

Informing and advising Ministers

guidance to Secretaries about their responsibilities



**Victorian
Public Sector
Commission**

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Purpose

This guidance is primarily for Victorian Public Service (VPS) Secretaries, and VPS senior executives who exercise the delegated authority of Secretaries.

It provides high-level, principles-based advice about Secretaries' obligations and responsibilities when informing and advising Ministers. It also outlines how this supports our system in Victoria of responsible government and Ministerial accountability.

Secretaries should consider the principles in this guidance as a starting point for:

- clarifying arrangements for working with Ministers relevant to their department

- informing their departmental briefing practices.

Other VPS staff are encouraged to read this guidance and allow it to inform their actions in informing and advising Ministers.

Accountability and responsibility in Victoria's system of government

Understanding accountability and responsibility

In this guide:

- a person is accountable where they must answer for the consequences of a matter or speak to the result
- a person is responsible where they are charged with getting something done or achieving a goal.

Victoria's system of government

Victoria's system of government is derived from the Westminster system. A key concept of the Westminster system as it applies to Victoria is the doctrine of responsible government. Under this doctrine, Ministers:

- are responsible for the administration of their portfolios
- are accountable to Parliament for the exercise of Ministerial authority.

Under the evolution of Westminster principles in Victoria, ultimate accountability is to the people of Victoria. Ministers, as Members of Parliament, are elected representatives of the people of Victoria and are accountable to the people through the process of parliamentary elections.

Lines of accountability and responsibility

Cabinet is the Victorian Government's principal decision-making body. Cabinet considers questions of policy, administration and legislation. All Ministers are part of



Cabinet and have collective decision-making responsibility for Cabinet decisions (See further the Victorian Cabinet Handbook, available at: <https://www.vic.gov.au/cabinet-handbook>).

Individual Ministers may give directions to departments to implement their decisions or the decisions of Cabinet and are responsible for administering and overseeing their portfolios.

The role of the VPS is to support the government of the day to deliver its agenda. In accordance with the *Public Administration Act 2004 (Vic)* (PAA) and the *Code of Conduct for Victorian Public Sector Employees* (the Code), the VPS:

- is professional and apolitical
- provides frank and impartial advice to support government decision-making
- implements government decisions.

The line of accountability under the Victorian system of government links from Secretaries, to the Minister, to Parliament, to the community:

- Secretaries are accountable to the Minister for their departmental responsibilities
- the Minister is accountable to Parliament for the actions and outcomes of the department and their portfolio
- the Government is accountable to the people, in their capacity as the electorate for the Parliament.

The board of a public entity is also accountable to the Minister for the exercise of its functions. Secretaries support Ministers to oversee public entities to enable Ministers to account to Parliament for a public entity's exercise of its functions.

Clarifying who's responsible and accountable

Responsibility for a matter can be held by multiple people and can be delegated. Similarly, while only one person should be ultimately accountable, it may be the case that multiple people are accountable for different aspects of a matter.

Secretaries operate in a complex environment. Uncertainty about responsibilities and accountabilities may arise due to:

- complexities relating to a Secretary's role in supporting Ministerial oversight of public entities in the context of the board of a public entity being directly accountable to the Minister
- the role of coordinating Ministers compared with portfolio Ministers, or a Secretary having reporting obligations to both the Premier and portfolio Minister
- the interconnected nature of service delivery arrangements, creating the potential for roles to overlap
- relationships with Administrative Offices
- whole-of-government programs or services or where matrix management or oversight structures are in place, resulting in multiple reporting lines.

In any structure, it is important to always be clear about:

- who is responsible and accountable for what
- what reporting lines are in place.

Secretaries and executives should ensure they understand any relevant agreed and documented governance and accountability structures, such as the Victorian Cabinet Handbook. If there remains any doubt about who is responsible and accountable, Secretaries and executives should raise it immediately with the relevant Minister or departmental executive and seek clarity. It is likely that others share this uncertainty and addressing it early is the best way to proceed.

