



Office of the Victorian
Information Commissioner

DATA PROTECTION

Does the Victorian Protective Data Security Framework apply to your organisation?

Freedom of Information | Privacy | Data Protection

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Introduction

The information provided in this pack summarises which Victorian public sector organisations are subject to the Victorian Protective Data Security Framework (**VPDSF**) and accompanying obligations under Part 4 of the *Privacy and Data Protection Act 2014 (Vic)* (**PDP Act**). It also provides a summary of which organisations are exempt from the VPDSF and accompanying obligations under Part 4 of the PDP Act.

If you find that your organisation is exempt, it may still apply the Victorian Protective Data Security Standards (**VPDSS**) to meet other legal, regulatory and administrative data protection obligations. In these cases, the OVIC reporting requirements of the VPDSF would not apply, as the standards are being applied voluntarily by the organisation.

OVIC requests that you advise our office of your organisations status if you have assessed that you are exempt or wish to opt in to the VPDSF.

1. Applicability overview

1.1. Visual summary¹



VPDSF – Victorian Protective Data Security Framework
VPDSS – Victorian Protective Data Security Standards
PDP Act – Privacy and Data Protection Act 2014 (Vic)
PA Act – Public Administration Act 2004 (Vic)

Victorian bodies' applicability or exemption to Part 4 of the PDP Act

Part 4 of the PDP Act applies to...

Departments

Administrative offices

Special bodies

The Victorian Public Service Commissioner (VPSC)

Public entities 

Bodies that are declared by the Governor in Council to be subject to Part 4 of the PDP Act in the Government Gazette, or to be declared as 'public entities' under the PA Act

N.B. Victoria Police and Crime Statistics Agency fall under Part 5 of the PDP Act, however both bodies have formally transitioned to the VPDSF and are bound by Part 4 of the PDP Act obligations

Part 4 of the PDP Act does NOT apply to...

Courts

Court Services Victoria

Tribunals (such as VCAT) and judicial or quasi-judicial offices (such as the Mental Health Tribunal) to the extent of their judicial and quasi judicial functions

Royal Commissions, Boards of Inquiries, Formal Reviews

Parliamentary Committees

Councils 

Universities

Multi-jurisdictional bodies, or appointed persons from other jurisdictions i.e. a joint Taskforce, or bodies in Victoria that have an interstate appointed director


Ambulance Services

Public hospitals, public health services or multi-purpose services

The Judicial Commissioner of Victoria

The Office of Public Prosecutions or the Director's Committee (within the meaning of the Public Prosecutions Act (1994))

The Governor in Council may declare bodies exempt that are otherwise considered to fall under the definition of 'public entity'

 Refer to the supporting workflow "Is your body a 'public entity'?" for more information on whether your organisation fits this criteria

Implementing the VPDSS may assist organisations in meeting other data protection and privacy obligations such as:

- Information Privacy Principles (IPPs)
- Information sharing agreements, memorandums of understanding (MOUs), and contracts
- Health Privacy Principles (HPPs)
- Other legal, regulatory and administrative obligations relevant to your organisation

¹ For a full overview of applicability and exemptions, refer to Section 4 of this information pack.

2. Workflow: Is your body a ‘public entity’?

2.1. Using the workflow

The following workflow is designed to give guidance as to whether your body is a public entity, or has a public entity operating within it. It is designed with the applicability of Part 4 of the PDP Act in mind.

Public entities can include organisations that provide services or functions like water and land management, healthcare and emergency services. It can also extend to include entities like advisory bodies, Ministerial advisory committees, land management committees, cemetery trusts, school or Tertiary and Further Education (TAFE) institutes, school councils, Victorian Crown Land Reserve Committees, the Board of Adult Multicultural Education Services (AMES) and the Board of the Centre for Adult Education.

This workflow does not cover other government bodies that are subject to the PDP Act, such as departments and special bodies.

