

ACTING IN THE SPIRIT OF SERVICE

Free and Frank Advice & Policy Stewardship



The intended outcome of free and frank advice is better results and services for New Zealanders, not officials advancing their own agenda or looking to demonstrate fearless independence for its own sake.

— Peter Hughes, State Services Commissioner

The provision of free and frank advice, as central to our system of government, is well acknowledged. Free and frank advice demonstrates and upholds the impartiality that is fundamental to maintaining a politically neutral Public Service. Having the capacity and capability to provide this underpins the integrity, legitimacy and performance of New Zealand's system of government.

Good policy decisions, informed by free and frank advice, optimise services and results for New Zealanders, including future generations. Investing appropriately in policy stewardship means we are well placed to provide free and frank advice to successive governments.

This guidance is issued by the State Services Commissioner under section 57 (4) of the State Sector Act 1988. The Commissioner acknowledges the leadership of Andrew Kibblewhite, the Head of the Policy Profession, in the development of this guidance.

SCOPE OF THE GUIDANCE

This guidance sets out expectations that Public Service chief executives provide free and frank advice to Ministers, engage in effective policy stewardship and ensure that their agencies understand these important fundamentals. Agencies in the broader State Services may also find this guidance a useful reference point for good practice.

The advice referred to in this guidance includes stand-alone as well as streams or suites of advice to Ministers that are tendered orally and in writing. Written advice includes briefings, aide mémoires, Regulatory Impact Assessments, A3s and other documents, emails and texts.

There are two key elements to this guidance:

1. **Free and frank advice:** delivery and effectiveness
2. **Policy stewardship:** capability to provide future focused research, evaluation and analysis.

FREE AND FRANK ADVICE

The responsibility of chief executives under section 32 of the State Sector Act 1988 to provide free and frank advice to Ministers underpins the maintenance of political neutrality. This means providing advice that:

- identifies the nature, scale and significance of the policy issue or opportunity (with supporting evidence)
- is politically neutral while also being aware of relevant political contexts
- recognises the historic, contemporary and potential longer term dimensions or conditions
- is comprehensive, objective and balanced to cover the range of options that address the issue(s)
- is honest about where the opportunities, benefits, costs, pitfalls and risks of all options are and about the limitations, assumptions and information gaps in analysis
- is clear about any trade-offs involved and which option(s) on balance are recommended
- delivers any hard truths in the most constructive way possible
- covers implementation considerations.

The convention also means ensuring the advice is understood, which may include repeating the advice if necessary.

Benefits

Free and frank advice ensures that Ministers individually and collectively are better informed about the “pros” and “cons” and uncertainties associated with the decisions they are being asked to take. It also prepares Ministers for Cabinet and Cabinet Committee discussions with their colleagues and for stakeholder engagements.

Free and frank advice reduces the risk of judicial review of Ministerial decisions and means that policy is more robust when implemented. This gives rise to fewer surprises and less need for rework late in the process.

Delivering effective free and frank advice

Giving free and frank advice is designed to support Ministers to achieve their objectives. To be effective, free and frank advice depends on a relationship of trust and confidence between a Minister and their officials. It may be useful to discuss with Ministers how they benefit from free and frank advice.

Free and frank advice is more likely to be heard and acted on when it acknowledges Ministers’ and the Government’s policy intent and priorities and is provided in a form that fits Ministers’ communication style preferences. Operating within the context is key. When delivering free and frank advice, consider the most appropriate timing, the level of trust and/or confidence of the Minister and the seniority, experience or credibility of the advisor.

Sometimes the timeframe a Minister specifies for providing advice is insufficient to allow full advice to be developed. Advise the Minister and give the best free and frank advice possible at the time and provide more fulsome advice later.

Free and frank advice is expected to be in full and in written form. A record of key points and decisions should be made of any advice given orally, in keeping with the Public Records Act 2005 that states every public office “must create and maintain full and accurate records of its affairs, in accordance with normal, prudent business practice” (s 17(1)). This enables Ministers and the Public Service to be held to account.

If there are significant changes in the operating environment, proactively advise Ministers of them, especially if the assessment of the changes highlights risks or problems to be managed, or opportunities to be realised.

Briefing papers and Regulatory Impact Assessments are important vehicles for our free and frank advice. These should be full and include consideration of and advice on a comprehensive suite of options and their potential benefits, costs and risks. Subsequently these can be summarised in a Cabinet paper.

Tendering free and frank advice jointly with other agencies is best practice if an issue spans portfolios. Joint advice can agree on the problems or opportunities and the best ways to address them or identify for Ministers clear and coordinated trade-offs based on different values or priorities.

POLICY STEWARDSHIP

The Public Service has a duty of stewardship to look ahead and provide advice about the future challenges and opportunities New Zealand faces. It is the responsibility of chief executives to steward agency capability and capacity to offer free and frank advice to successive governments.

Chief executives are responsible for building and maintaining expertise, or ensuring easy and quick access to expertise, on:

- emerging issues that are likely to be important to long-term public interests
- current issues that are important to the public interest now but where the current government does not wish to focus its attention or has not sought advice to date
- the suitability of existing regulatory and other policy interventions for current and future conditions.

Benefits

The guidance provided to long-lived administrations on future and emerging issues ensures they have a programme of action capable of dealing with change, and reduces their risk of being accused of lacking foresight. Equally when there is a change of government, agencies are well equipped to serve them.

Policy will be more robust and resilient when implemented if its development is mindful of future contexts, risks and opportunities. In addition, policy failures are less likely if agencies advise proactively on emerging problems, vulnerabilities and opportunities for policy performance improvement.

Effective policy stewardship

Building the capability to provide quality strategic advice on medium to longer-term issues is a challenge for the system. It is necessary to allocate sufficient resources to enable future-focused research, analysis and evaluation beyond the immediate policy priorities and preferences of the government of the day. This is a legal responsibility. Nonetheless, Ministers are responsible for decisions on spending from within appropriations. It may be useful to discuss with Ministers the benefits of policy stewardship, how it is reflected in the policy work programme and how the required people and other capability is being, or will be resourced.

Consideration needs to be given to the appropriate level of investment in developing future-focused capability. This includes investing in agency capability, contributing to pooled investment in sector or system groups' shared capability and supporting, funding or engaging with external experts who contribute research and analysis (for example, academics, think tanks or other institutions). Mature policy stewardship is embedded throughout policy teams and processes rather than relying on dedicated teams or individuals.

When discussing issues beyond the immediate priorities and preferences of the government of the day with external individuals or groups, it is useful to ensure all parties understand that such work is stewardship thinking.

Chief executives may like to use Four Year Plans or other strategy documents, to outline the approach to stewardship and addressing future opportunities, challenges and resources.

Useful Links

- The State Sector Act 1988 ([section 32\(1\)\(f\)](#)) and ([section 32\(1\)\(c\)](#)) — provides information regarding chief executive responsibilities for providing free and frank advice.
- The Public Records Act 2005 ([section 17\(1\)](#)) and ([section 3\(c\)\(i\)](#)) — provides information regarding government agencies responsibilities for creating and maintaining official records
- The Cabinet Manual paragraphs [3.14](#), [3.15](#), [3.22](#), [3.59](#), [3.8](#) and [5.39](#) — provides relevant advice on free and frank advice and policy stewardship.