In seeking clarity:

- refer to and follow any agreed and documented governance and accountability structures
- clarify responsibility directly with the owners of the structures in which you are operating.

As a central agency in the Victorian Government, the Department of Premier and Cabinet may provide advice and assistance to clarify responsibilities and accountabilities. It does this on the basis of its whole-of-Victorian government role in governance and coordination, and in managing Cabinet processes.



A Secretary's key responsibilities

Legal responsibilities and obligations

Secretaries have a number of specific legal obligations and responsibilities under Victorian legislation. This includes, for example, the PAA and the *Public Records Act 1973 (Vic)*. This section outlines key obligations relating to a Secretary's role in informing and advising Ministers. Other obligations, for example under the *Financial Management Act 1994 (Vic)*, are not discussed in this guidance.

Secretaries:

- are responsible to their Minister/s for the general conduct and the effective, efficient, and economical management of the functions and activities of their department (and any related administrative offices)
- must advise their Minister/s in all matters relating to their department (and any related administrative office) and matters relating to a relevant public entity in their department's portfolio
- are responsible for working with, and providing guidance to, a relevant public entity to assist the entity on matters relating to public administration and governance
- must promote the Victorian public sector values as set out in the PAA: responsiveness, integrity, impartiality, accountability, respect, leadership and human rights
- must ensure that full and accurate records of their department's business are made and kept.

Under their employment contract with the Premier of Victoria, a Secretary is also subject to a duty to obey any lawful and reasonable directions made by the Premier.

Secretaries should apply their obligations in the context of:

- our system of responsible government in Victoria
- the PAA
- the role of the public service in supporting the government of the day to deliver its agenda.



In fulfilling their obligations, Secretaries must also comply with the Code. The Code is issued by the Victorian Public Sector Commissioner under the PAA and is binding. It is based on the public sector values and promotes adherence to those values. Under the Code, Secretaries are required to:

- provide frank, impartial and timely advice, with an understanding of its implications on the government's broader policy direction
- not withhold relevant information from the government of the day
- conduct themselves in an apolitical manner
- implement and administer the government's policies and programs openly and transparently
- maintain accurate and reliable records.

In addition to the need to respect and promote human rights as one of the public sector values, Secretaries also have a legal obligation under the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* to:

- give proper consideration to human rights in their decision-making
- act compatibly with human rights.

Informing and advising Ministers

Secretaries are legally obliged under the PAA to provide full information and frank and impartial advice in all matters relating to their department, its administrative offices and relevant public entities. This supports Ministers to make decisions, ensure their agenda is being implemented, and account to Parliament and the community.

When to advise

While there is not a specific set of rules as to what matters Secretaries need to inform their Minister about to fulfil their obligations under the PAA, the best outcomes will be achieved through the exercise of judgement and experience. It is also important for Secretaries to work through expectations with the Minister and their office early in their relationship. These discussions should:

- identify matters of interest to the Minister

- emphasise the Secretary's obligation to inform and advise the Minister
- establish agreed reporting requirements, for example addressing the frequency of briefings or level of detail of information preferred in briefings.

Secretaries should use their judgement and brief their Minister on all matters of significance. Matters of significance will include, for example:

- a new critical risk or issue relating to a Minister's legislative responsibilities, including their obligations under the *Charter of Human Rights and Responsibilities Act 2006* (Vic)
- a new policy proposal that has a material impact on the portfolio (including any proposed legislative amendments)
- expenditure exceeding their financial delegation
- Cabinet or Cabinet committee items
- the emergence of a new significant risk or an adverse change to an existing significant risk
- a significant operational matter that has a material impact on the administration of the portfolio, for example public transport delays, hospital waiting times and teacher shortages.

Part of a Secretary's role is to ensure Ministers are informed about significant and material matters related to the operational activity of the department and implementation of government policies and programs. This will enable them to:

- account to the Parliament and the community for the actions and outcomes of the department
- administer their portfolios in accordance with the highest expectations of public trust.