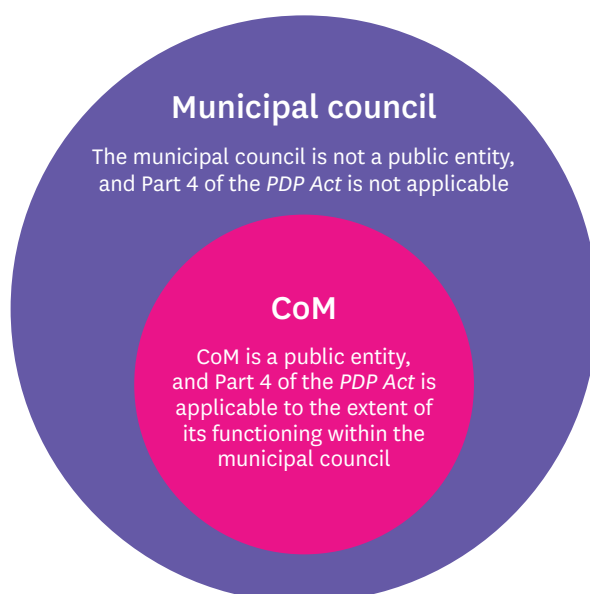
If you remain unsure about the status of your body after completing the workflow, it is suggested that you seek advice from your portfolio department and/or independent legal advice. This workflow does not constitute legal advice and should not be used as a substitute for applying the provisions of the PDP Act, or any other legal requirement, to individual cases.

2.2. Does your body have multiple roles?

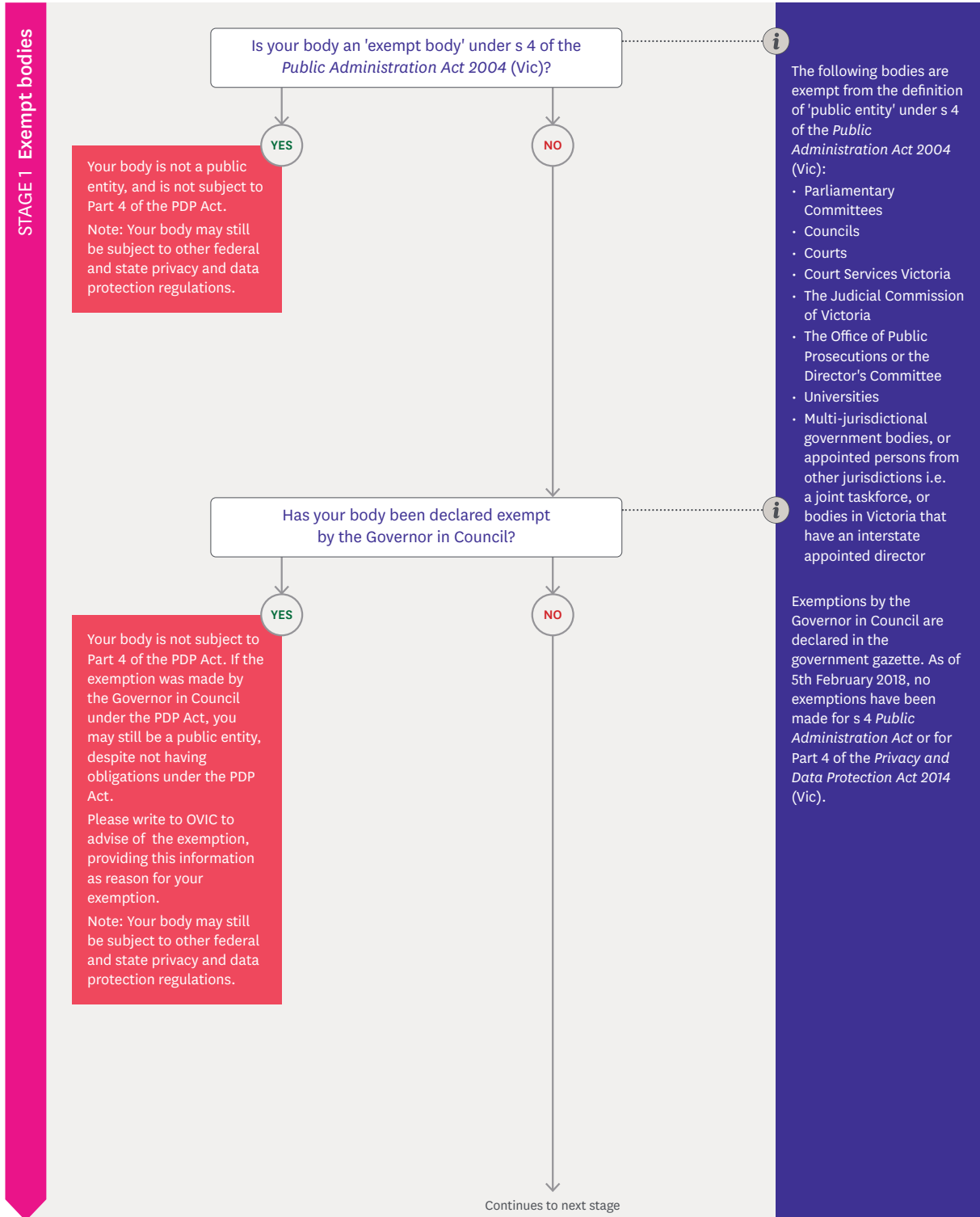
The following workflow must be conducted separately for each role that your body undertakes, as each role may have different obligations for your body under the PDP Act.

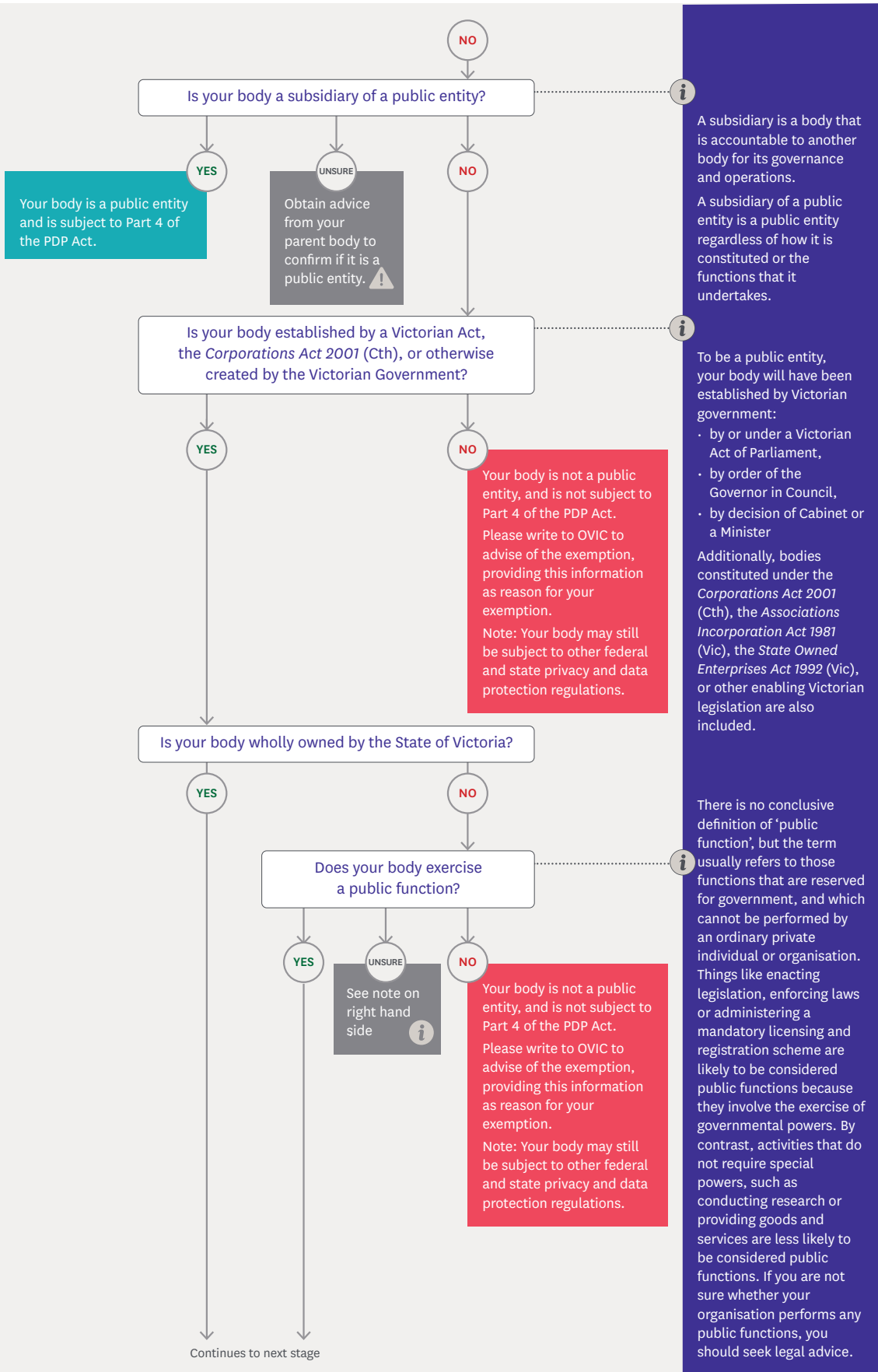
For example, a Committee of Management (CoM) for Crown Land Reserves is deemed to be a ‘public entity’, and is required to fulfil all associated obligations for that of a ‘public entity’, including Part 4 of the PDP Act. This is still the case even when the ‘public entity’ is nested in a body that is otherwise exempt. A good example of this may be a municipal council that has a CoM nested in it.

