

Administrative Guidelines on Engaging Professional Services in the Victorian Public Sector

Number: 2019/02

Authorisation and amendments

Authorised by the Secretary, Department of Premier and Cabinet Victoria, under section 36A(1) of the *Public Administration Act 2004* (Vic).



CHRIS ECCLES AO

SECRETARY, DEPARTMENT OF PREMIER AND CABINET

Compliance note: Under section 36A(3) of *Public Administration Act 2004* (Vic), if a public service body or a public entity to which guidelines have been issued operates, or intends to operate, in a manner that is inconsistent with those guidelines, the relevant public service body Head or public entity Head must provide written reasons for doing so to the Secretary, Department of Premier and Cabinet.

No. 2019/02

Issued by the Department of Premier and Cabinet Victoria (DPC).

These Guidelines are subject to periodic amendments, in line with amendments to Victorian Government policy. DPC will provide notification when an update has taken place.

For the latest version of these Guidelines please visit:

<https://www.vic.gov.au/guidelines-using-labour-hire-and-professional-services>

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Glossary and definitions

Term	Meaning
Public service body Head	To be read within the definition of ' <i>public service body Head</i> ' under section 4(1) of the <i>Public Administration Act 2004</i> (Vic) as the Head of a department or administrative office.
CAFAS	Commercial and Financial Advisory Services
DTF	Department of Treasury and Finance
EOI	Expression of Interest
Exempt body	An entity within the meaning of section 4 of the <i>Public Administration Act 2004</i> (Vic) which is exempt for the purposes of the Act.
FAS	Financial Advisory Services
FMA	<i>Financial Management Act 1994</i> (Vic)
FRD	Financial Reporting Direction
FTE	Full Time Equivalent
IT	Information Technology
PAS	Professional Advisory Services
Public entity	<p>A public entity within the meaning of section 5 of the <i>Public Administration Act 2004</i> (Vic) (the Act) that is established by or under an Act; or by the Governor in Council; or by a Minister and (among other requirements set out in section 5) has a public function to exercise on behalf of the State, or is wholly owned by the State.</p> <p>Please refer to section 5 of the Act for the comprehensive legislated definition.</p>
PS	Probity Services
Segmented Independence	The need for independence from a particular area of the VPS or Victorian Government (e.g., a department, or a division within a department), but not necessarily from the Government as a whole, in order to instil confidence in the objectiveness, impartiality, and integrity of a decision-making process, or other work.
Special body	A Government department, agency or entity falling within the meaning of section 6 of the <i>Public Administration Act 2004</i> (Vic).
SPC	State Purchase Contract
TAS	Tax Advisory Services
ToRs	Terms of Reference
Total Independence	The need for total independence from the Victorian Government or the VPS in order to instil confidence in the objectiveness, impartiality, and integrity of a decision-making process, or other work.
VGPB	Victorian Government Purchasing Board.
VPS	Victorian Public Service

Preface

Purpose of the Guidelines

A core strategic reform goal of the Victorian public sector (VPS) is to become more efficient in how it uses public resources to drive growth and development. At the heart of this goal is a cultural and strategic emphasis on secure employment, building capability, and sharing resources, learnings, and expertise across the VPS.

The *Administrative Guidelines on Engaging Professional Services in the Victorian Public Sector* (‘the Guidelines’) are circulated to public service bodies and public entities under section 36A of the *Public Administration Act 2004* (Vic). The purpose of these Guidelines is to provide decision-making principles and practical guidance that supports public service bodies and public entities to determine when the use of professional services is appropriate.

What are professional services?

Professional services describe the formal engagement by Government of an individual or organisation to provide skills, expertise, knowledge or advice in the performance of work or services. More information on the scope of professional services captured by these Guidelines can be found overleaf.

In these Guidelines, professional services **does not** refer to personnel provided by a staffing services provider such as a labour hire company to perform labour or other services for the Government for a fee. These engagements are covered under **labour hire services** and are addressed in the *Administrative Guidelines on Engaging Labour Hire in the Victorian Public Service*.

How to use these Guidelines

The Guidelines are developed around a set of first principles on the appropriate engagement of professional services that mandated public service bodies and public entities must incorporate into their decision-making processes.

Public service bodies and public entities should start by determining if they are a mandated entity for the purposes of these Guidelines. This information can be found overleaf in **Compliance with the Guidelines**. Detailed guidance on how to interpret and apply the first principles can then be found in **Applying the First Principles** on **pages 10–12**.

