

Premier and Cabinet Circular

PC 015 – PROCEDURES FOR SUBMISSIONS TO CABINET SEEKING THE REVIEW OF PUBLIC WORKS BY THE PUBLIC WORKS COMMITTEE



Effective from December 2018

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Purpose

Cabinet must consider all public works where the total amount to be applied to construction of the work is \$15 million (inc. GST) or more.

Ministers are encouraged to bring significant strategic issues, such as major investment decisions, to Cabinet and are required to refer public works to Cabinet that have not been included in a budget previously approved by Cabinet, in line with Treasurer's Instructions.

This circular deals only with the referral of public works to Cabinet and reporting on public works to the Public Works Committee ('the PWC') following advice to Cabinet. It aims to assist Chief Executives in fulfilling their responsibility to ensure that complete, accurate and relevant information is provided in a timely fashion to Cabinet and to the PWC.

Chief Executives remain responsible for ensuring that Ministers are in a position to refer public works to the PWC where the total amount to be applied to construction of the work is between \$4 million and \$15 million, in a form and with the information required by Ministers and the PWC. In particular, Chief Executives are responsible for ensuring that the necessary level of consultation has occurred with the Department of Treasury and Finance, the Crown Solicitor and the Department for Environment and Water, and consequent assurance and advice with respect to legal, financial, procedural and sustainability issues has been obtained.

This circular sets out:

1. the role of Chief Executives vis-à-vis Cabinet and the PWC
2. the definition of public works under the *Parliamentary Committees Act 1991*
3. initial consultation
4. advising Cabinet of reports to the PWC
5. submitting reports to the PWC
6. further information.

The role of Chief Executives

Chief Executives must ensure that, in relation to the public works for which they are responsible, their agencies:

- comply with the requirements of Cabinet Guides and Treasurer's Instructions
- comply with all statutory and other legal requirements, particularly the requirements of the *Parliamentary Committees Act 1991*
- comply with other relevant government policies and guidelines, and
- provide reports and evidence to the PWC in the format and manner it requests.

Definition of public works under the *Parliamentary Committees Act 1991*

A 'public work' is defined under section 3 of the Parliamentary Committees Act as any work that is proposed to be constructed where:

- the whole or any part of the cost of construction of the work is to be met from money provided or to be provided by Parliament or a State instrumentality
- the work is to be constructed by or on behalf of the Crown or a State instrumentality, or
- the work is to be constructed on land of the Crown or a State instrumentality.

By virtue of section 16A of the Act, public works are compulsorily referred to the PWC if the total amount of money provided by Parliament or a State instrumentality to be applied to construction of the work will exceed \$4 million. In this case, no public monies may be expended on the actual construction of the public work until the PWC has presented its final report.

For the purposes of this circular and subsequent referral to the PWC, the definition of a 'public work' also extends to all capital works that are subject to Public Private Partnership arrangements.

Initial consultation

Agencies should, at the earliest opportunity, seek the views of the Department of Treasury and Finance and the Department for Environment and Water with respect to the proposed public works.

In addition, advice from the Crown Solicitor's Office should be sought at an early stage about any legal issues surrounding the public work or if there is any doubt as to whether works should be referred to the PWC.

Advising Cabinet of reports to the PWC

A Minister's intention to refer a proposal to the PWC must be noted by Cabinet if the total amount to be applied to construction of the work is \$15 million or more. The note must be submitted to Cabinet in advance of the report being sent to the PWC, and a copy of the report must be attached.

If the total amount to be applied to construction of the work is between \$4 million and \$15 million, the Minister may refer the work directly to the PWC without notifying Cabinet. In this case, the Cabinet note is replaced with a submission to the Minister. It is recommended that this document contain similar information to that described below for the Cabinet note. At a minimum it should contain enough information to allow advice from the Department of Treasury and Finance under Treasurer's Instruction 17, and enough information for the Minister to make an informed decision.

Where advice to Cabinet is necessary, two documents are required:

- a Cabinet note, and
- a PWC report.

Cabinet Note

The note to Cabinet is a confidential document that enables executive government to be fully informed of the need for a public work, based on the evaluation of all options, value-for money, high-level risk management and other relevant information.

The note must comply with the general requirements for all Cabinet notes set out in the Cabinet Guide.

The body of the note must specifically draw Cabinet's attention to the following matters:

- previous approvals in respect of the work
- the underlying policy-based justification for the work
- any matters of substance relating to the work including any relevant professional advice
- the outcome of any consultation, including a report on the outcome of any consultation that has occurred with:
 1. the Department of Treasury and Finance (on economic and financial issues)
 2. the Crown Solicitor (on legal process), and
 3. the Department for Environment and Water (on environmental sustainability issues)

[The wording of this report detailing the summary of consultation outcomes should be agreed with the agencies consulted but should not include copies of documentation between agencies and those consulted.]

- any major or significant risks associated with undertaking the work and the strategies proposed to manage those risks, and
- any necessary commitments or undertakings required in relation to these issues.

The note must be accompanied by a draft report to the PWC. The draft report must be attached as a complete and self-contained appendix to the note, ready to be sent to the PWC after being noted by Cabinet.

