

Cabinet Handbook

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Introduction

Cabinet is the forum of Ministers which decides major policy for the Victorian Government. It comprises all Ministers of the Crown and considers questions of policy, administration and legislation.

Victorian Government agencies play a critical role in providing advice to Cabinet and its Committees.

Integral to Cabinet's success is a well-functioning system. Cabinet relies on high-quality Cabinet documents, timely circulation and appropriate levels of security.

This Cabinet Handbook outlines:

- the place of Cabinet within the broader system of Executive Government
- the underlying principles of Cabinet
- general expectations for Cabinet business and meetings
- processes for appointments
- components of a quality submission
- requirements to manage and secure Cabinet documents.

The Handbook has been developed as a resource for Ministers, ministerial staff and public officials involved in the development and progression of Cabinet business.

1. Key features of the Victorian Cabinet system

In Victoria, Cabinet is the body through which the significant decisions of the Government are determined. The outcomes of Cabinet decisions may require action through:

- The Parliament
- The Governor
- Individual Ministers
- Holders of a statutory office.

1.1. Parliament and Ministers

Cabinet operates within the broader context of the Executive Government of Victoria.

The *Constitution Act 1975* provides that the legislative power of the State is held by a Parliament comprising Her Majesty, the Legislative Assembly and the Legislative Council. Members of Parliament are democratically elected, and governments are formed based on the ability to command the support of a majority of members in the Legislative Assembly.

There are 88 Members of the Legislative Assembly and 40 Members of the Legislative Council. The members of the Legislative Assembly are elected by a method of preferential voting, while the members of the Legislative Council are elected by a method of proportional representation.

The State consists of eight Legislative Council electoral regions, which return five Legislative Councillors each. Every Legislative Council region consists of 11 Legislative Assembly electoral districts, with each Assembly district returning one Legislative Assembly Member to Parliament.

The party that forms Government may elect, or the Premier may nominate, a number of its Members of Parliament to be Ministers. Ministers of the Crown are appointed by the Governor on advice of the Premier.

Section 50 of the *Constitution Act 1975* establishes that the number of Ministers may not exceed 22 and no more than six Ministers can be drawn from the Legislative Council and no more than 17 can be drawn from the Legislative Assembly. By convention, the Premier is a Member of the Legislative Assembly.

1.2. Governor of Victoria and Executive Council

Under the *Constitution Act 1975* and the *Australia Act 1986* executive power is vested in the Crown and is exercised by the Governor as the Queen's representative. The Queen, on the advice of the Premier, appoints the Governor of Victoria.

The role of the Governor can be divided into four broad parts – constitutional duties, ceremonial functions, engagement with the Victorian community, and international engagement.

The Executive Council is established under section 87A of the *Constitution Act 1975* and consists of all current and former Ministers. However, only current Ministers can attend Executive Council meetings. Quorum for Executive Council meetings is the Governor and two current Ministers, with the Governor responsible for chairing the meeting. Typically, four Ministers attend.

The Executive Council advises the Governor ('Governor in Council') when he or she is required by law or convention to act in accordance with the advice of the Executive Council, and when he or she is permitted or required by statute or other instrument to act in Council.

1.3. Cabinet

Cabinet is the principal decision-making body for the Victorian Government and comprises all Ministers of the Crown. In Victoria, Cabinet considers questions of policy, administration and legislation.

The Premier, as the leader of the Government, chairs Cabinet. Cabinet is a formal meeting of Ministers but has no legal powers, nor is there any reference to Cabinet contained within Victoria's Constitution. By virtue of the authority accorded to Cabinet, and in the Westminster tradition, it is the body through which the significant decisions of the Government are determined.

Cabinet considers significant matters of state, including major policy issues, legislation, matters likely to impact relations with Local, other State and Commonwealth governments, and significant appointments.

Matters to be discussed at Cabinet are requested by the responsible Minister for inclusion on the Cabinet agenda via the Cabinet Secretary.

Cabinet is attended by the Premier and Ministers, the Cabinet Secretary, the Premier's Chief of Staff, and the Secretary of the Department of Premier and Cabinet. In exceptional circumstances, and with the approval of the Premier, guests may attend for particular items.

Cabinet Committees

Cabinet is usually supported by a number of Cabinet Committees, which focus on specific subjects (security) or functions (legislation). Cabinet Committees are established by a decision of the Premier or Cabinet.

Guided by their Terms of Reference, Cabinet Committees provide a forum for detailed discussion and analysis of options and consideration of issues from a broad cross-portfolio perspective.

The Committee structure comprises three types:

- **Standing Committees:** ongoing committees that report directly to Cabinet and support it in its decision-making role and provide oversight of Sub-Committees and Taskforces
- **Sub-Committees:** ongoing committees that support a specific whole of government policy area, allow for broad Ministerial representation and support standing Committees
- **Taskforces:** time-limited committees that are used to develop, implement and oversee the delivery of a specific policy, or related set of policies.

DPC provides secretariat support for all three groups.

Ministerial Working Groups (MWGs) support Cabinet decision making, but do not form part of the Cabinet Committee structure. A notable distinction is that MWGs may include members from outside of Government. MWGs support by the department supporting the MWG's Chair. MWGs should only be established with the approval of the Premier or Cabinet.

1.4. Roles and responsibilities

Premier

The Premier determines the structure and terms of reference for Cabinet Committees, appoints Ministers as Chairs and members, chairs Cabinet meetings, and chairs or delegates chairing for Cabinet Committees. Through the Cabinet Secretary, the Premier approves the final agenda for Cabinet and Premier-chaired Committee meetings.

Ministers

Ministers are responsible for the administration of their designated portfolio areas. All Ministers are required to attend each Cabinet meeting, unless their absence is agreed by the Cabinet Secretary (on the Premier's behalf).

Ministers present submissions that propose legislation, policy proposals and other matters relevant to their portfolio. They are supported by their relevant Victorian Government department(s) and/or agency/agencies in the development of these submissions.

Ministers are responsible for the submissions they present to Cabinet. They must ensure appropriate consultation takes place during the development of any submission and that Cabinet information is handled appropriately in accordance with Cabinet conventions. They must also ensure that their submissions are of a high quality and meet the required timeframes.

Ministers to whom the Premier has delegated chairing responsibilities for a Cabinet Committee are responsible for oversight of the Committee agenda, with the Cabinet Secretary, and for the effective management of meetings, including suitable attendance, approval of presentations and timely finalisation of minutes.

Ministers attending meetings of Cabinet or Cabinet Committees must declare any private interests held by them, or members of their immediate families, in relation to the matters before the relevant meeting. Ministers should advise the Premier should they find themselves in a situation of conflict of interest. This advice will be tendered at Cabinet and a record made by the Cabinet Secretary that the Minister so declared his/her pecuniary interest or conflict of interest and also withdrew from the Cabinet or Committee Meeting when it was determined necessary.

Cabinet Secretary

The Cabinet Secretary works with the Premier, Special Minister of State, Ministers and their offices in the ongoing oversight of Cabinet, Committees and legislation, including:

- assisting in setting and coordination of Cabinet and Committee agendas and forward Cabinet and Committee programs to achieve an orderly handling of Cabinet and Committee business
- ensuring that appropriate consultation occurs in the Cabinet process in accordance with the Government's policy and procedural requirements
- implementing and ensuring compliance with agreed Cabinet and Committee protocols and processes
- advising on issues involving the receipt and distribution of Cabinet and Committee submissions, recording the decisions of Cabinet and providing further support as required
- assisting in settling the record of Cabinet decisions, in consultation with the Special Minister of State, Secretary, Department of Premier and Cabinet (DPC), and Ministers where required
- assisting in the management and coordination of the legislation program
- monitoring work commissioned through Cabinet Committees, for example in the form of requests for report backs
- arranging Ministerial attendance at Executive Council meetings and, in exceptional circumstances, approving matters for Executive Council consideration the day following consideration by Cabinet.