In deciding whether to advise the Minister of other matters, consider the matter's significance and importance in terms of:

- the impact it may have on the implementation of a government program or service, for example, transport services
- the impact it may have on the Victorian community or a community group, for



example people with a disability

- its sensitivity and public interest in the matter, for example an issue that is likely to become a matter for public debate in the media or the Parliament
- any material and significant risks associated with the matter, for example a financial, legal, social, environmental or reputational risk or the potential for a government policy, program or service to be negatively impacted or delayed.

Secretaries should be proactive in briefing the Minister on material and significant matters. While Ministers often proactively request information, Secretaries cannot assume their Minister is aware of what to ask for regarding the broad and detailed nature of departmental business.

A guiding consideration in deciding whether to brief is whether the Minister reasonably needs the information to oversee, administer and account for their portfolios. This does not mean a Secretary should brief the Minister on every matter dealt with by the department. Taking this approach would increase the risk of overwhelming decision-making and hindering the effective and efficient functioning of departments and government.

Secretaries should exercise their judgement and use their experience to determine whether the significance of a matter makes it materially relevant to the Minister such that the Secretary should advise the Minister of it as part of their role in supporting responsible governance.

What constitutes a briefing

There are various ways to communicate with, and provide information and advice to, a Minister. This includes digital channels such as email, texts, messaging platforms and virtual meetings.

These tools can support Secretaries in being responsive to requests from Ministers. However, Secretaries should not assume that they:

- represent a complete formal briefing process
- fully acquit their responsibilities to advise Ministers and make appropriate records of that advice.

Sound judgement and active consideration of a matter's significance are required in

balancing the provision of informal updates to Ministers with the provision of formal briefings which allow for considered and documented ministerial decision-making.

Informal conversations and communication methods may be appropriate for providing factual information to the Minister or for an initial policy discussion or decision.

Secretaries should confirm the factual information, discussion or decision in a follow-up written brief or other appropriate formal briefing process, unless they are confident that the matter is not material or significant enough to warrant this. If a Secretary believes this is the case, they may still document the matter in file notes or meeting minutes.

Formal systems are important:

- for record-keeping purposes
- to provide clarity as to what the Minister has been briefed on.

Where timeliness is of particular importance, expedited formal briefing processes can assist in striking the right balance while maintaining accountability and transparency. Secretaries are encouraged to determine what expedited processes may look like based on the current briefing systems and processes their department uses and the technology that is available at the time.

Technology is evolving rapidly and can play a role in meeting increasing expectations for timely responses. Secretaries are encouraged to periodically review compliance with public record keeping requirements to confirm that the use of new technology and communication options complies with those requirements. This is consistent with a Secretary's role to steward the public service and ensure that it remains contemporary with social and technological advances.

Ministerial advisers may also seek information from a Secretary as part of the adviser's role in supporting the Minister. It is important to confirm that information the department provides:

- is for the purposes of advising or supporting the Minister
- reaches the Minister personally in appropriate cases.

Providing information to an adviser does not equate to briefing the Minister. Where there is any uncertainty as to whether a Minister is aware of a particular matter that a Secretary thinks the Minister should be aware of, the Secretary should seek direct



confirmation from the Minister as a matter of clarification.

Managing the department and implementing government programs and services

Secretaries are responsible for managing their department. This includes overseeing the day-to-day activities and operational decisions that are required to be made in real time to ensure the effective functioning of their department and government.

Secretaries are responsible for ensuring their department implements the agenda of the government of the day. Once the Minister has made a decision or given the department a direction, a Secretary must ensure that their department implements that decision professionally and responsively and not repeatedly advise on other options the department may have recommended.

However, where there is a significant change in circumstances (for example, new material risks are identified), it is appropriate to advise the Minister of these matters to confirm the Minister's decision. It may also be appropriate to provide a supplementary briefing, following a decision, to update the Minister on new or realised implications of the decision. It is also possible that a Secretary could receive differing or conflicting directions from different Ministerial portfolios which would justify additional briefings on already addressed matters to clarify the matter.