Compliance with the Guidelines

Scope of professional services captured by these Guidelines

The definition of professional services applied in these Guidelines captures both ‘consultants’ and ‘contractors’ as they are defined in Financial Reporting Direction 22H (FRD 22H) (see **Appendix 4.3**). This is recognising there can be significant crossover between these two categories.

Subject to any relevant exemptions outlined below, this means that the first principles in these Guidelines should be applied regardless of whether the proposed engagement is for a consultant or a contractor.

For mandated public service bodies and entities (see below), the Guidelines apply to the scope of professional services captured by the service categories of the following Victorian Government Purchasing Board (VGPB) State Purchase Contracts (SPCs):

- **Professional Advisory Services (PAS)**
- **Legal Services Panel**
- **Marketing Services Register**
- **eServices Panel**

This means that if a proposed engagement falls within the categories of the above four SPCs, mandated public service bodies and entities must apply and follow these Guidelines, even if engaging a service provider that is **not** on a Panel of preferred providers.

Public service bodies and entities are also encouraged to apply the Guidelines when engaging professional services outside of the scope and categories of the above four State Purchase Contracts, where relevant to do so.

Which public service bodies and entities must comply with the Guidelines?

Subject to the exemptions outlined below, the Guidelines apply to government public service bodies and public entities (as defined in the *Public Administration Act 2004* (Vic)) that are mandated to comply with VGPB policies.

Public service bodies and public entities that currently fit this criteria can be found in **Table 1** on page 7 and **must comply** with these Guidelines.

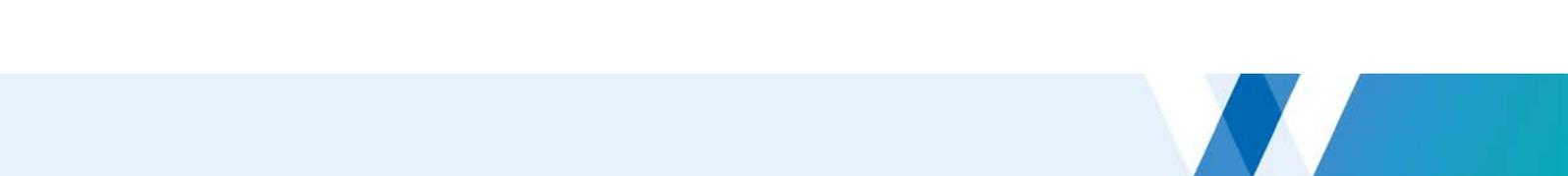
All other public entities are encouraged to follow these Guidelines but are not mandated to do so.

Exemptions

Professional services engaged to undertake, service, or advise built environment and infrastructure work are **not** captured by these Guidelines. This exemption includes professional services for construction; infrastructure; engineering; and architecture.

The Guidelines **do not** apply to **special bodies** within the meaning of section 6 of the *Public Administration Act 2004* (Vic), **even if** they are mandated to comply with VGPB policies (see **Appendix 2** for a list of special bodies).

The Guidelines **do not** apply to **exempt bodies** within the meaning of section 4 of the *Public Administration Act 2004* (Vic), **even if** they are mandated to comply with VGPB policies (see **Appendix 3** for a list of exempt bodies).



The Guidelines **do not** apply to any government body established under the *Inquiries Act 2014* (Vic) (for example, a Royal Commission).

Important information regarding commencement of the Guidelines

Application of the Guidelines commences **July 2019**. Mandated entities will have until **1 October 2019** to ensure their business and decision-making processes fully comply with the new Guidelines.

From 14 July 2019 until 1 October 2019, mandated entities must continue to seek Secretary (or equivalent) approval for all proposals to engage consultants. This authority may not be delegated.

From **1 October 2019**, the first principles on **page 8** (and the authorisation process they stipulate) will supersede the above approval requirement for mandated entities.

