements 52. Condition for variations to approved arrangements 53. Grounds for suspension of approved arrangements 54. Grounds for revocations of approved arrangements 55. Granting of export licence 56. Reason to renew an export licence 57. Condition for export licence variation 58. Grounds for suspension of export licence 59. Grounds for revocation of export licence

Participating agency	Legislation	Administrative decision(s)
		60. Approval to conduct audits 61. Revocation of approval to conduct audits 62. Approval to carry out assessments of goods 63. Revocation of approval to carry out reassessments of goods 64. Authorisation to be a third party authorised officer 65. Accreditation of veterinarians 66. Suspending the accreditation of veterinarians 67. Revoking the accreditation of veterinarians
ATO	*Excise Act 1901* (s39B, s39C, s39H, s39I)	68. Collector's discretion to grant a licence (s39A) 69. Renewal of licences (s39F) 70. When the Collector may suspend a licence (s39G) 71. Cancellation of licences (s39L), (sections 39F and 39L ultimately lead back to suspension in 39G)

Appendix 3: Biosecurity Act 2015 section 11 Meaning of associate

11 Meaning of *associate*

1. Associate of a person (the first person) includes each of the following:

   (a) a person who is or was a consultant, adviser, partner, representative on retainer, employer or employee of:

      i. the first person; or

      ii. any corporation of which the first person is an officer or employee or in which the first person holds shares.

   (b) a spouse, de facto partner, child, parent, grandparent, grandchild, sibling, aunt, uncle, niece, nephew or cousin of the first person.

   (c) a child, parent, grandparent, grandchild, sibling, aunt, uncle, niece, nephew or cousin of a spouse or de facto partner of the first person.

   (d) any other person not mentioned in paragraph (a), (b) or (c) who is or was:

      (i) directly or indirectly concerned in; or

      (ii) in a position to control or influence the conduct of a business or undertaking of:

      (iii) the first person; or

      (iv) a corporation of which the first person is an officer or employee, or in which the first person holds shares.

   (e) a corporation:

      i. of which the first person, or any of the other persons mentioned in paragraphs (a), (b), (c) and (d), is an officer or employee; or

      ii. in which the first person, or any of those other persons, holds shares.

   (f) if the first person is a body corporate—another body corporate that is a related body corporate (within the meaning of the Corporations Act 2001) of the first person.

2. Without limiting who is a child of a person for the purposes of this section, each of the following is the child of a person:

   (a) a stepchild or adopted child of the person.

(b) someone who would be the stepchild of the person except that the person is not legally married to the person's partner.

(c) someone is a child of the person within the meaning of the Family Law Act 1975.

3. Without limiting who is a parent of a person for the purposes of this Act, someone is the parent of a person if the person is his or her child because of the definition of child in subsection (2).

4. For the purposes of this section, if one person is the child of another person because of the definition of child in subsection (2), relationships traced to or through that person are to be determined on the basis that the person is the child of the other person.

Appendix 4: Supplementary Check Register

Agency	Description of Check	Date Amended
ABF	Right to work check in Australia	14/03/2024
ABF	Previous authorisation suspended or cancelled	06/06/2024
ABF	Previous Transport Security Identification Card suspended or cancelled	06/06/2024
ABF	False or misleading statements on an application	06/06/2024