Key challenges in meeting responsibilities

Providing difficult advice

A Secretary will from time to time need to provide the Minister with advice and clarification that may not be received favourably by the Minister, including actions by their department that need to be changed or corrected. A Secretary may also need to provide advice that they know or anticipate the Minister may not welcome.

This should be managed openly and transparently and by:

- acknowledging the issue
- being responsive by presenting options and possible solutions.



Shielding the Minister from information and advice that they may not be comfortable hearing is not consistent with the principle of frank and fearless advice. It is only by providing the Minister with full information and advice that Ministers can consider the matter, take into account relevant information and make decisions about necessary actions.

Informing the Minister's office that such a brief is forthcoming may be helpful and assist in building a positive relationship with the office. Discussing the direction of the advice may assist advisers to understand the issues and allow advisers to indicate any matters that the Minister wants specifically addressed in the brief. However, Secretaries should avoid discussing options or testing ideas with advisers in a way that would filter, constrain or modify their frank and impartial departmental advice to the Minister.

There may also be times where a Minister has outlined specific preferences regarding when they want to receive a brief or the types of briefs they want to receive. This might include a request not to be briefed on a particular matter at a point in time. Secretaries should consider why the Minister has made these requests. For example, the Minister may:

- consider a matter to not be significant enough to warrant a briefing
- want to delay a briefing until further work has been done to identify and analyse potential departmental advice and options.

It is important that Secretaries develop trust with their Minister and consider the Minister's wishes in appropriate circumstances. A Secretary should also be mindful of their:

- legal obligation under the PAA to advise Ministers in all matters relating to their department and related administrative offices
- role in supporting accountability and transparency in government.

The Minister's preferences alone should not be determinative of whether to brief. A Secretary should consider the impact of not briefing and proceed to brief if they consider that it is necessary and required by their role as department head under the PAA. This may include where they consider:

- the matter is sufficiently material and significant

- a brief is important to enable public scrutiny over government decisions in line with the PAA and public sector values.

Secretaries should ensure that briefs are provided with full consideration of the matter at hand including analysis, evidence, consultation with relevant experts, understanding of risks and who owns the risk, and with options for a path forward.

Providing apolitical advice

The Government and its Ministers will primarily frame a policy issue through:

- the formation and presentation to the electorate of policy platforms
- consultation with the community
- Cabinet deliberation and decision-making.

The public service also has a significant role in policy-making, including:

- contributing long-term considerations and subject matter expertise in developing new and updated policy approaches
- providing policy options to Ministers to support them and the government of the day in implementing their agenda.

In contributing to policy advice and in exercising their judgement, a Secretary should be aware of, but not influenced by, political or electoral considerations that exist separate to policy advice. The purpose of policy advice should not be to advance a particular party's political interests. Secretaries should be aware of the political context; however, they should always ensure they are providing frank and impartial policy advice separate to the political context.

Working with urgency

Advising a Minister is frequently a matter of urgency. Ministers can require advice or information in very short timeframes, for example to account to Parliament. Urgency may also be influenced by daily media queries on matters of public significance or interest.

Responding to urgent matters should be considered standard operating practice and part of business as usual for Secretaries and departments.

It is important that Secretaries are responsive to their Ministers and support them by:

- providing timely advice and information
- acting quickly when directed to do so.

It is therefore imperative that Secretaries establish working arrangements and briefing processes which can operate effectively in urgent situations. Along with the use of appropriate technology, these processes should be designed to support the quick and efficient provision of advice.

Urgency does not remove the need to:

- abide by public sector values, principles, conventions and processes
- comply with the *Public Records Act 1973 (Vic)*.

Urgency increases the importance of documenting actions and decisions as Secretaries and senior departmental executives can find themselves in circumstances where information is passed on quickly and clarity and direction can be low.

Emergency situations

Working arrangements should operate effectively under an emergency and should work consistently with established Victorian Government emergency management arrangements (for example, the Victorian State Emergency Management Plan, prepared under the *Emergency Management Act 2013 (Vic)*).