Special Minister of State

The Special Minister of State oversees the business of Cabinet, Committees and legislation on behalf of the Premier. This includes a specific focus on the Government's legislation program, and monitoring the implementation of the Government's short, medium, and long term strategic objectives to ensure the timely progression of priorities.

Parliamentary Secretaries

Parliamentary Secretaries are Members of Parliament who are appointed by the Premier to perform the role of supporting Ministers to carry out some of their responsibilities. Parliamentary Secretaries are not part of the Executive Government

of Victoria, which means they are not members of Cabinet and do not attend Cabinet meetings, though may attend Cabinet Committee meetings as observers. However, as Parliamentary Secretaries can support Ministers in the Cabinet process, they are bound by the Cabinet conventions outlined below.

Parliamentary Secretaries may attend Cabinet Committee meetings at the invitation of the Premier but are not members of Cabinet Committees. A Parliamentary Secretary's attendance at a Cabinet Committee meeting is solely to support a Minister who is a member of that Committee.

Secretary, DPC

The Secretary, DPC leads the Victorian Public Service (VPS) and is the VPS's principal adviser to the Premier. The Secretary attends Cabinet and supports the Cabinet Secretary in recording the decisions of Cabinet.

The Secretary is also responsible for the administration of DPC. This includes being the custodian of Cabinet documents for the Government and previous governments to ensure their security and preservation (see Section 7 for further information about Cabinet document management and security).

Cabinet Office, DPC

The Executive Director, Cabinet Office is responsible for the operations of the Cabinet process and supports the Cabinet Secretary in their role.

On behalf of the Secretary, DPC, the Executive Director acts as the custodian of authoritative Cabinet documents for the Government and previous governments to ensure their security and preservation for archival purposes, until transferred to the Public Records Office of Victoria (PROV).

The role of Cabinet Office is to:

- provide expert and impartial advice on Cabinet systems and processes to support continuity of core Government operations
- support Cabinet, Cabinet Committees, the Premier, the Special Minister of State, the Cabinet Secretary, and the Secretary, DPC in the conduct of Cabinet and Cabinet Committee business
- receive, process and distribute submissions to be considered by Cabinet and Cabinet Committees
- assist the Cabinet Secretary with Cabinet and Cabinet Committee programming and agenda setting to ensure effective use of Cabinet's time
- maintain a record of Cabinet and Cabinet Committee decisions
- advise departments and agencies on Cabinet and legislation processes and requirements
- coordinate the legislation program, including its relationship with the Cabinet agenda
- ensure the security and preservation of Cabinet records
- manage Victorian Auditor-General Office, Freedom of Information and litigation requests for access to Cabinet and Committee documents
- provide support for meetings of the Executive Council.

Departments

Departments will establish internal processes to brief portfolio Ministers on relevant Cabinet and Committee items. Departments will also manage the development of advice on coordination submissions, to inform lead departments of issues across their portfolios. Departments are also responsible for internal systems to communicate the relevant decisions of Cabinet or Committees, and to monitor the implementation of Cabinet or Committee decisions led by their portfolio Ministers.

Office of the Chief Parliamentary Counsel (OCPC)

The role of OCPC is to provide the State of Victoria with high-quality services related to the development, drafting, publication and implementation of legislation.

OCPC drafts legislation on the authority of Cabinet or on the authority of the Premier. In performing this function, OCPC works with departments to settle drafting instructions for Cabinet's approval. Bills are then drafted in line with this approval for final endorsement at Cabinet and subsequent introduction into Parliament.

OCPC also settles, certifies and advises on statutory rules, Rules of Court and other subordinate legislation, drafts House Amendments and provides a range of legal and administrative advice to Government on legislation and Parliamentary matters.

Cabinet and Legislation Liaison Officers (CLLOs)

CLLOs are the point of contact in each department for information and guidance on Cabinet. The role of the CLLO includes:

- providing advice on Cabinet processes and protocols and ensuring the timely preparation and lodgement of submissions
- being the central point of contact for Cabinet Office and other departments on Cabinet matters relating to their department
- monitoring, coordinating and forecasting Cabinet business of the Minister(s) and department and keeping Cabinet Office informed of developments
- ensuring submissions and all attachments, including second reading speeches and Statements of Compatibility with the *Charter of Human Rights and Responsibilities Act 2006* adhere to the procedural requirements outlined in this Handbook
- overseeing access to, and security of, Cabinet documents held within their department.

2. Cabinet Conventions

As with other Westminster Governments, Cabinet is not established by statute, and its strength is maintained via adherence to a number of principles focused on shared purpose, and robust deliberation.

Collective responsibility

Cabinet decisions are collective decisions and are binding on all Ministers as government policy. Accordingly, all Ministers give their support in public debate to the collective decisions of Cabinet, even if they do not agree with them.

Confidentiality

The openness and frankness of discussions in the Cabinet room are protected by the strict observance of confidentiality, and, except in the event that Cabinet agrees to public release of its deliberations, all Cabinet information (including oral and written information) must be kept strictly confidential and secure at all times.

Unauthorised or premature disclosure of Cabinet deliberations may be prejudicial to the proper consideration of an issue by government and can be damaging to the public interest.

'Need to know'

To maintain Cabinet confidentiality, access to Cabinet information is tightly controlled and the distribution of this information should be determined on a 'need to know' basis. Cabinet documents, both hard-copy and digital, need to be managed in accordance with the *Public Records Act 1973* and standards issued by the Keeper of Public Records.

Ministers and department Secretaries are responsible for having appropriate procedures in place for managing the security of all Cabinet information in their office, their relevant department or agency/agencies.

3. Administration of Cabinet and Committees

3.1. Matters for Cabinet

Cabinet considers major or significant policy issues. The types of submissions for Cabinet consideration include proposals:

- requiring new legislation
- relating to whole of Victorian Government policies and programs
- with a significant impact on either public or private sector investment and employment
- establishing new non-departmental entities
- relating to significant intergovernmental matters
- relating to reports and other major policy reviews which require a Victorian Government submission/response
- to make full-time and specified part-time appointments.

Items proposed for Cabinet consideration may first require consideration by a Cabinet Committee, especially for policy matters which require consultation across Government.

The following types of submission are used for Cabinet:

- **Bills at Cabinet – (BAC)** Submission seeking Cabinet approval of a Bill, and supporting documents, prior to its introduction to Parliament (BAC template or BAC Committee submission template)
- **House Amendments** - Submission seeking amendment to a Bill which has been introduced in Parliament (BAC template)
- **Exposure Drafts** - Submission seeking Cabinet's approval to publicly release a Draft of a Bill for stakeholder input between Approval in Principle and BAC (ED template)
- **Approvals in Principle (AIP)** - Submission seeking Cabinet approval in principle for the drafting of a Bill (General submission template);
- **Policy Proposals** - Submission seeking Cabinet's endorsement of a new policy or major reform proposal, or seeking to settle a policy position prior to the development of an AIP or BAC proposal (General submission template)
- **Victorian Parliamentary Reports** - Submission seeking Cabinet's endorsement of a Whole of Victorian Government response to a Parliamentary Committee of the Victorian Parliament (General submission template)
- **Other Victorian Government Reports** - Submission seeking Cabinet's endorsement of a Whole of Victorian Government response to an independent Victorian body (e.g. Victorian Commission for Gambling and Liquor Regulation) (General submission template)
- **External Reports** – Submission seeking Cabinet's endorsement of a Whole of Victorian Government external report/response (e.g. submissions to Commonwealth Inquiries) (General submission template)
- **Matters for Information** - Submission on a matter for noting by Cabinet rather than endorsement (General submission without coordination template)

- **Appointments** - Submission seeking Cabinet approval for appointments to particular Government bodies (Appointment submission template).