Table 1: Public service bodies and public entities that must comply with the Guidelines*

Departments	Offices or Bodies	Specified Entity	Other
Department of Education and Training	Essential Services Commission	VicRoads	Victorian Public Sector Commission
Department of Environment, Land, Water and Planning	Game Management Authority	Public Transport Victoria	
Department of Health and Human Services	Infrastructure Victoria	CenITex	
Department of Jobs, Precincts and Regions	Office of the Chief Commissioner of Police (Victoria Police)		
Department of Transport			
Department of Justice and Community Safety	Office of the Commissioner for Environmental Sustainability		
Department of Premier and Cabinet	Office of the Legal Services Commissioner		
Department of Treasury and Finance	Office of the Road Safety Commissioner		
	Commercial Passenger Vehicle Commission		
	Victorian Commission for Gambling and Liquor Regulation		
	Victorian Equal Opportunity and Human Rights Commission		
	Victorian Fisheries Authority		
	Victorian Responsible Gambling Foundation		
<p>*If your organisation does not appear in the above list, please also review the following VGPB criteria to determine if they apply to your organisation. Organisations that meet the following VGPB criteria are also captured by these Guidelines:</p> <ul style="list-style-type: none"> ▪ Those offices or bodies specified in section 16(1) of the <i>Public Administration Act 2004</i> (Vic). ▪ Administrative Offices established in relation to a department under Section 11(a) of the <i>Public Administration Act 2004</i> (Vic). 			

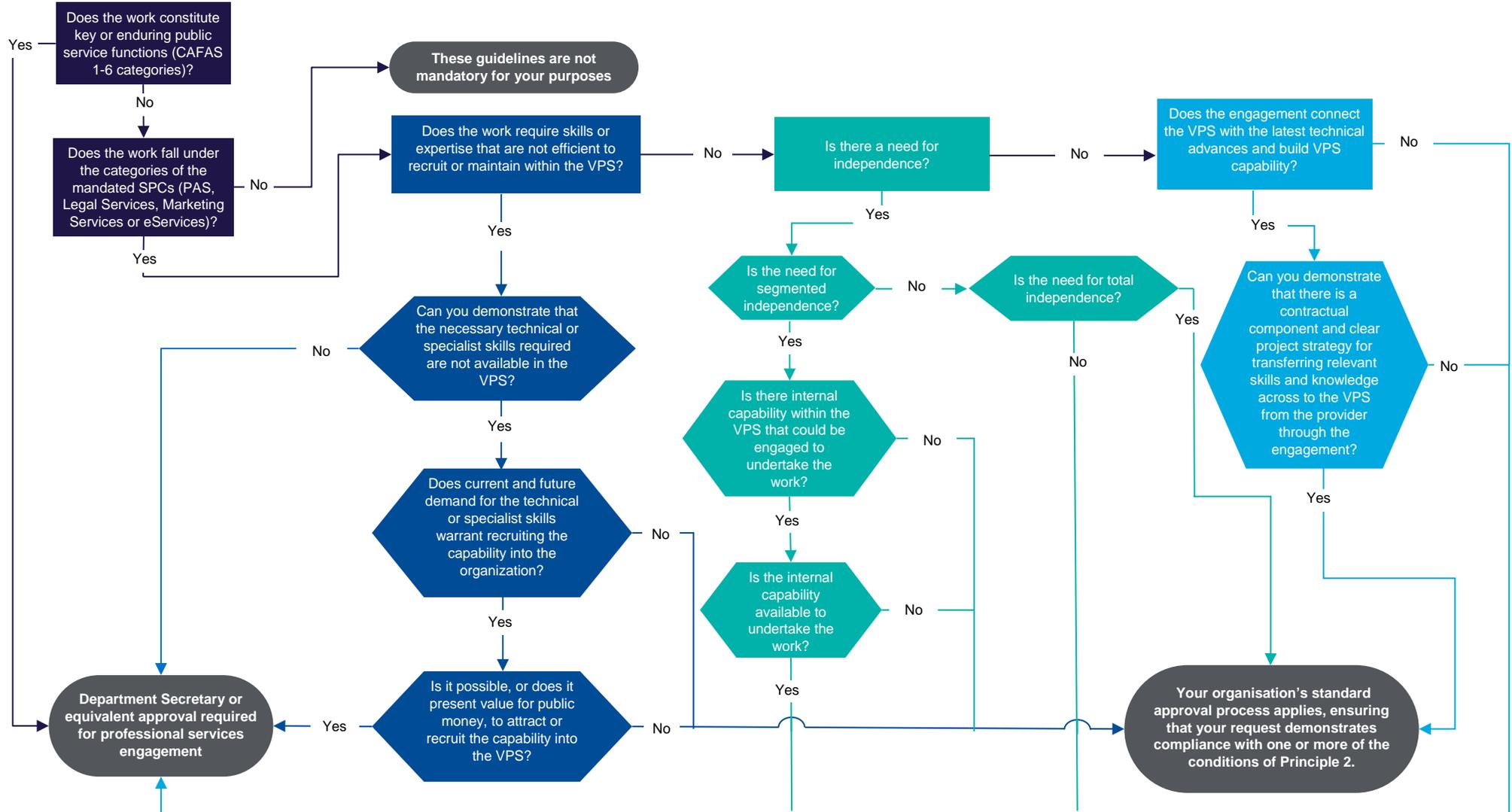
First Principles

First principles for engaging professional services

1. Professional services should not be engaged to undertake work identified as **key or enduring public service functions** without department Secretary or equivalent public service body or entity Head approval.
2. Professional services engagements should be limited to the following circumstances:
 - a) **Work requiring skills or expertise that are not efficient to recruit or maintain within the VPS.**
 - b) **Need for independence:**
 - Where **total independence** from the Victorian Government is required; or
 - Where **segmented independence** is sufficient, but a suitably qualified VPS employee who is sufficiently independent to the proposed project or work cannot be sourced.
 - c) **The engagement connects the VPS with the latest technical advances, emerging key skills or expertise and builds VPS capability.**

Decision Matrix

Figure 1: Decision matrix - engaging professional services



Applying the first principles

Principal One

This principal is founded on the understanding that public service bodies and entities are responsible for conducting strategic planning and workforce capability mapping to identify the essential internal skills and capabilities their organisation needs to carry out its functions.

On this basis, public service bodies and entities should not engage external consultants or contractors to undertake work or services that would constitute key or enduring public service functions, or that a public service employee could reasonably do.

Key or enduring public service functions are often referred to as ‘core business’. This includes repeatable skills and capabilities, and the delivery of products and services that are essential to the running of the public service and the delivery of Government work.

What this constitutes specifically will necessarily vary from one public service body or entity to another due to their differing roles and functions. However, examples of key or enduring public service functions universal to government include:

- **Policy, strategy, and business case development**
- **Policy and program evaluation**
- **Engagement and facilitation**
- **Organisational development**

These core functions are most commonly captured by work or services engaged under the Commercial and Financial Advisory Services (CAFAS) categories (1-6) of the Professional Advisory Services State Purchase Contract (PAS SPC). Recognising this, **all requests to engage professional services that fall within the PAS SPC CAFAS 1-6 categories must be approved by a Secretary or equivalent public service body or public entity Head.** This authority may not be delegated. This condition applies irrespective of:

- the amount of the contract;
- whether or not the service providers are on the PAS SPC Panel;
- whether the engagement is classified as ‘contractor’ or ‘consultant’ for the purposes of FRD 22H.

For professional services requests that fall within another category of the SPCs captured by these Guidelines, mandated bodies should proceed to **Principle Two**.

Principle Two

This principle outlines the conditions where it may be appropriate to engage professional services to undertake work or services for the Government, under the four State Purchase Contracts and their categories mandated for the purposes of these Guidelines.

At least **one** of the three conditions must be met to satisfy this principle.

Principle 2(a): Work requiring skills or expertise that are not efficient to recruit or maintain within the VPS

To meet this condition, it must be demonstrated that:

- the necessary technical or specialist skill(s) required to deliver the work or services are not available in the VPS; **and**
- current and future demand within the organisation for the technical or specialist skill(s) do not warrant recruiting the capability into the organisation; **or**
- due to supply and demand or subject matter obsolescence issues it is not possible or does not present value for public money to attract or maintain the capability into the VPS.

Principle 2(b): Need for independence

In some circumstances independence is required to instil confidence in the objectiveness, impartiality, and integrity of Government work, services, or decision-making processes. In these circumstances, the type and level of independence required must be carefully considered and the following questions addressed:

- *Is the need one of **segmented independence** (i.e., independence from a particular area of the organisation or Government), or **total independence** (i.e., independence from the Victorian Government as a whole)?*
- *If the need is for segmented independence only, is there internal capability within the VPS that can be engaged to undertake the work?*

Not all circumstances will warrant the need for total independence from the Government. In many cases, segmented independence will be sufficient to ensure objective impartiality and maintain confidence in the integrity of the decision making, work or services delivered. However, there may be circumstances where it is not possible to engage a suitably qualified and sufficiently independent VPS employee. Engaging professional services may, in these instances, be the most appropriate option.

Principle 2(c): The engagement connects the VPS with the latest technical advances, emerging key skills or expertise and builds VPS capability

The VPS must continue to adapt to and adopt new ways of working. To do this, the Government will continue to need external support to provide innovative solutions to problems, and transition to new technologies.