To support effective processes under emergency management conditions, Secretaries should:

- ensure they and their executives have familiarised themselves with relevant guidance for Ministers and senior officials on the management of emergencies
- induct senior members of their department in the department's emergency management processes when they commence with the department
- conduct scenario testing exercises with their executives, relevant staff and Ministers
- ensure their Ministers are informed about any decision-making powers of key

emergency management and operational roles that have legislated responsibilities.

Modelling the public sector values

Upholding and modelling the public sector values is one of a Secretary's key responsibilities under the PAA and as a steward of the VPS.

Secretaries should use their judgement in approaching a task to ensure that all values are considered and complied with in their actions. It is important for Secretaries to avoid overemphasising one value at the expense of another. For example, being responsive through the use of new communication tools is important, but this cannot be at the expense of an ability to be accountable, for example through endorsed and documented ministerial briefings.

At times, different people working on a particular issue may have different ideas about how to best comply with the public sector values and therefore about the right course of action. Secretaries should foster a culture in their department that encourages open and frank discussion about the best way to ensure all public sector values are complied with in providing advice to Ministers.

Building trust with the Minister and their office

It is important that there is established and well-developed trust between Ministers and public servants. A Secretary should prioritise establishing trust with the Minister and their office from the start of their professional relationship.

Trust is built through:

- a Secretary's and department's consistent practices
- the provision of evidence-based advice consistent with the Victorian public sector values.

Advice should be:

- built on departmental expertise and help to navigate the Minister through a matter and offer solutions or pathways forward

- responsive to the Government's priorities
- consistent with the public sector values.

With time in their portfolio, a Minister will identify what they need to work effectively with the Secretary and department. Secretaries should regularly review their working arrangements and processes to ensure that they meet the Minister's needs and the Secretary's obligations. This will include placing well trained and supported public service departmental liaison officers in Ministers' offices to assist with departmental business.

Good working relationships between departments and ministerial advisers benefit from clarity of roles and responsibilities. A Secretary should discuss these with their Minister and document the discussion as an agreed protocol for department staff which addresses and complements the guidance in this document.

Secretaries should, through their departmental processes, develop templates and materials to provide detailed guidance to support effective professional relationships between the department, Ministers and their advisers. These processes and materials should be reviewed regularly to ensure they are maintained and evaluated.

A professional working relationship with the Minister and their office requires the Secretary and the department to be aware of the Minister's priorities relating to their responsibilities as members of Parliament. This includes awareness of the timing of Parliamentary sitting days and business, and other timing requirements for electorate-related activities.

A trusting relationship must be built on:

- a common understanding of roles
- an open sharing of risks, information and ideas.

Working with Ministerial advisers

A trusting relationship with the Minister is supported by a trusting relationship with their advisers. In Victoria, advisers are appointed by the Premier to work in a ministerial office. They provide advice on policy, political and other issues. The main adviser a Secretary will interact with in practice is the Minister's Chief of Staff.

Keeping advisers informed will assist a Secretary in supporting their Ministers, as advisers will be aware of what information the Minister wants and how to best support them. Working closely with advisers therefore allows a Secretary to be responsive to the Minister's needs.

Secretaries should always remember that they work to support the Minister rather than their advisers. They should also bear in mind that:

- advisers are not public officials. Though advisers are employed under the PAA, they are not included in its definition of 'public official'
- unlike public officials, who must be apolitical in accordance with their Code of Conduct, advisers are employed by the Premier, are responsible and accountable to their Minister and can provide political advice
- through agreed processes and protocols with the Minister and their office, a Secretary should confirm the authority of advisers' actions to ensure that any directions and decisions being implemented are coming from the Minister
- a Secretary should confirm that information that the department is providing to an adviser for the purpose of briefing the Minister is in fact reaching the Minister and is not being filtered, including through the use of endorsed briefs where necessary.

These factors may be a useful basis upon which to discuss an agreed protocol for communications and engagement between the Secretary and the Minister's office.