A visual depiction of these arrangements is contained below:

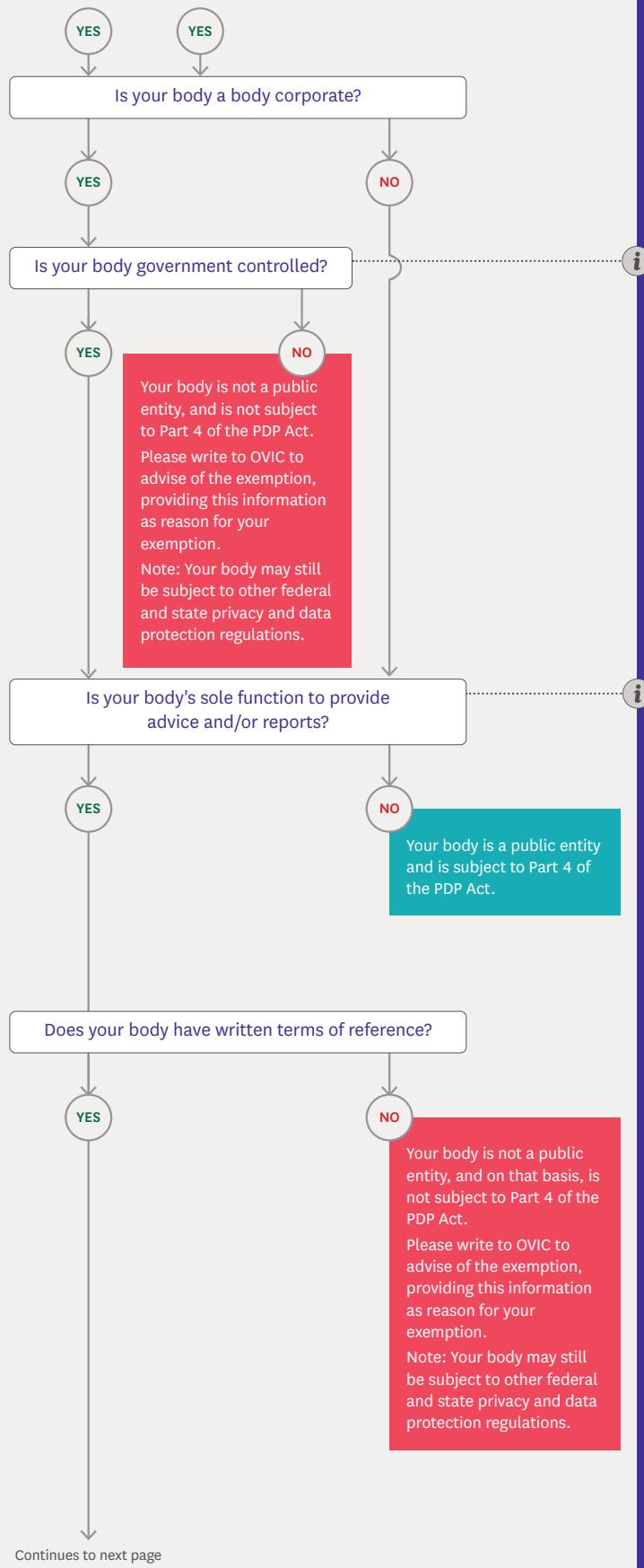


Workflow: Is your body a 'public entity'?





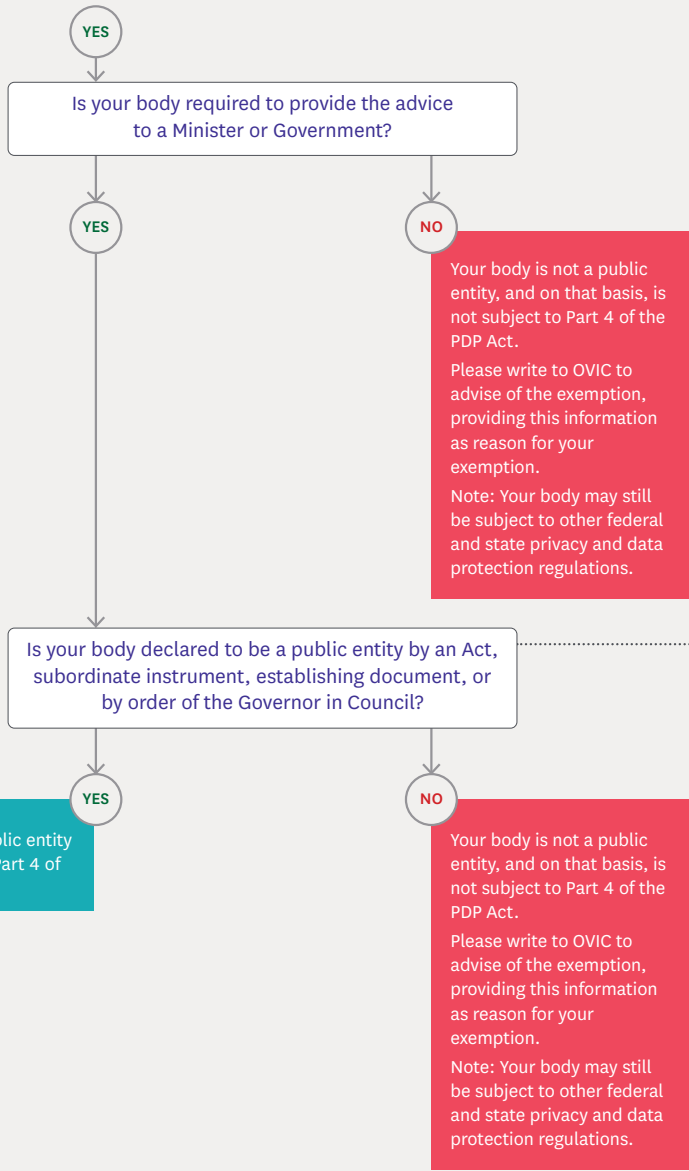
STAGE 3 Specific types of public entity



i Your body is 'government controlled' if it vests the rights to appoint ½ of the directors to the Governor in Council or the Minister, or the rights could have been vested when established by an Order made by the Minister or the Governor in Council.

i Advisory and reporting bodies are public entities when they:

- solely provide advice or reports, and
- have written terms of reference, and
- are required to provide the advice to a Minister or Government, and
- are declared to be a public entity by an Act, subordinate instrument, establishing document, or by an Order of the Governor in Council.