The transfer of skills and knowledge to build VPS expertise must be a central and essential component of engagements that rely on this condition.

Where applicable, the engagement **must not** be approved without evidence of a contractual component and clear project strategy for transferring relevant skills and knowledge across to the organisation from the professional services provider through the engagement.

Approval of engagements

These Guidelines do not change existing arrangements for approving professional services except in the following circumstances:

The proposed engagement falls within the PAS SPC CAFAS 1-6 categories (Principle One)

- **All** requests to engage professional services that fall within the PAS SPC CAFAS 1-6 categories must be approved by a Secretary or equivalent public service body or entity head. This authority may not be delegated. This condition applies irrespective of:
 - the amount of the contract;
 - whether or not the service providers are on the SPC Panel;
 - whether the engagement is classed as ‘contractor’ or ‘consultant’ for the purposes of FRD 22H.

The engagement is captured by the categories of one of the four mandated SPCs AND *does not* meet one or more of the three criteria of Principle Two

- Where an engagement is for work or services that fall under the categories of one of the four mandated SPCs:
 - Professional Advisory Services (PAS)
 - Legal Services Panel
 - Marketing Services Register
 - eServices Panel

and

- the engagement **does not** meet **one or more** of the three criteria of Principle Two, the Secretary or equivalent public service body or public entity body Head must approve the engagement. This authority may not be delegated. This condition applies irrespective of:
 - the amount of the contract;
 - whether or not the service providers are on the SPC Panel;
 - whether the engagement is classed as ‘contractor’ or ‘consultant’ for the purposes of FRD 22H.

Additional Guidance

What channels are available to public service bodies and public entities to procure professional services?

Many commonly sourced professional services are captured by the State Purchase Contracts mandated for the purposes of these Guidelines

Subject to any relevant exceptions, public service bodies and public entities mandated to comply with VGPB policies must procure professional services through State Purchase Contracts (SPCs). The objective of the SPCs is to provide consistent and high quality professional advisory services to the Victorian Government through a range of Panels of approved service providers. The benefits of this approach include:

- consistency in approach to project development and implementation across the Government;
- qualified professional advisory services suppliers, approved to provide a wide range of services; and
- a wide range of suppliers including large and medium sized organisations, sole operators and small partnerships.

For information on how to engage a supplier through an SPC, see **Appendix 4.1**.

Public service bodies and public entities should refer to their corporate teams for specific internal procurement advice

For detailed information about the policies that govern procurement in the Victorian Government more broadly, contact the Victorian Government Purchasing Board, or visit the Victorian Government Purchasing Board website, www.procurement.vic.gov.au.

What should public service bodies and public entities consider before procuring professional services?

Be clear about the Terms of Reference for the project, including timing and deadlines

Public service bodies and public entities can mitigate issues such as scope creep and project delays by ensuring the engagement is framed by clear Terms of Reference (ToRs). Clear ToRs explicitly state what is in the scope of the engagement, and the priorities for delivery. The ToRs should also include a realistic workplan and schedule for delivery of the work, and clear reporting requirements to ensure the engagement is progressing on track and within scope. Other typical contents of ToRs include:

- **Context** of the engagement, including strategic vision and alignment of the work.
- **Purpose and objectives**, why the work is necessary and the outcomes that are expected to be achieved through the engagement, including transfer of knowledge, capability, and learnings.
- **Reporting structure and governance**, clearly outlining the authorising environment, formal reporting, and contacts for the engagement.
- **Outputs and key deliverables**, including the format of any products and output resulting from the engagement.
- **Capabilities**, outlining the skills, experience and technical or other expertise required to undertake the engagement.

Carefully plan how the engagement will build VPS capability throughout the project

Public service bodies and public entities should carefully consider how the skills, knowledge and learnings, and any relevant intellectual or other property created through the engagement is transferred to, or otherwise shared with the organisation to build internal capability. Approaches can include tutorials or seminars; training and shadowing; a technical report or manual; or other relevant approaches either alone or in combination. Once agreed, this approach can be included as a condition or deliverable in the contract of engagement.

What are the reporting requirements for public service bodies and public entities around professional services use?

All public service bodies and public entities are subject to mandatory reporting requirements around the use of professional services

All public service bodies and entities within the meaning of section 3 of the *Financial Management Act 1994* (Vic) ('the *FMA*') have specific reporting obligations they must adhere to when entering into professional services engagements. This applies irrespective of whether the engagement is for a contractor or a consultant. It is critical for public service bodies and public entities to understand these obligations and collect consistent, accurate data around engagements to ensure transparency in the use of these resources.