Officers' Papers

Submissions signed by senior officials (at least at the level of a Deputy Secretary) must be clearly distinguishable from submissions signed by Ministers. The submission must clearly indicate in its title that the paper is being presented by an Officer, not by a Minister.

Section 4 provides further detail and guidance on the submission types used for Cabinet.

3.2. Matters for Cabinet Committees

There are two types of matters considered by Cabinet Committees:

- **Matters for Endorsement (ME)** – Submissions on a matter for deliberation and endorsement by a Committee. For example, policy proposals are often first considered by a Cabinet Committee, to help determine policy objectives and allow for consideration of options and critical issues before the policy is implemented or developed into legislation
- **Matters for Noting (MN)** - Submission on a matter for noting by Committee rather than endorsement.

3.3. Cabinet and Committee process

Many Cabinet and Committee submissions follow a common process:

- Registration of proposed item
- Approval of proposed item by Cabinet Secretary
- Draft submission for coordination comment
- Final submission lodged for distribution
- Distribution of submission with final agenda
- Departmental briefing/s to portfolio Minister/s
- Meeting deliberation and decision
- Meeting record.

3.4. Registration of Cabinet and Cabinet Committee items

Ministers are required to seek the Cabinet Secretary's approval to register or move items on the Cabinet agenda, as well as for Committees chaired by the Premier. This is to ensure that the item and its pathway into the agenda are approved at Ministerial level.

- Approvals in Principle (AIP) and Bills at Cabinet (BAC) submissions will be registered on the relevant Cabinet agendas, in accordance with the dates listed on the legislation program. Subsequent to this, departments (on behalf of their Minister/(s)) will be required to submit a registration request to seek to move any AIP or BAC to another Cabinet date.
- For all other submission types, departments (on behalf of their Minister(s)) are required to:

- advise Cabinet Office of items proposed for Cabinet consideration over the next 12 months on a twice-yearly basis
- confirm submission readiness with a registration form submitted six weeks prior to the proposed consideration date
- submit revised registration forms for changes to already registered items
- submit appointment registration forms (which must include candidates' names, remuneration and CVs) four weeks prior to the foreshadowed Cabinet meeting date.

Cabinet Office consults with departments via their CLLOs on forthcoming items for Cabinet consideration, including both potential and confirmed items for future Cabinet agendas. Registration forms are available from Cabinet Office.

Registration forms for Committee items that have been deferred for Committee consideration by Cabinet should cite the date on which Cabinet made the decision to defer it.

Late or urgent changes to the agenda may only proceed with written approval by the Cabinet Secretary.

3.5. Submission lodgement

Cabinet and Cabinet Committee submissions

A Minister uses a submission to put a proposal to Cabinet or Committee for deliberation and decision. A quality submission enables informed and effective decision making. Submissions must be clear and concise, detailing key issues for decision, and contain clear recommendations to facilitate decision making.

A well-developed submission should clearly outline issues and options for consideration, be supported by evidence and identify appropriate consultation with relevant groups. Further advice on the preparation, development and writing of Cabinet submissions is at Section 6.

There are two stages of the submission lodgement process: draft coordination submissions and final submissions. All Cabinet submissions must undergo coordination except Bills at Cabinet, House Amendments, Matters for Information and Appointments. Exemptions are granted by the Cabinet Secretary only in exceptional circumstances.

For prescribed Committees 'Matters for Endorsement' require departmental coordination prior to Committee consideration.

A digital copy of the coordination and final submission and its attachments must be provided to Cabinet Office via the Secure Cabinet VicPortal. The digital copy must be one document that includes a scanned searchable submission, that has been rendered searchable and attachments converted from MS Office to PDF with no tracked changes. It should be accompanied by a signed Certificate of Endorsement.

Coordination submissions

Coordination submissions are submissions distributed prior to Cabinet or Committee consideration for formal comment from all departments. All departments are invited to review all coordination submissions; however they may determine that no comment is required.

To ensure proper consultation with all departments, coordination submissions must be lodged on the VicPortal **no later than noon, 16 business days** before the Cabinet meeting at which the matter is scheduled for consideration (taking into account public holidays).

Departments then have **three business days** to provide coordination comments to the authoring department. Departments are responsible for ensuring the appropriate level of authority for comments.

These comments are included towards the end of a Cabinet submission (further information is contained within the general Cabinet submission template).

Cabinet submission deadlines

Deadlines for the lodgement of Cabinet submissions and coordination comments ensure that Ministers have sufficient time to review and seek advice on Cabinet items ahead of Cabinet's consideration.

Cabinet submissions listed or proposed for a meeting must be lodged **no later than noon, seven business days** before the Cabinet meeting. Ministers seeking to lodge submissions after this time must seek the Cabinet Secretary's approval for late lodgement.

Committee submission deadlines

Committee submissions must be lodged with Cabinet Office by 12pm via the VicPortal at least **seven business days prior** to the Committee meeting, with the exception of meetings that are held on Tuesdays, which require submissions to be lodged eight business days before the Committee meeting. Ministers seeking to lodge submissions after this time must seek the Cabinet Secretary's approval from the relevant Chair or Cabinet Secretary for Committees chaired by the Premier.

Joint submissions

Ministers may decide that submissions dealing with some subjects should be prepared jointly. Joint submissions require the sponsoring Ministers to agree to the recommendations and content of the submission and to sign the submission.

3.6. Distribution of Cabinet Agenda and items

Ministers and Secretaries receive the upcoming meeting's draft Agenda and lodged Cabinet submissions **six business days** before the meeting and the previous Cabinet meeting's draft record **four business days** before the meeting.

The Cabinet Secretary confirms the Cabinet Agenda after the Premier is briefed by DPC on items registered for Cabinet's consideration. Ministers and Secretaries then receive the confirmed Agenda, certified record of the previous Cabinet meeting and approved late Cabinet submissions **two business days** before the Cabinet meeting. In the event that items involve highly sensitive information, the Cabinet Secretary may direct that the item is for "Ministers' Eyes Only".

Urgent or sensitive items proposed for Cabinet's consideration after the final agenda and submissions have been distributed require the approval of the Cabinet Secretary.

3.7. Distribution of Committee Agenda and items

Committee papers will be distributed **six business days prior** to the Committee meeting via the VicPortal, with final circulation of papers and confirmation of the agenda to occur **two business days prior** to the Committee meeting.

In accordance with the lodgement timeframes above, and based on an approved agenda, any urgent or sensitive items proposed for a Committee's consideration after the final agenda and submissions have been distributed require the approval of the Chair or the Cabinet Secretary (for Committees chaired by the Premier).

Copies of documents tabled during Committee meetings must be supplied to Cabinet Office for reference and archive purposes as soon as possible following the meeting. This includes any documents, such as presentation slides supporting a verbal presentation.

3.8. Committee attendance

Committee membership is open only to members of Cabinet. The Cabinet Secretary may attend Committee meetings and contribute to discussion but cannot be considered as part of the quorum for decision making.

Cabinet Office arranges all Committee meetings for the coming year in accordance with a schedule agreed by the Cabinet Secretary, in consultation with the Committee Chair, with any subsequent changes to meeting dates approved by the Cabinet Secretary.

In order to maintain the confidentiality and security of Committee discussions and decisions, attendance at Committees is restricted.

A quorum, consisting of the Chair (or Acting Chair) and two other Ministers is required for Committee decision making. It is desirable that a Committee be quorate throughout the meeting. At the direction of the Chair, additional Ministers may augment the membership of a Committee to enable a quorum to be attained.

In general, for Committees, attendance by departmental officials is restricted to the Committee Secretary, a maximum of two senior-level representatives from DPC and DTF (each). One exception will be during consideration of the State Budget, where up to three senior-level officials from DPC and DTF may attend. Any other variations will be specified in the Committee's Terms of Reference.

The Chair may have an additional senior level representative from his/her supporting department. For any additional attendees, the approval of the Chair is required.

If a Minister is unable to attend a Committee meeting, that Minister should advise the Chair, or the Cabinet Secretary in the case of Committees chaired by the Premier, in writing as soon as possible prior to the relevant meeting.

Ministers presenting a submission are invited to attend by Cabinet Office at the direction of the Chair. If the Minister is not able to attend, they must delegate responsibility for presenting the paper to another Minister.

Presenting Ministers may bring one ministerial adviser and one departmental official to the meeting for the relevant item only. Departmental officials support the presenting Minister/s by providing additional information or clarification if requested. It is not the role of the departmental official to provide support to non-presenting Ministers or to participate in decision-making.

3.9. Notification of non-attendance

If a Minister is unable to attend a Cabinet meeting, that Minister should advise the Cabinet Secretary, in writing as soon as possible and, in any event, prior to the relevant meeting.

3.10. Cabinet decisions and their implementation

The Cabinet Secretary and the Secretary, DPC, record the decisions of Cabinet. Following each meeting the Cabinet Record is verified by the Secretary, DPC and the Cabinet Secretary, in consultation with the Special Minister of State and then approved for circulation as a draft to Ministers one to two business days after the meeting. Ministers and Secretaries have until the next business day to provide feedback on the draft Record.

The certified record is then distributed two business days before the meeting. The Premier, as Chair of Cabinet, signs the certified record prior to the meeting.

Ministers and their departmental Secretaries are responsible for the communication and implementation of Cabinet decisions. Ministers may confer with their departmental Secretaries after a Cabinet meeting, particularly on matters relevant to their portfolio. Written or verbal instructions should be used to inform officers of Cabinet decisions and to advise on implementation strategies, consistent with the convention of Cabinet confidentiality.

The relevant Minister implements decisions of Cabinet for example through:

- issuing a decision or instruction to the department
- making a recommendation to the Governor in Council
- introducing a Bill to Parliament.

Ministers should establish procedures with their departments to ensure that decisions are implemented in accordance with any timetable agreed by Cabinet.

Where decisions affecting more than one portfolio are taken, it is the responsibility of the proponent Minister to ensure that the relevant Minister(s) and department(s) are appropriately involved in their implementation.

Where a joint submission is agreed, the respective Ministers should set in place an agreed implementation process.

Cabinet Office holds the approved Cabinet Record. Where a decision involves the preparation of legislation, an extract is provided to the Chief Parliamentary Counsel.

3.11. Committee decisions

Decisions of a Committee are the prerogative of Ministers who are Committee Members only, unless (at the direction of the Chair) additional Ministers have augmented the membership of a Committee for a particular item or items. Advisers and officials are not to take part in any vote on a determination made by a Committee.

Cabinet Committees derive their mandate from Cabinet. Generally Cabinet committee decisions are brought back to Cabinet for endorsement prior to action.

Committees report to Cabinet in the form of Committee minutes.

A number of committees have delegated authority to act on specific matters, however most Cabinet committee decisions are not implemented until they have returned to Cabinet for endorsement, unless the Cabinet Secretary agrees that decisions can be implemented without Cabinet endorsement.

Minutes should be written as a self-contained record of meeting outcomes. Committee minutes are to be prepared immediately after a meeting and progressed to the Committee Chair for approval at the earliest possible time.

3.12. Out of Session consideration

From time-to-time, and in exceptional circumstances, Ministers may request matters to be considered 'out of session'. Consultation must occur with Cabinet Office before the Cabinet Secretary is approached to approve out of session consideration. The Cabinet Secretary approves the timeframe for the circulation of submissions and the deadline for responses.

Ministers receive a decision page with a submission(s) but do not meet in person to discuss the proposal(s). Ministers either agree to support the submission recommendations or request a meeting to discuss the issue. No other options, for example "support subject to ...conditions", are available.

4. Types of Cabinet and Cabinet Committee submissions

There are a number of different submission types, to suit the purpose of the proposal.

4.1. Policy proposals (including Matters for Endorsement)

Policy Proposals (PPs) include all new policy and major reform proposals seeking Cabinet or Committee approval. The recommendation(s) of a policy proposal should seek a decision, rather than be a matter for noting.

In most instances, policy proposals are first considered by a Cabinet Committee, to help determine policy objectives and allow for consideration of options and critical issues before the policy is implemented or developed into legislation.

Upon consideration of a ME, the relevant Cabinet Committee may approve the policy proposal, refer it to Cabinet for consideration or refer the proposal to a subcommittee or taskforce for further policy development.

Policy proposals for Cabinet consideration are generally significant policy initiatives, particularly when the proposal has whole-of-government or cross-portfolio implications.

For PPs that propose the establishment of a new non-departmental entity that does not require legislation, further information can be found in Premier's Circular 2013/02. Appointments to new entities should be proposed in a separate appointment submission rather than as part of the PP. Such submissions can be considered at the same meeting.

PPs that relate to intergovernmental agreements (IGAs) must be considered in accordance with DPC and DTF guidance on analysis, governance and approval requirements for IGAs, including how, or whether, the IGA is considered by Cabinet or Cabinet Committees.

PPs use the 'General submission' template and MEs use the 'Committee submission' template.

4.2. Legislation proposals

Legislation proposals come to Cabinet in at least two stages: first, Cabinet **Approval in Principle (AIP)** for the drafting of the Bill and second, approval of the **Bill at Cabinet (BAC)**, prior to its introduction into Parliament.

If the proposed legislation represents a new policy position or a change in existing policy, Cabinet or Committee approval on the policy position should be obtained in a ME and/or a PP, prior to AIP.

Approval in Principle

AIP submissions must include drafting instructions, prepared in consultation with the Office of Chief Parliamentary Counsel. The instructions must identify the key issues to be addressed in the proposed Bill and must set out clearly how it is proposed to deal with all substantive issues.

If a Minister is seeking to significantly depart from the original AIP approved by Cabinet, a **'Supplementary AIP'** submission for Cabinet will be required. This ensures that Cabinet can consider the implications of any changes to the Bill prior to BAC.

Alternatively, in situations of exceptional urgency, the Minister may write to the Premier seeking approval for variations to AIP. The Premier still has the discretion to request the Minister to bring a Supplementary AIP submission to Cabinet where proposed variations significantly depart from AIP or carry significant risk.

Cabinet (or Premier) approval of additional drafting instructions provides the Chief Parliamentary Counsel with the authority to prepare the Bill based on the AIP and Supplementary AIP. Where Supplementary AIPs add substantial elements to the original AIP, a new Bill may be recommended by the Chief Parliamentary Counsel.

If there are significant business or competition impacts associated with the proposed legislation, a Legislative Impact Assessment (LIA) should be undertaken and attached to the AIP submission. The Victorian Guide to Regulation provides details on the requirements for preparing a LIA. The Guide is available at www.dtf.vic.gov.au.

AIPs use the 'General submission' template.

Exposure Draft

If a Minister wishes to publicly release a Bill for consultation prior to BAC, an **Exposure Draft (ED)** submission to Cabinet is required. An ED is a separate submission brought to Cabinet following AIP. Where possible, the AIP submission should seek Cabinet's approval to bring the item as an ED.

When seeking Cabinet's approval to prepare and release an ED, departments should:

- consider whether it is appropriate to release a draft Statement of Compatibility to accompany the ED of the Bill
- (if a draft Statement of Compatibility is to be released) seek approval in the Cabinet submission to publish the draft Statement of Compatibility with the ED of the Bill
- (if a draft Statement of Compatibility is not to be released) explain in the Cabinet submission the reasons why a draft Statement of Compatibility will not be released.

Cabinet must consider EDs of Bills before their release. Following the ED public consultation period, the BAC is presented to Cabinet, before introduction into Parliament.

EDs use the 'ED submission' template.

Bill at Cabinet

BAC submissions seek Cabinet or the authorised Cabinet Committee's approval of Bills before their introduction into Parliament. BACs are presented in the BAC submission template, which includes a number of attachments:

- a copy of the Cabinet print of the Bill (with Explanatory Memorandum) will be provided by the Chief Parliamentary Counsel
- a Statement of Compatibility with the *Charter of Human Rights and Responsibilities Act 2006*, a Second Reading Speech and a Bill Summary (provided by the department).

BACs **must** outline variations since AIP that are more than just technical or minor in nature. Significant departures from AIP should follow the Supplementary AIP or Premier's letter processes for approval of the variations.

Where BACs are consistent with AIP, they may be considered by the authorised Cabinet Committee, with final endorsement by Cabinet via the approval of the Committee meeting's minutes.

If for time reasons the Explanatory Memorandum is not included in the Cabinet Print of the Bill, the Memorandum is to be attached to the submission.

Lodgement of a BAC submission is contingent on the accompanying Bill being provided to Cabinet Office in time for circulation to Ministers in line with the approved Cabinet agenda.

BACs use the 'BAC submission' template for Cabinet or relevant Committee.

Joint AIPs/BACs

In exceptional circumstances a Minister may bring a joint AIP/BAC submission to Cabinet for consideration of the drafting instructions and the Cabinet print of the Bill.

Joint AIP/BAC consideration of a Bill is at the discretion and approval of the Premier and may be requested by a letter from the Minister to the Premier. Joint AIP/BAC submissions are confined to Bills which are either highly sensitive, are required to respond to a public safety matter or emergency situation, have significant urgent implications for the State or involve only technical statute law revision matters. The Chief Parliamentary Counsel must be consulted regarding the feasibility of timing and the level of detail required.

To prepare a Bill for joint AIP/BAC consideration, the Chief Parliamentary Counsel requires drafting authority from the Premier, as the Chair of Cabinet.

Joint AIP/BACs use the 'BAC submission' template.

House Amendments

House Amendments are required to make any changes to Bills once they are introduced into Parliament. Where proposed House Amendments depart substantially from what has already been approved by Cabinet (i.e. other than technical amendments), an accompanying submission is required.

This submission should address how and why the Minister is seeking to depart from the original Cabinet decision. Copies of the proposed changes to the Bill should be attached to the submission.

House Amendments use the 'BAC submission' template.

Private Members' Bills

The relevant Minister for the Bill will undertake an initial assessment of the Bill and prepare a submission for Cabinet consideration recommending the Government's response to a Private Member's Bill, which will include any amendments or alternate legislation.

The Parliamentary leadership is authorised to approve amendments or procedural questions relating to a Private Member's Bill if Cabinet cannot be convened. However, it is expected that the responsible Minister will bring a submission for

Cabinet consideration even if time constraints prevent circulation for coordination comments.

Private Members' Bills use the 'BAC submission' template.

4.3. Reports

The Government will be asked to submit or respond to a range of inquiries being undertaken by various bodies, such as Royal Commissions, the Victorian and Commonwealth Parliaments or the Productivity Commission.

Submissions and responses to these bodies should be from a whole-of-government perspective and Cabinet approval is required before a whole-of-government response is tabled. In some instances, the Premier may determine that a **submission** does not require Cabinet approval, or be considered by the authorised Committee, with final Cabinet endorsement via the Committee's minutes. However, all Government **responses** require Cabinet's approval.

These items are classified as either:

- Victorian Parliamentary Reports (for responses to Parliamentary Committees of the Victorian Parliament)
- Other Victorian Government Reports (e.g. Victorian Government Report in Multicultural Affairs)
- External Reports (e.g. submissions to Commonwealth Inquiries).

Officers should refer to the Victorian Government's Guidelines for Submissions and Responses to Inquiries for further information on drafting a Government response or submission. These guidelines can be accessed at www.dpc.vic.gov.au.

Reports use the 'General submission' template.

4.4. Appointments

Section 5 provides further information on appointments that require Cabinet's approval.

Appointments use the 'Appointment submission' template

4.5. Matters for Information (MIs)

Matters for Information do not seek a decision by Cabinet but recommend that information be noted. These submissions typically include key information that all Ministers need to be aware of and information relating to key policy areas. Consideration should be given to whether or not a matter for information is required to be brought to Cabinet.

MIs use the 'General submission' template.

4.6. Committee Reports

Committee Reports (minutes of Committee meetings) inform Cabinet of the outcomes of Cabinet Committee deliberations and seek Cabinet endorsement of these decisions where required.

4.7. Addendum

Cabinet may call for supplementary information to a submission that is being considered or a Minister may wish to advise Cabinet of developments on a submission since it was lodged. This supplementary information is presented to Cabinet in the form of an Addendum to the original submission. All changes should be clearly outlined for Cabinet, including all (original and additional) recommendations.

If the changes or supplementary information are substantial a **replacement submission** is to be presented to Cabinet in the standard submission format.

A complete set of recommendations of which the Minister is seeking Cabinet endorsement, must be listed in the Addendum submission. Cabinet Office can provide advice on the appropriate form of an addendum.

Cabinet Office will arrange for the re-distribution of the original submission to Ministers at the appropriate time.

4.8. Cabinet Committee submissions

There are two submission types for Committees: 'Matter for Endorsement' (ME) (as addressed at 4.1) and 'Matter for Noting' (MN).

A submission that is a MN must not seek a decision from the Committee.

ME and MN Committee submissions use the 'Cabinet Committee submissions' template and are both required to undergo coordination.

4.9. Presentations to Cabinet or Committees

Ministers must consult the Cabinet Secretary if they want to make a presentation to Cabinet or to a Committee.

The presentation must be circulated with the submission as part of the Cabinet and Committee papers. No presentation is to be tabled at the meeting unless explicitly authorised by the Cabinet Secretary.

Audio visual presentations have the same status as formal Cabinet submissions and form part of the records of Cabinet and its Committees. Accordingly, presentations are to be marked and treated as CIC. The digital version of any presentation must be provided to Cabinet Office at least 24 hours before the meeting. Any recommendation contained in a presentation should be consistent with those in an accompanying formal submission.

