

Victoria Police Manual

The Victoria Police Manual is issued under the authority of the Chief Commissioner of Police in s.60, Victoria Police Act 2013. Non-compliance with or a departure from the Victoria Police Manual may be subject to management or disciplinary action. Employees must use VPM Professional and ethical standards to inform the decisions they make to support compliance.

Obtaining legal advice or representation

Context

Victoria Police employees have a responsibility to ensure they obtain legal advice through the Legal Services Department (LSD) regardless of whether that assistance is for criminal prosecutions, civil matters, general legal advice or any matter relating to their duties.

This policy sets out the responsibilities and procedures for engaging LSD and provides instructions to employees so that they may access legal advice or representation, as appropriate or required.

Contents

Context.....	1
Contents	1
Scope and application.....	1
Responsibilities and procedures	1
1. Process for obtaining advice or representation	1
2. Provision of legal advice	2
3. Privacy.....	4
4. Costs.....	4
5. Legal privilege	4
Related documents.....	5
Further advice and information.....	5
Update history.....	5

Scope and application

This policy applies to all employees and their managers and must be read in conjunction with **Obtaining legal advice Practice Guide**.

Responsibilities and procedures

1. Process for obtaining advice or representation

1.1 Civil matters and general legal advice

- Employees must make a request for written legal advice through the Legal Advice Portal on the Request for Legal Advice or Representation form, with endorsement from their line management, after which the request will be triaged and tasked. This form is available on the LSD intranet page.
- Following this, the triage process will involve LSD finalising a risk assessment to ensure appropriate consideration of the public interest/legal risks, in accordance with Appendix A in **Obtaining legal advice Practice Guide**.
- The Office of the Executive Director (OED), LSD will determine the most appropriate avenue to obtain advice upon receiving a request via the Legal Advice Portal. Refer

to **Obtaining legal advice Practice Guide** for authorisation levels when considering a request.

- If the Whole of Victorian Government procurement contract option is determined to be appropriate by the Executive Director, LSD, the file is returned to the source work unit, via email, detailing further instruction.
- If an employee has a request that is of an urgent nature, where crucial oral advice is required, the Executive Director, LSD staff officer is the first point of contact who will then direct the request further if required.

1.2 *Requests for legal representation*

- Employees making a request for legal representation must submit the request through the Legal Advice Portal on the Request for Legal Advice or Representation form.
- The request will be considered by the Executive Director, LSD and is subject to a separate assessment and approval process regarding the engagement of lawyers and associated costs.

1.3 *Criminal prosecutions*

Employees should refer to the relevant section in **VPMG Brief preparation and management** for details of the procedures to obtain legal advice on criminal prosecutions and/or direct specific enquiries in the first instance, to the Prosecution Frontline Support Unit (PBEA STATEWIDE-PFSU-OIC), or alternatively to the Disclosure Management Unit or the Victorian Government Solicitor's Office (VGSO) Police Branch Duty Call Line.

2. Provision of legal advice

2.1 *Legal advice options*

- Possible options for obtaining legal advice include:
 - in-house counsel by a solicitor employed by LSD
 - the VGSO Police Branch based at the Victoria Police Centre
 - the VGSO head office
 - direct briefs to counsel
 - selection of an appropriate specialist legal firm from the Whole of Victorian Government procurement contract.
- If an urgent request arises outside business hours, the employee is recommended to contact the VGSO Police Branch Duty Call Line directly and inform their line manager as soon as possible.

2.2 *Civil matters*

- Employees subject to civil proceedings should also refer to **VPMG Civil proceedings**.
- Where the Executive Director, LSD determines the legal advice must be sought under the Whole of Victoria Government procurement contract the requesting work unit must undertake this engagement via the Legal Advice Portal.
- Employees seeking to comment on legislation or suggest a change to legislation should refer to **VPM Policy development and advice**.

2.3 *General legal advice*

- Employees must follow the procedure of submitting a Request for Legal Advice or Representation form when seeking services from LSD in relation to contractual and transactional matters such as agreements, Memorandums of Understanding (MOUs), Letters of Understanding (LOUs), protocols, and deeds, etc.
- The OED, LSD will appoint an instructor or liaison from LSD who will consider the request and recommend to the OED the most appropriate avenue to provide the requested legal advice or representation. Refer to **Obtaining legal advice Practice Guide** for sources of legal advice.
- The OED, LSD will consider the recommendation and if the request is approved, authorisation will be given for the provision of advice or representation from either within Victoria Police or an external legal advisor.
- In determining if legal advice or representation should be provided by LSD (internally) or by an approved external provider, LSD will consider the following:
 - whether specific subject matter expertise is required
 - the complexity of the legal issue
 - the capacity of internal employees to provide the advice
 - the urgency of the issue
 - whether any significant risks to the organisation were identified
 - whether similar legal advice has previously been obtained and who provided it
 - significant stakeholder relationships (e.g. other government agencies)
 - any other relevant factor/s
 - whether the advice is subject to Whole of Government arrangements for VGSO exclusive advice.

2.4 *Internal legal advice or representation*

Where legal advice or representation is to be provided internally by LSD, the instructor will refer the matter to the relevant legal unit who will allocate a lawyer to provide the requested advice or representation. Refer to **Obtaining legal advice Practice Guide** for the referral process.

This policy does not impact the provision of specialist advice or representation to specific units within Victoria Police, including briefings in relation to existing MOU, LOU, documentation, inclusive of advice relating to protocols and deeds. All existing internal specialist legal service arrangements to these units from LSD will remain unchanged, including those that have direct access privileges.

2.5 *External legal advice*

When it is determined that legal advice is to be provided by an approved external provider, including direct briefs to counsel, the following applies:

- an instructor or liaison from LSD will be assigned as the liaison between the external provider and the requesting Victoria Police employee
- where appropriate, and prior to the provision of any written advice, a conference involving the assigned LSD instructor or liaison and the requesting employee will be held with the external provider to discuss the relevant legal and factual issues
- a copy of any written advice will be provided to the instructor or liaison and OED, LSD.

2.6 *Seeking alternate or second legal advice*

Second or alternate legal advice on the same issue or matter must not be sought without prior written approval from the Executive Director, LSD.

3. Privacy

Victims or any other third party must not be referred directly to the advising lawyer or the area providing the legal advice or representation. The identity of the advising lawyer is not to be provided to the victim or respondent. This includes requests made to the Office of Public Prosecutions for advice.

4. Costs

- Where approval is given to obtain legal advice from an external provider (other than from the VGSO – Police Branch), the external provider is to provide the scope of work and cost estimate (contingent liability) to LSD for initial approval.
- LSD will then provide this estimate to the requesting employee for them to seek approval from their respective region/command/department management representative (as determined by the level of the fees and the relevant financial delegation).
- It is important to note the following:
 - if the estimate is beyond LSD delegation, then it will be provided to the Deputy Commissioner, Specialist Operations for approval
 - the costs of any external provider of legal advice are to be paid by the requesting employee's region/command/department (unless prior written agreement has been obtained from the OED, LSD).
- Where costs exceed an estimated budget, the OED, LSD will liaise with the region/command/department contact who approved the original request. Any additional costs must be approved by the requesting area prior to services rendered.

5. Legal privilege

5.1 *Legal privilege*

- Client legal privilege, formerly referred to as "legal professional privilege", is a common law right protecting the administration of justice and the right to obtain confidential legal advice. Client legal privilege protects legal advice given by a lawyer to a client, and communications pertaining to actual or contemplated litigation or court proceedings.
- For client legal privilege and third-party disclosure information refer to **VPMG Brief preparation and management** and **VPM Disclosure in criminal proceedings**.

5.2 *Distribution of legal advice*

- All written legal advice belongs to the Chief Commissioner of Police (CCP). To ensure legal privilege is not inadvertently waived, employees must not disseminate legal advice to other areas within the organisation or outside of the organisation without the express written approval of the CCP's delegate, the Executive Director, LSD.
- Guidance should be sought from LSD regarding appropriate caveats to be applied to legal advice approved for dissemination before it is disseminated.

Related documents

- Obtaining legal advice Practice Guide
- Request for Legal Advice or Representation form
- VPM Professional and ethical standards
- VPMG Brief preparation and management
- VPMG Civil proceedings
- VPM Policy development and advice
- VPM Disclosure in criminal proceedings

Further advice and information

For further advice and assistance regarding this policy, contact the OED, LSD.

Update history

DATE UPDATED	SUMMARY OF CHANGE	FORCE FILE NUMBER
30/01/23	Merging of previous VPMP and VPMG Obtaining legal services and advice into VPM Obtaining legal services. The policy was reviewed due to the creation of the Legal Advice Framework and Legal Advice Request or Representation Form and supporting practice guide.	FF 202986