Financial Reporting Direction (FRD) 22H prescribes reporting requirements under the FMA

Public service bodies and public entities must report individually for consulting engagements above \$10,000, including ensuring that details of contracts are available on request. For each consultancy engagement, public service bodies and public entities must provide the following details:

- the consultant engaged;
- a brief summary of the project;
- total project fees approved (exc. GST);
- expenditure for the reporting period (exc. GST); and
- any future expenditure committed to the consultant for the project.

In addition, subject to any relevant provisions of the *Freedom of Information Act 1982* (Vic), the following information should also be retained:

- Details of all consultancies and contractors including:
 - Consultants/contractors engaged;
 - Services provided
 - Expenditure committed for each engagement.

Entities that fall within the meaning of 'public body' or 'department' under section 3 of the *FMA* are mandated to report individually in compliance with the Act and FRD 22H. Entities that do not fall within these meanings are accountable to provide reporting data to a governing department.

For more information on reporting requirements under the *FMA* and the PAS SPC, see **Appendix 1.3**.

Appendix 2

Special Bodies

Special bodies are defined under section 6 of the *Public Administration Act 2004* (Vic) to include:

- a department of the Parliament of Victoria;
- the Independent Broad-based Anti-corruption Commission (IBAC) within the meaning of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic);
- the Commission for Children and Young People within the meaning of the *Commission for Children and Young People Act 2012* (Vic);
- the Electoral Boundaries Commission;
- the Office of the Health Complaints Commissioner within the meaning of the *Health Complaints Act 2016* (Vic);
- the Office of the Ombudsman;
- the Office of the Victorian Information Commissioner;
- Office of the Victims of Crime Commissioner
- the Mental Health Complaints Commissioner;
 - the Mental Health Tribunal;
- the Victorian Civil and Administrative Tribunal (VCAT);
- the Victorian Auditor-General's Office;
- the Victorian Electoral Commission;
- the Victorian Inspectorate within the meaning of the *Victorian Inspectorate Act 2011* (Vic);
- Victoria Police;
- a body that is declared by an Order by the Governor in Council to be a special body for the purposes of the Act.

Appendix 3

Exempt Bodies

Exempt bodies are defined in section 4 of the *Public Administration Act 2004* (Vic) to include:

- a committee established under the *Parliamentary Committees Act 2003* (Vic); or
- a council within the meaning of the *Local Government Act 1989* (Vic); or
- a court; or
- Court Services Victoria; or
- the Judicial Commission of Victoria; or
- the Office of Public Prosecutions or the Director's Committee within the meaning of the *Public Prosecutions Act 1994* (Vic); or
- a university within the meaning of the *Education and Training Reform Act 2006* (Vic); or
- a body to which, or to the governing body of which, the government of another jurisdiction, or a person appointed or body established under the law of another jurisdiction, has the right to appoint a member, irrespective of how that right arises.

Appendix 4

4.1 Additional information and resources on Victorian Government State Purchase Contracts

Departments mandated to source through the State Purchase Contracts

<http://www.procurement.vic.gov.au/About-the-VGPB/Scope-of-Policies>

State purchase contracts organised by category

<https://buyingfor.vic.gov.au/browse-government-contracts>

Professional Advisory Services State Purchase Contract

<https://buyingfor.vic.gov.au/professional-advisory-services-contract>

User Guide - Professional Advisory Services State Purchase Contract

<https://www.content.vic.gov.au/sites/default/files/2018-10/PAS-User-Guide%20%281%29.pdf>

eServices Register

<https://buyingfor.vic.gov.au/eservices-register>

Marketing Services Panel

<https://buyingfor.vic.gov.au/marketing-services-register>

Legal Services Panel

<https://buyingfor.vic.gov.au/legal-services-panel-contract>

4.2 Other procurement resources

Other procurement registers and supplier panels

<https://buyingfor.vic.gov.au/find-supplier>

Procurement complexity and capability assessment policy

<https://buyingfor.vic.gov.au/complexity-and-capability-assessment-policy>

4.3 Victorian Government Financial Management and Financial Reporting Directions

Financial Reporting Directions and guidance for Departments

<https://www.dtf.vic.gov.au/financial-reporting-policy/financial-reporting-directions-and-guidance>

Standing Directions 2018 under the Financial Management Act 1994

<https://www.dtf.vic.gov.au/financial-management-government/standing-directions-2018-under-financial-management-act-1994>