An adviser may sometimes request that a brief be amended before submitting it for the Minister's consideration. It is important to provide the Minister with:

- the information they need to make decisions
- advice on all options that the Minister wants to be explored.

Noting that the Secretary is ultimately responsible and accountable for the contents of a brief, the Secretary may consider it appropriate to include additional information in a brief at the request of an adviser to ensure it meets the Minister's needs. However, a Secretary should not amend a brief if the final product no longer represents the impartial, considered advice and expertise of the department. This is equally true of requests made by the Minister personally. To promote transparency and accountability, a brief should reflect where it includes new information at the request of an adviser.

To maintain an effective and trusting relationship with the Minister's office, a Secretary should:

- ensure that they are regularly meeting with the Minister's Chief of Staff
- support relevant departmental senior executives to develop professional working relationships with the Minister's advisers so all parties can better understand each other's priorities and working styles.

A trusting relationship is built on the understanding and respect for the different roles of the Minister's office and the department. One is there to serve the Minister's priorities and needs and provide advice on political considerations; the other is there to provide independent policy advice and deliver the Government's policy priorities and programs.

Further information about the role of Minister's advisers is outlined in [Serving Government: A Guide to the Victorian Public Sector for Ministerial Advisers](#).

Documentation

A key requirement in the provision of frank and impartial public service advice is that it is documented. This provides clarity:

- at that time, about discussions and decisions
- in the future, for those who wish to revisit and better understand discussions and decisions.

Clarity in responsibility, accountability and decision-making is a fundamental component of advising the Minister. The need to keep full and accurate records is also a requirement under the [Public Records Act 1973 \(Vic\)](#).

Departments benefit from creating work systems which embed as routine the documentation of key decisions, discussions and advice. This should include use of departmental liaison officers, assistants or advisers who focus on departmental processes and documentation as a priority in their role.

Informed by this guidance, Secretaries and senior executives can demonstrate



leadership to departmental staff by documenting:

- how they will engage the Minister and their office
- expectations for how departmental staff will engage with the Minister and their office.

This may be informed by the Minister's expectations about the service they expect in meeting their requests for advice and information. This documentation can then be distributed amongst departmental staff.

Further reading and resources

Academic sources

- John Alford et al., 'Into the Purple Zone: Deconstructing the Politics/Administration Distinction' (2017) 47(7) *American Review of Public Administration* 752
- Dr Subho Banerjee, 'A Conversation Starter for New Ministers' <https://www.anzsog.edu.au/resource-library/news-media/a-conversation-starter-for-new-ministers>
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- Roderick A. W. Rhodes, 'Recovering the Craft of Public Administration' (2016) 76(4) *Public Administration Review* 638

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- Board of Inquiry, *COVID-19 Hotel Quarantine Inquiry Final Report and Recommendations* (December 2020)
- Victorian Public Sector Commission, *Serving Government: A Guide to the Victorian Public Sector for Ministerial Officers* (Guidance, February 2019)
- Victorian Auditor-General, *Implementing a New Infringements Management System* (Audit Report, May 2021)
- Victorian Cabinet Handbook



Other sources

- Australian Public Sector Commission, *Supporting Ministers – Upholding the Values* (Guidance)
- Catherine Althaus, Peter Bridgman and Glyn Davis, *The Australian Policy Handbook* (6th edition, 2017)
- State Services Commission (New Zealand), *Acting in the Spirit of Service: Free and Frank Advice & Policy Stewardship* (Guidance, December 2017)
- Bruce DeBelle AO QC, *Report of Independent Education Inquiry* (June 2013), Chapter 7
- Professor Peter Shergold AC, *Learning From Failure: why large government policy initiatives have gone so badly wrong in the past and how the chances of success in the future can be improved* (August 2015)
- Crime and Corruption Commission (Queensland), *An investigation into allegations relating to the appointment of a school principal* (July 2020)
- Department of the Prime Minister and Cabinet, *Our Public Service, Our Future: Independent Review of the Australian Public Service* (December 2019)