Any supporting documentation from an audio-visual presentation must be made available to Cabinet Office. Similarly, digital and hard copies of any items tabled in the meeting must be provided to Cabinet Office immediately after the conclusion of the Cabinet/Committee meeting. The digital copy must be provided via the VicPortal and be in PDF format, with no tracked changes.

As a general rule, the Cabinet Secretary's approval is required for any additional content a Minister wishes to bring to Cabinet for an item that has already been distributed. Cabinet Office should be contacted in the first instance for requests of this nature.

5. Appointments

Submissions recommending certain candidates for appointment are considered by Cabinet. Guidance on appointment processes and requirements is available in the Appointment and Remuneration Guidelines (the Guidelines), which can be accessed [via the DPC website](#).

The appointment submission template provides guidance on completing an appointment submission. Appointment submissions should:

- clearly explain why the proposed appointee is the best candidate for the position, with reference to the position description and the person's qualifications and experience
- explain the appointment process, including any departures from the Guidelines
- note the composition of the board, including gender representation, the length of respective board members' terms and address how the proposed appointee complements the board's composition
- note if there are any material or perceived conflict of interests, and the completion of probity checks.

5.1. Which appointments require Cabinet approval?

Cabinet will consider:

- all full-time appointments made by Governor in Council or a Minister
- all appointments of Members of Parliament to Government bodies
- part-time appointments to significant or sensitive boards, commissions, committees and advisory bodies (including in some instances Ministerial Advisory Committees), as specified in the Guidelines
- an appointment of a Deputy to a position that would usually be considered by Cabinet (e.g. Chair), where the appointment is for more than three months, subject to legislative requirements and/or terms of reference.

Short-term appointments for periods of up to three months may be made without the approval of Cabinet. However, Ministers may determine in some cases particular sensitivities warrant bringing a short-term appointment before Cabinet, and any subsequent reappointment (even if for less than three months) must be brought to Cabinet.

In addition to the above, other appointments may be presented for Cabinet approval. Ministers should consider:

- the importance of the position to the Government's policies and programs
- the remuneration attached to the position
- irregular terms and conditions of an appointment
- Government funding influenced or controlled by the position.

5.2. Timing of appointment submissions

Cabinet should consider appointments at **least one month in advance** of the date on which the position becomes vacant or expires, or in respect of a new position, the date on which it is proposed the appointee commences duty. If a new position

requires Governor in Council approval, Cabinet approval should be sought **at least one week** before Governor in Council approval is scheduled.

Departments are required to maintain a schedule of expiry dates of statutory appointments and to regularly review it to identify forthcoming appointments within their portfolios.

Multiple appointments to the same body, or to the same class of bodies (e.g. a range of public health services), can be made in the same submission. While there may be instances where appointments can be split across weeks to manage volume, it is generally preferable that such appointments be 'batched' so that Cabinet does not have to consider multiple submissions in relation to the same bodies in successive or proximate weeks.

Cabinet should not be asked to approve appointments that are scheduled to commence too far in the future, to ensure that appointments approved by Cabinet are based on current information.

5.3. Composition of board membership

Government boards and committees should accurately reflect the composition of the Victorian community. Boards should have members with an appropriate mix of expertise, experience and a range of perspectives.

No less than 50 per cent of all appointments to paid Government boards, and no less than 50 per cent of Chair positions, must be women.

Submissions should describe the gender composition of the proposed board (refer to 'Appointment template' for further detail).

Further improving the diversity of representation on paid Victoria Government Boards requires an active consideration of candidates from diverse cohorts, including:

- Aboriginal Victorians
- People with a disability
- People from culturally and linguistically diverse backgrounds
- Lesbian, gay, bisexual, trans, gender diverse and intersex people
- People from rural and regional Victoria.

Departments must consult with the relevant lead policy office, to plan suitable recruitment processes to engage potential candidates across diverse cohorts and communities.

5.4. Remuneration

Where submissions recommend full-time or part-time appointments for particular categories of boards, Ministers determine and then recommend to Cabinet the level of remuneration (if applicable) from within the bands specified in the Guidelines. This requirement applies regardless of whether the submission is recommending an appointment for a newly established or pre-existing vacant position, or a new appointee or a re-appointment.

If a recommendation is made to remunerate outside the bands, a justification should be outlined in the submission.

5.5. Declarations of Private Interests, conflict of interest and probity checks

Appointments and re-appointments are contingent upon the nominees completing a Declaration of Private Interests to the satisfaction of the responsible Minister. Under no circumstances should an Appointment submission indicate that a satisfactory Declaration of Private Interests has been completed until the Minister has received the Declaration and judged it to be satisfactory.

Declarations of Private Interests should be submitted by the nominee to the responsible department and retained in an appropriately secure facility and in accordance with privacy laws by that department.

Satisfactory completion of a Declaration of Private Interests should be obtained before Cabinet considers the appointment. The Declaration should not be attached to the submission.

Any material or potential conflict should be addressed in the submission, as well as information relating to required probity checks for appointments.

5.6. Curriculum Vitae (CV)

A CV for each appointee must be provided at the time the registration form is submitted and then as an attachment to the submission to Cabinet. The CV should be typed and contain all relevant and recent experience, and details of current appointments, employment and offices held. It must not be more than six months old.

5.7. Instruments of Appointment

A copy of the draft instrument of appointment (e.g. Order in Council, Ministerial letter) must be attached to the submission.

6. Writing Cabinet submissions

6.1. General principles of a quality Cabinet submission

The development of submissions for consideration by Cabinet and Cabinet Committees consists of a number of stages. These stages include:

- planning and early engagement
- analysis and impact assessments
- coordination across government
- where appropriate, consideration by a Cabinet Committee prior to Cabinet consideration.

Submissions must be presented in such a way as to facilitate informed and effective decision making by Cabinet. Submissions must clearly identify the matters on which agreement is sought, why the decision is significant and any other key matters.

Submissions should be concise (a maximum of ten pages in length). Committee submissions should only address issues relating to the Committee's terms of reference. Committee and Cabinet submissions should clearly focus on what Ministers need to consider in order to make an informed decision.

6.2. Planning for quality outcomes

To enable an efficient and effective drafting process, the authoring department should:

- brief the Minister to identify and analyse the key issues, options and recommendations for consideration by Cabinet or a committee/s;
- consider cross-government implications of the proposal and the potential for collaboration with other departments to achieve whole-of-government solutions; and
- obtain specific directions from the Minister on consultation requirements, timetable and the proposal/s the Minister wishes to recommend to Cabinet.

Consideration should also be given to the urgency of the response and whether the issues require a legislative or administrative response, or both. Consideration should also be given to how the Commonwealth, other states and, if appropriate, other countries have dealt with similar issues.

6.3. Analysis and impact assessments

While the form and level of analysis will depend on the issue, a submission should include an assessment of alternative means to achieve the desired objective, weighing up benefits and disbenefits of each option. Risks related to the recommended approach should be outlined.

Impact assessments are now built into the submission template and encourage departments to take a holistic view of the issue, for example, how impacts are distributed across the State, or the social impacts of implementation.

6.4. Consultation and co-production

Consultation can take many forms including:

- proactive engagement with stakeholders and the community in formulating options and priorities
- public discussion papers released for comment; written requests for comments directed to specific individuals or groups
- Exposure Drafts
- meeting with other departments and seeking feedback via the formal coordination comment process.

Consultation within Government (prior to formal coordination comments)

Consultation allows affected Ministers, departments and/or agencies to comment and, where possible, to design cross-portfolio solutions and resolve issues ahead of Cabinet consideration.

Consultation should occur early in the development of the proposal, with the subsequent formal coordination comments stage providing an opportunity to check that all views have been considered. Submissions should not be delayed unduly because of failure to reach full agreement on all the recommendations; however, effort should be made to resolve outstanding issues prior to consideration by Cabinet.

Early consultation with DPC and DTF (particularly if economic/financial implications apply) is particularly important to allow sufficient time to address significant budgetary or other concerns that the Premier or Treasurer may have.

The lead Minister of each department should be engaged on any proposals that are to be brought to Cabinet or a Cabinet committee, to identify cross-portfolio impacts and processes for managing any shared accountabilities for implementation.

The Department of Justice and Community Safety (DJCS) must be consulted when any proposed infringement offences are to be considered by Cabinet. The submission must indicate that DJCS has been consulted and the offence complies with the Attorney-General's Guidelines to the *Infringements Act 2006*. DJCS should also be consulted in relation to compliance with the *Charter of Human Rights and Responsibilities Act 2006*.

Consultation with Chief Parliamentary Counsel

For legislation, departments must discuss a draft of the proposed drafting instructions and submission with the Chief Parliamentary Counsel before the submission is lodged for coordination comments.

The Chief Parliamentary Counsel will advise on the readiness of drafting instructions to enable preparation of the first draft of the proposed Bill. For more complex proposals, early consultation with the Chief Parliamentary Counsel supports the timely and quality preparation of Bills, including allowing consideration of how best to formulate particular aspects of a Bill or considering how a policy is best implemented.

Consultation outside Government

Departments should seek direction from their Minister(s) concerning external consultation. If consultation is to occur following consideration of a matter by Cabinet

at the PP or AIP stage, the submission recommendation should seek approval of this consultation.

Coordination Comments

Formal coordination comments must be sought from all departments for MEs (for prescribed Committees), PPs, AIPs, EDs, and all Reports.

In exceptional circumstances an exemption from coordination comments can be sought from the Cabinet Secretary.

6.5. Composition of a submission

Submissions must be presented using the correct template. There are different templates for legislation, policy, appointment and Cabinet Committee submissions. Submission templates are available from CLLOs and Cabinet Office.

All relevant sections of the submission must be completed, and new sections must **not** be added. In cases where a section is not applicable to the particular submission, this should be stated. Adherence to the templates is mandatory and the main body of the submission (i.e. up to the funding page) must not exceed ten pages.

Any reference in a submission to an attachment must clearly identify the attachment (e.g. bold and/or underline) and, where appropriate, the attachment's page number and the paragraph or table number.

Recommendations

The submission's recommendations form the basis of the Cabinet record. It is critical that they are written in order to stand alone, without relying on the body of the submission. For example, instead of 'that Cabinet should approve the final report at Attachment 1', the recommendation should read 'that Cabinet approve the Victoria's Future report (Attachment 1 of the submission)'.

Recommendation/s for which Cabinet or Committee approval is sought should be clear and succinct. They should cover all matters on which decisions are being sought. Only attachments that require Cabinet's approval or noting need to be referenced in the recommendations.

Recommendations should focus on the actual decisions required by Cabinet or a Committee, with 'noting' recommendations used rarely.

Objectives

Following from the recommendations, the initial sections of the submission outline the objectives and a summary of the main issues which Cabinet is being asked to consider.

The objectives of the proposal should be clear and succinct, including analysis that demonstrates the merits of the proposal.

Key issues

The submission should incorporate salient detail explaining the reason for the development of the proposal, why it warrants Cabinet's consideration and why the recommendations of the submission should be supported.

Previous consideration and/or decisions made by Cabinet or Committees should be referred to, including decision dates. It is important to outline where decisions support and depart from previous Cabinet decisions. Reference to relevant Government commitments or policy frameworks should also be included, along with implementation plans outlining accountability for operational aspects and how impacts will be monitored and measured.

Risks

This section should consider the consequences for Government if the submission is not supported in whole or in part, or if the proposed policy is delayed or deferred. It should also specify if there are significant challenges in the policy or its implementation, and briefly outline how these challenges will be managed.

Support/Criticism

This section needs to outline the level of support that exists for the proposal. This section should note support, or identify concerns and criticism from stakeholders, and outline how this will be addressed.

Reference to how the outcome will be communicated should be included, and the section should address whether a media release or a communications strategy is planned.

Funding

The Cabinet template includes a Financial Implication Table for completion. Departments should include relevant financial information and delete any sections as required. Consultation should occur with DTF and DPC.

Impact Assessments

Impact Assessments identify all anticipated consequences of the recommendations Cabinet is being asked to consider.

An assessment of the various short and long-term impacts of a proposal is a crucial part of policy development. A detailed analysis of issues and options provides for a better understanding of how to meet the policy objectives. The submission should always identify how these impacts will be managed.

Impact Assessments follow the main body of the submission (i.e. after the funding page). They should be considered for all submission types other than those dealing with appointments or administrative decisions.

7. Cabinet document management and security

The *Public Records Act 1973* sets out requirements for the preservation, management, use and destruction of public records of the state. The Public Records Office of Victoria (PROV) provides detailed guidance advice regarding Departmental obligations under the Act in the form of Retention and Disposal Authorities (RDAs).

'Cabinet information' includes both written (including digital) and oral information, and reference to 'Cabinet documents' refers to written (including digital) information only.

Ministers and departmental Secretaries are responsible for having appropriate procedures in place for managing Cabinet information in their possession.

7.1. Access to Cabinet information

Only those with a 'need to know' may have access to Cabinet information. The unauthorised and/or premature disclosure of matters contained in Cabinet information can be damaging to the government and to the public interest.

Any request for the disclosure of a document or other material that refers to a discussion conducted at a Cabinet meeting, records a decision made at a Cabinet meeting, or was considered at a Cabinet meeting is to be discussed with Cabinet Office before the relevant document or material is disclosed.

7.2. Cabinet-in-Confidence (CIC) classification

Based on exemptions under the *Freedom of Information Act 1982*, a document is CIC if it is:

- an official Record of any deliberation or decision of Cabinet
- a document that has been prepared by a Minister or on their behalf or by an agency for the purpose of submission for consideration by Cabinet
- a document prepared for the purpose of briefing a Minister in relation to issues to be considered by Cabinet
- a document that is a draft of, or contains extracts from a document referred to above
- a document which refers to any deliberation or decision of Cabinet, other than a document by which a decision of Cabinet was officially published.

Typical examples of Cabinet documents include:

- Cabinet/Committee agendas/briefs/minutes
- submissions prepared for consideration by Cabinet or a Cabinet Committee, even if the submission was, in the end, withdrawn prior to consideration
- submission attachments that were not already in the public domain at the time of the proposed Cabinet/Committee consideration
- agency-internal consultation and collaboration documents, memos, briefs and comments, including coordination comments
- correspondence containing or disclosing Cabinet/Committee information
- documents relating to the development or progress of legislation through Cabinet to Parliament, e.g. Drafting Instructions for the Chief Parliamentary Counsel, Cabinet Drafts of Bills or draft Second Reading Speeches

- any emails and file notes or general correspondence containing reference to CIC material e.g. matters arising from Freedom of Information (FOI) requests or Auditor-General investigations involving Cabinet/Committee documents or decisions
- any other document (including working drafts) that is considered a Cabinet document, e.g. notes, briefs or correspondence about any of the above which identify the subject, registration number, Cabinet or Committee, outcome or deliberation
- any information that is prepared as part of a policy development, consultative processes and/or during Cabinet submission drafting.

Documents that are classified as CIC should be marked with 'Cabinet-in-Confidence' whether they are hard copy or digital. Documents already in the public domain may be attached to Cabinet submissions to provide Cabinet with detailed background on a particular issue. Whilst these documents are already in the public domain, their inclusion for Cabinet consideration should remain confidential.

7.3. Storage

Security measures governing the filing and storage of digital and hard copy Cabinet documents need to be tailored to each department's information management systems and business environment to ensure their security and that there is no unauthorised disclosure of information.

Where Cabinet documents are retained within departments, separate and secure annual and portfolio-based Cabinet files should be maintained, especially where the subject matter also relates to material on corporate departmental files. Cabinet documents must not be held on a corporate departmental file; however corporate files may be cross-referenced to the appropriate Cabinet file.

Printing of Cabinet documents should be minimal and tightly managed. Hard copy material must be securely stored when not in use.

7.4. Distribution and tracking of Cabinet documents

Transmission and receipt of Cabinet documents

Cabinet and Committee submissions, Cabinet agendas and records and Cabinet Committee minutes are distributed electronically via the VicPortal.

A user's name or unique tracking name and date of access will be imposed as a watermark on any CIC document accessed within the VicPortal. Users are responsible for their secure use of the system. Departments and Ministers' offices must ensure that distribution lists and access permissions are controlled and are kept up to date.

Use of fax or unsecured hard copy or mail systems (e.g. Australia Post or a department's internal mail run) is not allowed.

Departments should not send CIC information via email or other unsecured ICT services to other departments (email within departments, where secure, is permitted).

Cabinet records are created, controlled and circulated under the direction and supervision of the Cabinet Office, Department of Premier and Cabinet, to authorised recipients with a 'need to know'. Individuals involved with Cabinet and Committee processes must be aware of their responsibilities under the *Public Records Act 1973*.

Please refer to the Cabinet Office, DPC or the Cabinet/Executive Services group in the relevant department for detailed information on the management of Cabinet documents.

Unauthorised access

If breaches of security involving Cabinet documents occur, the Secretary, DPC or his or her nominee may seek information from a Minister's office or department about the movement of Cabinet documents.

In the event that Cabinet information is given to or comes into the possession of an unauthorised person, all efforts are to be immediately undertaken to:

- (in the case of written information) retrieve the information
- identify persons that had access
- report the incident to the Executive Director, Cabinet Office.

7.5. General return of Cabinet documents

Use complete

Ministers may return Cabinet or Cabinet Committee submissions they no longer require to their department or Cabinet Office following a Cabinet or Committee meeting.

Ministers may wish to maintain for extended reference some documents, such as Cabinet decision extracts and copies of submissions they have initiated.

Machinery of Government and/or Ministerial changes

When a Minister ceases to hold a position at Cabinet, all Cabinet documents held by the Minister are to be returned to the department's CLLO. Cabinet documents in the possession of officers or Ministers affected by machinery of government changes must be returned to their original CLLO for redistribution or destruction.

The department's CLLO must advise Cabinet Office of the document's destruction, including the submission and copy number (if applicable).

Upon request

At any time the Secretary, DPC or the Executive Director, Cabinet Office can request the return of Cabinet documents held by other departments, Ministers' offices or agencies. The relevant staff need to be able to quickly identify and provide the documents.

Caretaker Period

Section 38A of the *Constitution Act 1975* states that the election must be held on the last Saturday in November nearest to the fourth anniversary of the previous election day.

Caretaker commences at the time the Legislative Assembly expires or is dissolved. Section 38(1) of the Constitution sets out that the Assembly shall expire on the Tuesday which is 25 days before the last Saturday in November, which is closest to being four years from the last election. Caretaker continues until the election result is clear.

All hard copy and digital Cabinet documents created during the term of the government must be identified and returned to the custody of Cabinet Office during the caretaker period for storage, until the result of the election is known.

Before commencement of a caretaker period Cabinet Office will issue detailed guidelines on the transfer of custody of all Cabinet documents to DPC.

Audits

Periodical audits should be undertaken by departments and Ministerial offices holding Cabinet material. All Cabinet material in the custody of the department, agency or Minister's office must be accounted for. The location of all Cabinet material must be kept up to date and documents no longer required should be returned or securely destroyed.

7.6. Transfer of documents to PROV

Cabinet Office will undertake the transfer and archiving of permanent Cabinet documents to PROV for permanent retention in accordance with the *Public Records Act 1973*.

7.7. Requests for access to Cabinet documents

Any request for the disclosure of a document or other material that refers to a discussion conducted at a Cabinet meeting, records a decision made at a Cabinet meeting, or was considered at a Cabinet meeting is to be discussed with Cabinet Office before the relevant document or material is disclosed.

Documents of previous governments

Departments may provide advice to Ministers in relation to the publicly announced policies and programs of former governments.

By convention, Cabinet documents are confidential to the government which created them. Queries relating to access to Cabinet documents of a former government should be directed to the Executive Director, Cabinet Office.

Audit Act 1994

Sections 11 and 12 of the *Audit Act 1994* give the Auditor-General the power to access documents held in departments that are relevant to matters under consideration by the Victorian Auditor-General's Office (VAGO), including Cabinet documents. This access is provided in accordance with processes and procedures to uphold the confidential nature of Cabinet material.

Departments should consult Cabinet Office, DPC prior to providing any Cabinet documents to VAGO.

Freedom of Information

All documents subject to the *Freedom of Information Act 1982* (the FOI Act) need to be considered on a case-by-case basis when processing a request made under the FOI Act. However, the FOI Act contains a specific provision that exempts most documents relating to Cabinet from release.

Section 28 of the FOI Act provides that the following documents are exempt from release under the FOI Act:

- i. the official record of any deliberation or decision of Cabinet; or

- ii. a document that has been prepared by a Minister or on his or her behalf or by an agency for the purpose of submission for consideration by Cabinet; or
- iii. a document prepared for the purpose of briefing a Minister in relation to issues to be considered by Cabinet; or
- iv. a document that is a copy or draft of, or contains extracts from, a document referred to in items i to iii above; or
- v. a document the disclosure of which would involve the disclosure of any deliberation or decision of Cabinet, other than a document by which a decision of Cabinet was officially published.

The FOI Act defines the term 'Cabinet' as including a committee or sub-committee of Cabinet.

Other exemptions under the FOI Act (apart from section 28) may also apply to certain documents or parts of documents relating to Cabinet.

If a FOI decision relying on the section 28 exemption is to be reviewed by the Victorian Civil and Administrative Tribunal (VCAT), the Executive Director, Cabinet Office and General Counsel, DPC must be consulted and may need to give any required evidence.

The protection of the section 28 exemption cannot be obtained by merely asserting that a document is a document of Cabinet or Cabinet Committee. For the confidentiality and integrity of documents relating to Cabinet to be protected, it must be possible to prove before VCAT that the document sought has the characteristics of an exempt document detailed in section 28. Cabinet Office is uniquely placed to assist in providing the required evidence.

Discovery of Cabinet documents in litigation

Ordinarily, public interest immunity should be claimed when discovery or production of Cabinet information is sought in legal proceedings. Further advice can be sought from General Counsel, DPC and the Executive Director, Cabinet Office and, if required, the Victorian Government Solicitor's Office.