Unsure about 'public function' in Stage 2?

Your body may, or may not be a public entity. Review Stage 2 of this workflow assessment (the 'public entity' section). If you remain unsure about the status of your body after completing the workflow, it is suggested that you seek advice from your portfolio department and/or independent legal advice.

If you believe that your body is exempt, please write to OVIC to advise us of your exemption citing 'public function' as reason for your exemption.

Note: Your body may still be subject to other federal and state privacy and data protection regulations. Your body may be subject to Part 4 of the PDP Act if you have not yet analysed whether your body is a public sector agency, special body or body declared by the Governor in Council under s 84 of the PDP Act.

- i** If your body has multiple roles, please conduct the analysis again for each additional role.
- i** If you believe that your body is exempt, please write to OVIC to advise us of your exemption, and state why you believe that your body is not a public entity.

3. Advising OVIC of your organisations status

Once you have assessed whether your organisation is applicable or exempt, you should advise OVIC of its status.

3.1. What to do if your organisation is assessed as exempt

The following process should be followed by organisations who believe they may be exempt from obligations under Part 4 of the PDP Act:

1. Consider obtaining independent legal advice to assist the determination of whether or not your organisation has legislative obligations
2. Write to OVIC to advise of exemption. Please include a statement about the nature of your organisation and provide us with the reasons why you believe that your organisation might be exempt. Send a letter to:

Data Protection Team
Office of the Victorian Information Commissioner
PO Box 24274
Melbourne Victoria 3001

or by email to: security@ovic.vic.gov.au

3.2. What to do if your organisation is 'notionally' exempt, but assessed as having obligations under Part 4 of the PDP Act

The following process should be followed by exempt organisations (such as local councils or health service providers) who believe they may have obligations under Part 4 of the PDP Act:

1. Consider obtaining independent legal advice to assist the determination of whether or not your organisation has legislative obligations
2. Write to OVIC to advise of obligations. Send a letter to:

Data Protection Team
Office of the Victorian Information Commissioner
PO Box 24274
Melbourne Victoria 3001

or by email to: security@ovic.vic.gov.au

As a result of this notification, OVIC will provide your organisation with more resources and access to an online portal. OVIC will also provide assistance to your organisation in meeting its reporting obligations.

4. Overview of applicability and exemptions

The following section sets out the relevant provisions of the PDP Act and the PA Act, describing in detail which organisations are expected to apply the VPDSF and which are exempt.²

4.1. Applies

- Departments
- Administrative Office
- The Victorian Public Service Commissioner (VPSC)
- Special bodies defined by s6 of the Public Administration Act (2004). This includes offices like OVIC, quasi-judicial bodies such as the Mental Health Tribunal (MHT), and tribunals such as the Victorian Civil and Administrative Tribunal (VCAT), to the extent of their administrative functions; i.e. human resources and payroll
- Bodies that are declared by the Governor in Council via s 84(3) to be subject to Part 4 of the PDP Act
- Public entities defined by s 5 of the PA Act

N.B. Victoria Police and Crime Statistics Agency fall under Part 5 of the PDP Act, however both organisations have formally transitioned to the VPDSF and are bound by Part 4 of the PDP Act obligations.

4.2. Does not apply

There are multiple avenues through which an organisation can be exempted from obligations in the PDP Act, ranging from broad to specific exemptions in the PDP Act, to exemptions of ‘public entities’ in the PA Act.

Exempted bodies³

Entity	Consider the following legislative exemptions
Tribunals (such as VCAT), judicial or quasi-judicial offices such as the Mental Health tribunal (MHT)	<ul style="list-style-type: none">• General s 10, s 10A, s 11 exemptions in the PDP Act, to the extent of their judicial and quasi-judicial functions• (N.B. other administrative functions are subject to the PDP Act such as payroll, and other non-judicial related functions)

² A brief visual summary is included in Section 1.1 of this information pack, which offers a short form of the material presented in this section.

³ Despite being noted as an exempt entity, your organisation may still choose to adopt the VPDSF to help meet other data protection and privacy obligations it may have.

Entity	Consider the following legislative exemptions
Courts	<ul style="list-style-type: none"> • s 4 exemption in the PA Act - Bodies that are not considered 'public entities' • General s 10, s 10A, s 11 exemptions in the PDP Act
Court Services Victoria	<ul style="list-style-type: none"> • s 4 exemption in the PA Act - Bodies that are not considered 'public entities'
Parliamentary Committees (established under the Parliamentary Committees Act (2003)); i.e. the Joint Investigatory Committee, the House Committee, the Legislative Council and the Legislative Assembly	<ul style="list-style-type: none"> • s 10, s10A and s 11 exemption in the PDP Act • s 4 exemption in the PA Act - Bodies that are not considered 'public entities'
Multi-jurisdictional government bodies, or appointed persons from other jurisdictions; i.e. a Joint Taskforce, or bodies in Victoria that have an interstate appointed director	<ul style="list-style-type: none"> • Specific exemption from Part 4 data protection obligations via a s 84(2) of the PDP Act • s 4 exemption in the PA Act - Bodies that are not considered 'public entities'
Ambulance Services (within the meaning of the Ambulance Services Act (1986))	<ul style="list-style-type: none"> • Specific exemptions from Part 4 data protection obligations via a s 84(2) of the PDP Act that are 'public entities'
Public hospital, public health service or multi-purpose service within the meaning of the Health Services Act (1988)	<ul style="list-style-type: none"> • Specific exemption from Part 4 data protection obligations via a s 84(2) of the PDP Act that are 'public entities'
The Judicial Commission of Victoria (established under the Constitution Act, or as authorised by the Chief Parliamentary Counsel)	<ul style="list-style-type: none"> • s 4 exemption in the PA Act - Bodies that are not considered 'public entities'
The Office of the Public Prosecutions or the Director's Committee (within the meaning of the Public Prosecutions Act (1994))	<ul style="list-style-type: none"> • s 4 exemption in the PA Act - Bodies that are not considered 'public entities'

Entity	Consider the following legislative exemptions
<p>Universities (within the meaning of the Education Training and Reform Act (2006))</p>	<ul style="list-style-type: none"> • Specific exemption from Part 4 data protection obligations via a s 84(2) of the PDP Act • s 4 exemption in the PA Act - Bodies that are not considered 'public entities'
<p>Councils* (within the meaning of the Local Government Act (1989))</p> <p>* Note: Despite Councils being noted as an 'exempt body', some nested bodies within Councils may actually be subject to the VPDSF. Please refer to the 'Workflow: Is your body a 'public entity' for more information on whether or not your organisation meets this criteria</p>	<ul style="list-style-type: none"> • Specific exemption from Part 4 data protection obligations via a s 84(2) of the PDP Act • s 4 exemption in the PA Act - Bodies that are not considered 'public entities'
<p>The Governor in Council may declare bodies exempt that are otherwise considered to fall under the definition of a 'public entity'</p> <p>Note: As of February 2018, no bodies have been declared exempt by the Governor in Council</p>	<ul style="list-style-type: none"> • s 5(2) of the PA Act – Exempted 'public entities'
<p>Royal Commissions, Board of Inquiries and formal reviews</p>	<ul style="list-style-type: none"> • s 10, s 10A and s 11 exemptions in the PDP Act