It is important to remember that the Cabinet note and the report to the PWC are separate documents written for different purposes. The two documents may therefore contain similar, but not identical information. For example, there may be risks of which Cabinet needs to be aware. The note should fully describe those risks and how they will be managed.

PWC Report

The report to the PWC is a public document, providing specific information to a bipartisan parliamentary committee on the government's planned construction of a public work, including its purpose, its design and appearance, how it will be built (including if a Public Private Partnership arrangement is proposed) and its estimated cost.

The report must contain all the information described in the following section.

In the example given above regarding the risks of the work, the PWC report should address the management of risks anticipated in delivering the proposed work itself. For example, if a building is to be demolished, there may be a risk that asbestos will be found. In this instance, the report to the PWC should indicate how this risk will be managed.

Timeline for Cabinet note and PWC report

After Cabinet has noted the draft report to the PWC, Cabinet Office will return the agency's file and formally advise the responsible Minister of Cabinet's decision. The expected timeline and process for review by Cabinet and the PWC should not be taken for granted. Draft reports to the Committee should be referred to Cabinet as early as possible to avoid the possibility of delays and additional costs if Cabinet requires changes to the report.

Once the report has been noted, the responsible Minister should send the completed report to the PWC with a suitable covering letter.

Submitting reports to the PWC following advice to Cabinet

Process

All correspondence to the PWC must be forwarded through the agency's Minister.

Chief Executives should note that the PWC will not arrange a hearing date to consider a proposed public work, where the total amount to be applied to construction of the work is \$15 million or more, until it is known when the matter is to be referred to Cabinet.

Content of reports to the Public Works Committee

All reports to the PWC should include information organized under the following headings:

Proposal

Brief description of the public work.

Background

Briefly describe the background to the public work, including any previous approvals.

Key aims

Succinct summary of the reasons for carrying out the public work.

Expected outcomes

Succinct description of what is expected to be achieved and the broad benefits of the public work.

Site and ownership details

This is a technical section. It should include a detailed description of the location of the public work, including certificate of title references for all affected land. Details of any Public Private Partnership arrangements should be provided here.

Proposed solution

Detailed description of the technical solution and design proposal.

Financial information

- Capital costs
- Operating costs
- Projected income
- Impact on consolidated account
- Public Private Partnership service payments (if applicable)

Economic evaluation

An economic evaluation in line with Treasurer's Instructions and Guidelines on the Evaluation of Public Sector Initiatives, including:

- consideration of the present and prospective public value of the work consistent with the provisions of Section 12C of the Parliamentary Committees Act
- the net present value of the work, assumed discount rate and estimated rate of return for the project.

Project program

Key project milestone dates.

Project procurement

A description of the tender and contract arrangements for consultants and contractors.

Project management

An outline of the project management structures and processes for implementing the work. Include details of significant project risks of constructing the work (e.g., in an older building being demolished or renovated, this may be the risk of asbestos and having to deal with the costs of its removal. Or, where a work is to be fast-tracked there may be a risk of cost overruns due to the need to adopt unusual or innovative project management practices).

Ecologically sustainable development strategies

Demonstrate how the work incorporates sustainable development technology and associated matters, i.e.:

- identify all elements of the work that reflect sustainable development technology
- summarise the advice of the Department for Environment and Water regarding the extent to which the design of the work appropriately uses sustainable development technology, and include any recommendations made by the department regarding the incorporation of further sustainability features, and
- where any recommendation of the Department for Environment and Water has not been adopted in full, describe the reasons for variation or nonacceptance.

Heritage status

State whether the work site has any heritage status and, if so, what measures will be implemented to address this aspect.

Aboriginal land or Aboriginal heritage

State whether the work site is subject to any native title or Aboriginal heritage claims and, if so, how such claims will be dealt with.

Consultation and approvals

The degree of public and inter-agency consultation undertaken in relation to the work.

Cabinet approval

The final paragraph of the report to the PWC is to confirm to the PWC that proper procedures and administrative processes have been undertaken for the work. The following statement should be included in all submissions:

Following the necessary level of consultation with the Department of Treasury and Finance, the Crown Solicitor and the Department for Environment and Water and consequent assurance and advice with respect to legal, financial, procedural and sustainability issues, Cabinet approved this work on [insert date].

(Note that this date of approval will be the date on which Cabinet approved the work itself, not the date on which it noted the intention to refer the project to the PWC.)

Chief Executives must ensure that their agencies are in a position to provide this advice to the Committee by ensuring that they comply with all the requirements for consultation and analysis of the impacts and risks of the proposals that they send to Cabinet, in line with the Cabinet Guides.

Appendices

Attach and list in the table of contents all documents relevant to the Committee's consideration of the work, e.g.:

- clear and legible map/s or plan/s of the project area
- economic evaluation, and
- a list of the external consultants who will be involved in the work
- information regarding Public Private Partnership arrangements (if applicable).

[Note: This list is indicative only. What appendices are appropriate will depend on each type of work.]

Assistance from the Public Works Committee

Further guidance on the Public Works Committee's requirements is available from the committee's [website](#).

Document Control

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For more information

Cabinet Office
T: 8429 5113

E: DPCCOAdministration@sa.gov.au
W: dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars