



Department of Justice
Parliamentary Counsel's Office

Getting Government Legislation Drafted and Enacted

Guidelines and Procedures

Parliamentary Counsel's Office (PCO) drafts all Government Bills and all amendments to Bills required by Ministers during passage through Parliament. PCO also drafts —

- regulations, rules, by-laws and other instruments of a legislative nature; and
- various Executive Council minutes, proclamations, orders, commissions, warrants and other instruments.

Consult PCO about whether or not PCO drafts a particular instrument.

This document explains the process by which Government legislation (both Bills and subsidiary legislation) gets drafted and enacted and sets out the roles and responsibilities that PCO and officers of departments and organisations have in this process.

For an explanation of the legislative drafting services available from PCO to non-Government parties and groups in Parliament and private Members, see *Getting Private Member's Legislation Drafted and Enacted*, available at https://department.justice.wa.gov.au/P/parliamentary_counsel.aspx

Further inquiries about these matters can be directed to PCO. Contact details are set out on the next page.

Contacting Parliamentary Counsel's Office (PCO)

Street address

Level 29, David Malcolm Justice Centre

28 Barrack Street

Perth WA 6000

Phone: (08) 9264 1444

Email: pco@pco.wa.gov.au

Website: https://department.justice.wa.gov.au/P/parliamentary_counsel.aspx

WA legislation: www.legislation.wa.gov.au

Parliamentary Counsel

Geoff Lawn

Phone: (08) 9264 1402, mob. 0438 337 004

email: Geoff.Lawn@pco.wa.gov.au

Director, Legislation Services

Hugh McGinlay

Phone: (08) 9264 1420, mob. 0402 327 743

email: Hugh.McGinlay@pco.wa.gov.au

Abbreviations used in this document

Cabinet Handbook	Cabinet Handbook, available at https://www.dpc.wa.gov.au/RoleOfGovernment/Pages/CabinetHandbook.aspx
BRU	Better Regulation Unit (of Treasury)
DOF	Department of Finance
DoJ	Department of Justice
DOT	Department of Treasury
DPC	Department of the Premier and Cabinet
ERC	Expenditure Review Committee (of Cabinet)
ERC Handbook	ERC Handbook, available at https://www.dpc.wa.gov.au/RoleOfGovernment/Pages/ExpenditureReviewCommitteeHandbook.aspx
LSCC	Legislation Standing Committee of Cabinet
MP	Member of Parliament
PCO	Parliamentary Counsel's Office
PSB	Parliamentary Services Branch of DPC
PSC	Public Sector Commission
RIA Guidelines	Regulatory Impact Assessment Guidelines for Western Australia, available at https://www.treasury.wa.gov.au/Economic-Policy/RIA-Program/RIA-support/
SLP	State Law Publisher

Table of Contents

Getting Government Legislation Drafted and Enacted	1
A. Acts of Parliament	1
1. The need for legislation	1
2. Formulation of Government's legislative programme.....	1
3. Developing a proposal for legislation	1
4. Proposal put to Cabinet by Minister responsible	2
5. Drafting instructions for the proposed legislation	3
6. Cabinet approves the drafting of the proposed legislation	3
7. PCO to be requested to draft	4
8. The proposed legislation must have a drafting priority	4
9. The proposed legislation is drafted by PCO	5
10. Role of the instructing officer in the drafting process	5
11. Draft Bill put to Cabinet for approval to print by responsible Minister	5
12. Cabinet approves the Bill's printing for introduction and notifies PCO.....	6
13. Amendments resulting from briefings for Government or Opposition MPs.....	6
14. Printing the Bill	6
15. Introduction and passage through Parliament	6
16. Assent.....	7
17. Printing and publication of an Act.....	7
18. Commencement of an Act	7
19. Proclamation.....	7
20. Publication of amended versions of Acts.....	7
21. Reprints of Acts.....	8
22. Other useful documents	8
Appendix A1 — Process for drafting and enacting Government Bills	9
Appendix A2 — Legislation Standing Committee of Cabinet (LSCC).....	10
B. Subsidiary legislation (regulations etc.)	12
1. Need for subsidiary legislation	12
2. Developing a proposal for subsidiary legislation	12
3. Approval for drafting.....	12
4. Drafting instructions	12
5. PCO to be requested to draft	12
6. Drafting subsidiary legislation	12
7. Role of instructing officer.....	13
8. Making subsidiary legislation	13
9. Publication	13
10. Consideration by Parliament.....	13
11. Publication of new and amended versions of subsidiary legislation	14
12. Reprints of subsidiary legislation.....	14
13. Other useful documents	14
Appendix B1 — Process for drafting and making subsidiary legislation	15

A. Acts of Parliament

See Appendix A1 for a flow diagram outlining the process for the drafting and enacting of Government Bills.

1. The need for legislation

Arises from —

- election platform or new policy of the Government;
- uniform legislation;
- public service administrative needs;
- legal advice or court case.

2. Formulation of Government's legislative programme

The Government's legislative priorities are outlined at the start of a new Parliament in the Governor's speech. At the start of each subsequent year of that Parliament, the Government's legislative priorities are outlined in the Premier's statement to the Legislative Assembly.

Cabinet, on the advice of the Legislation Standing Committee of Cabinet (LSCC), decides which legislative proposals will be included in the Government's legislative programme for a year and assigns drafting priorities to them. (See *Appendix A2* for a list of drafting priorities.)

From time to time (usually before the start of each new Parliamentary sitting), the LSCC will also review the overall legislative programme (including the drafting priority allocated to each Bill) and present a revised programme to Cabinet for endorsement.

3. Developing a proposal for legislation

This involves —

- considering whether the proposed legislation is necessary, bearing in mind the purpose of legislation is to —
 - regulate the affairs, rights and liabilities of people;
 - impose duties on people;
 - give people powers they do not already have;
- researching the legislation of other places;
- seeking legal advice where appropriate;
- consulting with interested people or bodies;
- complying with the Government's Regulatory Impact Assessment program before approval to draft. The Better Regulation Unit (BRU) in the Department of Treasury (DOT) should be consulted in the early stages of any regulatory proposal (refer to *RIA Guidelines*);
- considering the financial and resource implications and, if need be, consulting the Department of Treasury (DOT) and referring the matter to the Expenditure Review Committee (ERC) (see *EERC Handbook*);
- considering accountability issues and, if need be, consulting the Public Sector Commission (PSC) and DOT;
- if the proposed legislation will create a statutory body, consulting the PSC and, if need be, DOT;
- if the proposed legislation will extend or reduce the jurisdiction of the Supreme Court, District Court, Magistrates Court, Children's Court or State Administrative Tribunal, referring the proposal to —

Executive Director, Court and Tribunal Services,
Department of Justice
David Malcolm Justice Centre,
28 Barrack Street, Perth WA. (Tel: 9425 7400)

so that it can be considered and approved by the Department of Justice (DOJ) and the relevant court or tribunal. If the proposal involves a legislative scheme of any complexity, the approval must be obtained before drafting takes place.

Note that this requirement does not apply to legislation that does no more than:

- create a new offence or alter or remove an existing offence; or
- retain existing jurisdiction in the course of enacting provisions in substitution for existing provisions.

Cabinet should not be asked to approve unnecessary legislation. In particular proposed legislation should not —

- provide for a matter if the matter can be done administratively;
- provide for a matter if the matter can be done under an executive (or prerogative) power possessed by a Minister (to do so might displace or restrict the executive power);
- set out the functions of a Minister unless there is a sound reason to do so.

PCO has extensive experience in the drafting of legislative schemes, and can provide advice on the best way to achieve a particular legislative policy. Consulting PCO before seeking Cabinet approval to draft can save time during the drafting process.

PCO can also provide advice on the time frames required to draft a Bill. The time required is often underestimated, and is affected by such matters as the complexity of the particular Bill, the drafting priority attached to the Bill and other Bills on the Government's legislative programme and PCO's drafting resources. Departments and agencies should not commit their Minister to a particular time frame for the drafting of a Bill without first consulting PCO.

You are welcome to contact the Parliamentary Counsel at any time to discuss your legislative proposal.

4. Proposal put to Cabinet by Minister responsible

The Cabinet submission (or minute) for approval for legislation to be drafted —

- explains in general terms —
 - the background to the proposed legislation;
 - why the proposed legislation is needed;
 - the intended effect of the proposed legislation;
- advises Cabinet that —
 - the proposal satisfies the Regulatory Impact Assessment requirements for an exclusion category; or
 - a Preliminary Impact Assessment and, if required, a Regulatory Impact Statement were completed and a compliance assessment notice was issued by the BRU; or
 - a Minister for Finance Exemption was approved;
- explains any urgency for the legislation;
- seeks Cabinet's approval for the necessary Bill or Bills to be prepared by PCO;
- unless there are exceptional circumstances, is accompanied by drafting instructions for the proposed legislation (see 5 below and *Appendix A2*);

- should not seek approval to print and introduce the legislation except in special cases (e.g. Government Agreement Bills) or in exceptionally urgent circumstances.

See further the *Cabinet Handbook* for the details of the procedure to be followed when submitting a Cabinet submission for approval to draft a Bill.

5. Drafting instructions for the proposed legislation

Drafting instructions —

- are prepared or overseen by a person (the instructing officer), who is a very senior officer of the department concerned, is totally conversant with the legislative proposal and its background and is able to make or readily obtain decisions on policy;
- should not be finalised until —
 - appropriate consultations have been conducted with persons and bodies likely to be affected by the proposal (inside and outside the Government); and
 - the *RIA Guidelines* have been complied with to the satisfaction of the BRU, or a Minister for Finance Exemption has been obtained (refer to *RIA Guidelines*);
- explain in specific terms and in detail the matters to be dealt with by the proposed legislation.

Dos —

- do use ordinary plain narrative English to explain in detail what is wanted. Describe what effect or result you want to achieve, not how you think it might be achieved. It is the drafter's job to decide how to express the policy in legislative form;
- do refer to other WA legislation, or legislation from other places, if it may assist in the drafting;
- do deal with the effects of the proposed legislation on —
 - existing WA legislation (e.g. consequential amendments);
 - existing situations (e.g. need for transitional or saving provisions);
- do include the name, address, telephone number and email address of the instructing officer. (Once PCO receives a copy of Cabinet's approval to draft the Bill, PCO sends an email advising that PCO has received a copy of the approval but will not proceed to draft until it receives a request to commence drafting. See 7 below.)

DON'Ts —

- don't repeat the material in the Cabinet submission;
- don't set out drafting instructions in the form of a lay draft of legislative provisions or otherwise attempt to draft the legislation wanted. This applies even if you are a lawyer;
- don't write preliminary or incomplete instructions hoping to complete them orally;
- don't include copies of WA legislation (PCO has it).

6. Cabinet approves the drafting of the proposed legislation

If Cabinet approves the submission, Cabinet sends a copy of Cabinet's decision and the associated submission to PCO.

After Cabinet has approved the drafting of legislation, drafting of it will not proceed until —

- PCO has been sent a formal request to commence drafting the legislation by the department responsible for the legislation (see 7 below); and
 - the LSCC has assigned a drafting priority to the legislation (see 8 below).
- When drafting will commence is determined by its drafting priority (see 8 below).

7. PCO to be requested to draft

PCO must be sent (by email) a formal request to draft the necessary legislation by the department concerned in order to commence drafting. This applies in every case and should be done as soon as Cabinet approval to draft has been obtained: there is no need to wait for a drafting priority to be given (see 8 below).

The formal request must —

- refer to the date of Cabinet's approval to draft (no need to include a copy as PCO is sent them by Cabinet);
- include the name, address, telephone number and email address of the instructing officer;
- include the identifying number (RG number) given to the proposal by the BRU when the proposal's Preliminary Impact Assessment was submitted to the BRU;
- attach —
 - drafting instructions (see 5 above) even if they accompanied the Cabinet submission;
 - background material that will assist the drafter to understand the subject matter involved;
 - any legal opinion that may assist;
 - whichever of the following is applicable —
 - if the BRU did not require a Regulatory Impact Statement, a copy of the Preliminary Impact Assessment compliance assessment notice;
 - a Regulatory Impact Statement for the proposal and a copy of the Regulatory Impact Statement compliance assessment notice for the proposal as issued by the BRU;
 - if a Minister for Finance Exemption was obtained, a copy of the exemption letter;
- attach or, if it is available on the Internet, refer to —
 - legislation from other places if it is to be used as a model;
 - any decision of a court that may assist;
 - any material that is to be referred to in the legislation, or that affects the legislation, and that the drafter might need to consult during the drafting process (e.g. Australian Standards);
- be emailed to pco@pco.wa.gov.au (attention Parliamentary Counsel). Material that cannot be emailed should be sent or delivered to PCO. (see contact details above). There is no need to confirm emailed instructions by letter or fax.

On receiving the formal request, PCO will acknowledge receipt of the instructions. Once a drafting priority has been allocated to the legislation, PCO will notify the instructing officer by email of the name of the drafter who will do the drafting.

8. The proposed legislation must have a drafting priority

A drafting priority for the legislation may have already been assigned by Cabinet when setting the legislative programme (see 2 above) or, in rare cases, when it

approves drafting of the legislation. But in most cases legislation will not have a drafting priority at the time Cabinet approves drafting.

If there is no current drafting priority, the LSCC will give the legislation a drafting priority when it next meets (see *Appendix A2*) and inform PCO of this. Between meetings of the LSCC, the chair of the LSCC may give the legislation an interim drafting priority.

9. The proposed legislation is drafted by PCO

Drafts of the proposed legislation are produced for comment until it is acceptable to the instructing officer and the drafter is satisfied that it is suitable to be introduced to Parliament as a Bill.

How quickly proposed legislation is drafted depends on —

- the drafting priority assigned to it;
- how well thought out and written the drafting instructions are;
- how conversant the instructing officer is with the subject matter;
- how quickly the instructing officer answers questions by the drafter and comments on drafts produced for comment;
- how complex the subject matter is and how long the proposed legislation needs to be;
- how much work with the same or a higher priority PCO has.

10. Role of the instructing officer in the drafting process

It is the job of an instructing officer —

- to respond promptly to requests for clarification or further information made by the drafter;
- to carefully and methodically examine and check each draft in detail to see that it accurately reflects the drafting instructions and to see that it will work in practice;
- to constructively criticise each draft;
- if additional or revised instructions are required by the drafter, to give them in writing;
- to consult with other agencies or persons as necessary during the drafting process;
- to consult the BRU if the legislation drafted differs significantly from what was originally proposed and, if necessary, complete a replacement Regulatory Impact Statement.

11. Draft Bill put to Cabinet for approval to print by responsible Minister

When drafting is completed, the Minister submits the final draft to Cabinet for approval to print the Bill for introduction into Parliament.

It is the instructing officer's job to prepare the Minister's Cabinet submission seeking that approval. The submission —

- refers to Cabinet's approval for the legislation to be drafted and attaches a copy of the drafted Bill (PCO provides a PDF of the draft to the instructing officer for this purpose);
- identifies any material changes to the proposal for legislation that have occurred since Cabinet gave its approval to draft the legislation;
- advises that if any significant changes have been made to the proposal since Cabinet gave its approval to draft, a replacement Regulatory Impact Statement has been completed by the agency and assessed by the BRU;
- seeks Cabinet's approval to print the Bill.

It is useful to include in the Cabinet submission a request for the Minister to be authorised to make amendments of a minor or technical nature before introduction. If the need to make amendments of this nature arises after Cabinet's approval to print, this authority avoids the need to resubmit the Bill to Cabinet for approval of those amendments.

12. Cabinet approves the Bill's printing for introduction and notifies PCO

13. Amendments resulting from briefings for Government or Opposition MPs

Amendments to the Bill may be required as a result of Caucus consideration or consultation with other parties in Parliament. Unless these amendments are of a minor drafting nature, PCO will require that they be approved by the Minister before the Bill is printed for introduction. Significant amendments will require approval by both the Minister and the Premier, or further approval by Cabinet.

14. Printing the Bill

PCO —

- arranges for the Bill to be printed by SLP;
- prepares and sends to DPC a notice of motion to introduce the Bill to Parliament. DPC arranges for the notice of motion to be provided to the Minister who is to move the Bill's introduction;
- arranges for a Governor's message to be obtained under the *Constitution Acts Amendment Act 1899* s 46(8) if that is appropriate.

PCO will not normally print the Bill until instructed to do so by the Cabinet Secretariat. The instructing officer must also notify PCO immediately if there is any reason why printing of the Bill should be delayed.

The department responsible for a Bill pays for printing it. SLP sends the instructing officer an invoice for the cost.

Once the Bill has been introduced, an electronic version of the Bill and the explanatory memorandum are made available on the Parliament website.

If the Bill makes significant amendments to another Act, PCO will also prepare a "Blue Bill". This is a version of the other Act showing how it is proposed to be amended by the Bill. Copies of the "Blue Bill" are provided to the instructing officer and members of Parliament, and an electronic version is made available on the Parliament website, when the Bill has been introduced.

15. Introduction and passage through Parliament

The instructing officer —

- prepares the second reading speech for the relevant Ministers;
- prepares an explanatory memorandum for the Bill (required by the Standing Orders of each House of Parliament) explaining the background to and the reasons for each clause of the Bill and, if necessary, the relationship of a clause to other clauses in the Bill;
- attends Parliament to assist the relevant Ministers when the Bill is being considered by Parliament.

The drafter, if requested to do so —

- attends Parliament to assist the relevant Ministers with drafting matters when the Bill is being considered by Parliament;
- drafts any amendments in committee to the Bill that may be required by the relevant Ministers;
- comments on draft amendments proposed by non-Government members.

The Bill must pass through the first, second and third reading stages of each House of Parliament and may have to be considered by a committee of a House.

See further the *Parliamentary Procedures Guide*.

16. Assent

If both Houses of Parliament pass the Bill, copies of the Bill incorporating all amendments that were made to it by the Houses are prepared by the Clerk of the Parliaments and forwarded through PCO and DPC to the Governor for assent.

Executive Council is not involved in the assent procedure.

When assented to, a Bill becomes an Act of Parliament.

If the administration of the Act needs to be committed to a Minister under the *Interpretation Act 1984* s.12(a) (mainly for new Acts), PCO prepares an Executive Council minute and provides this to DPC.

17. Printing and publication of an Act

SLP prints and sells copies of an Act once it has been assented to.

As soon as practicable after an Act is assented to, a copy of it is made available on the WA legislation website (www.legislation.wa.gov.au).

18. Commencement of an Act

When an Act comes into operation depends on what it says —

- if the Act is silent about commencement, it will operate 28 days after assent;
- otherwise the Act might say that it comes into operation —
 - on the day after the date of assent;
 - on a stated date before assent (i.e. retrospectively—this is rare);
 - on proclamation;
 - a combination of the above.

If an Act is to come into operation on proclamation, it is often because matters have to be attended to before the Act can come into operation, e.g. —

- subsidiary legislation (regulations etc.) may have to be drafted and made;
- administrative structures may have to be set up;
- people may have to be appointed to statutory positions.

19. Proclamation

A proclamation for the commencement of an Act —

- is a document drafted by PCO on written instructions from the relevant department that have been approved by the Minister responsible for the Act;
- must be signed by the Minister and sent to Executive Council with a draft Executive Council minute (drafted by PCO);
- is made by the Governor with the advice and consent of Executive Council;
- states when an Act or some of it comes into operation;
- must be published in the *Government Gazette* before it has effect (the instructing officer arranges this).

20. Publication of amended versions of Acts

If an Act amends another Act, the WA legislation website will show the other Act as amended as soon as practicable after it is amended.

The WA legislation website also makes available compare documents that show the changes that have been made between versions of an Act, either by amending legislation or under the *Reprints Act 1984*. A compare document is a comparison between a version of the Act at a particular point in time and the previous version of the Act.

21. Reprints of Acts

Reprints of Acts are published from time to time under the *Reprints Act 1984*. The current versions of all Acts (and some past versions) are available on the WA legislation website.

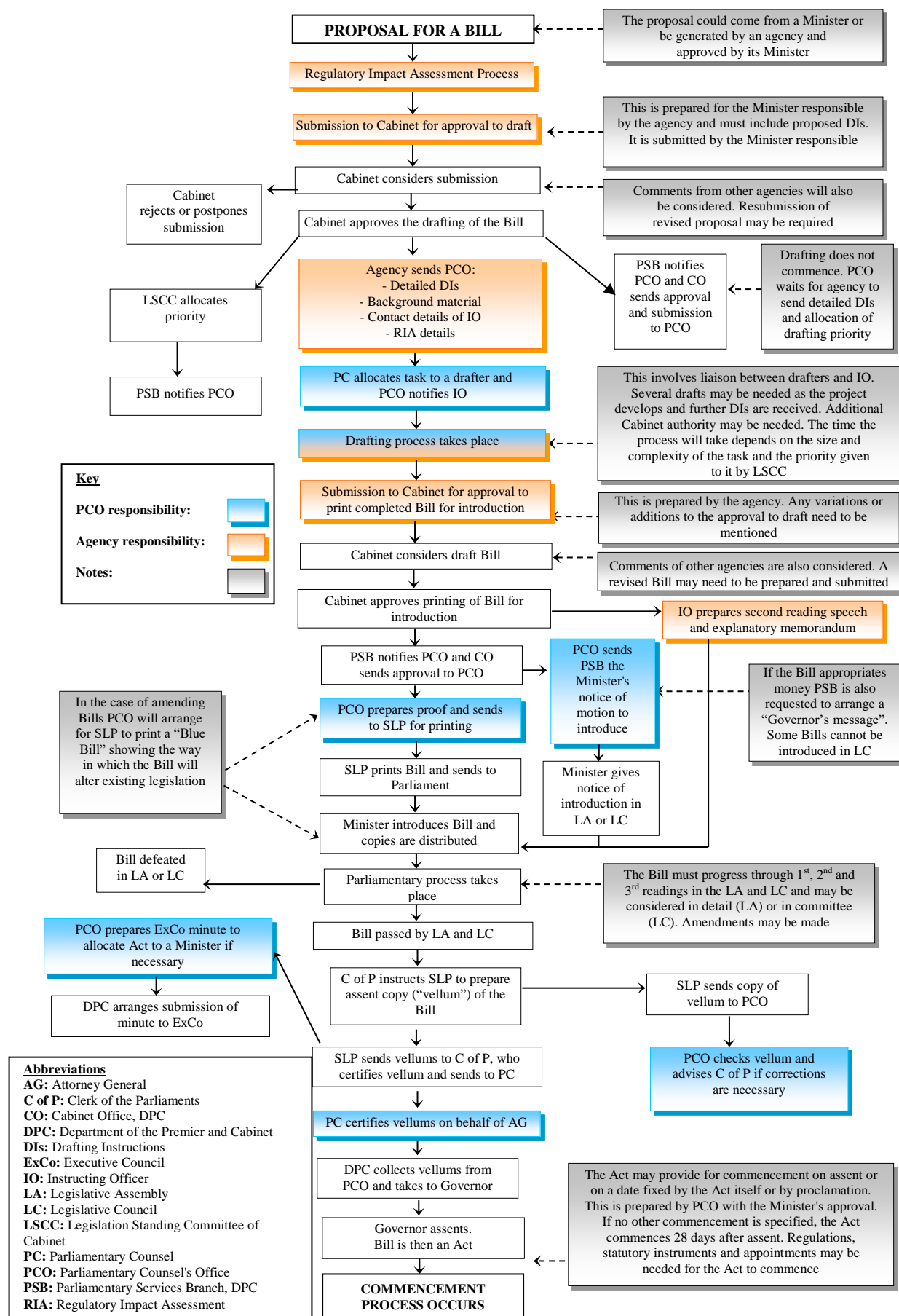
Reprints incorporate all amendments made to the Act that are in operation at the date shown on the reprint. Any amending provisions not yet in operation appear in notes at the end of the reprint.

22. Other useful documents

See the following documents for additional information:

- Cabinet Handbook:
<https://www.dpc.wa.gov.au/RoleOfGovernment/Pages/CabinetHandbook.aspx>
- Parliamentary Procedures Guide:
<https://www.dpc.wa.gov.au/RoleOfGovernment/Pages/ParliamentaryProceduresGuide.aspx>
- Expenditure Review Committee Handbook:
<https://www.dpc.wa.gov.au/RoleOfGovernment/Pages/ExpenditureReviewCommitteeHandbook.aspx>
- Executive Council Guidelines:
<https://www.dpc.wa.gov.au/RoleOfGovernment/Pages/ExecutiveCouncilGuidelines.aspx>
- Regulatory Impact Assessment Guidelines:
<https://www.treasury.wa.gov.au/Economic-Policy/RIA-Program/RIA-support/>
- A Guide for Ministerial and Departmental Staff:
<https://www.dpc.wa.gov.au/RoleOfGovernment/Documents/Parliamentary%20Procedures%20Guide.pdf>

- **Appendix A1 — Process for drafting and enacting Government Bills**



Appendix A2 — Legislation Standing Committee of Cabinet (LSCC)

Operation

Role —

The role of LSCC is to set drafting priorities for Bills approved for drafting by Cabinet and, as a consequence, determine the timing of their introduction into and passage through the Parliament using the following priority coding system:

PRIORITY CODE	DESCRIPTION
OO	Assigned by the Premier for urgent Bills to be given priority above all others.
AA	Bill to be introduced in the first half of the current year and passed before the end of the first half of the current year.
AB	Bill to be introduced in the first half of the current year and passed before the end of the current year.
BB	Bill to be introduced in the second half of the current year and passed before the end of the current year.
BX	Bill to be introduced in the second half of the current year but not necessarily passed before the end of the current year.
A(year)	Bill to be introduced in the first half of the following year.
B(year)	Bill to be introduced in the second half of the following year.
SP	Special long term projects for introduction in future years which require drafting in the current year. To be restricted to very large exercises.

Membership —

- Premier
- Leader of the House in the Legislative Assembly (Chair)
- Leader of the Government in the Legislative Council
- Attorney General.

Three member Ministers constitute a quorum.

Other attendees —

Also in attendance at LSCC meetings are —

- Parliamentary Counsel
- Director, Cabinet Secretariat, DPC
- Manager, Parliamentary and Executive Government Services, DPC (secretariat support).

Chiefs of Staff or policy advisers may also attend to support member Ministers.

Matters referred to LSCC —

- Bills approved by Cabinet for drafting are referred to LSCC for allocation of a drafting priority
- Any correspondence concerning legislative priorities
- Any other matter referred to LSCC by Cabinet
- Any other matter considered by the Chair to warrant consideration by LSCC.

Frequency of meetings

LSCC will meet as required and directed by the Chair, probably 4-6 times per year.

Amalgamation of amendments —

- Wherever possible, LSCC will liaise with the responsible Minister to amalgamate proposed amendments to any one Act. This will reduce the overall number of Bills and in turn reduce the number of parliamentary debates each year on amendments to the same Act.

Repeals and minor amendments —

- Ministers are always encouraged to repeal unnecessary or redundant Acts. To assist this process, preparation of the annual or bi-annual *Statutes (Repeals and Minor Amendments) Bill* will be coordinated by DOJ. See further Premier's Circular No. 2010/01 Statutes (Repeals and Minor Amendments) Bill.

B. Subsidiary legislation (regulations etc.)

See Appendix B1 for a flow diagram outlining the process for drafting and making subsidiary legislation.

1. Need for subsidiary legislation

See A1.

In many cases an Act will specifically require some matters to be dealt with by subsidiary legislation.

2. Developing a proposal for subsidiary legislation

See A3. All points apply equally to developing a proposal for subsidiary legislation. See, in particular, the advice about consulting PCO about a legislative proposal and making commitments about time frames required for drafting.

Agencies frequently underestimate the time required to draft subsidiary legislation, particularly subsidiary legislation required before an Act or particular amendments to an Act can be brought into operation. Agencies should not commit their Minister to a particular time frame for commencing legislation without first consulting PCO.

Subsidiary legislation —

- must be contemplated by an Act;
- must be within the power conferred by an Act;
- if it proposes changes to tariffs, fees or charges, must have the prior approval of the ERC and endorsement by Cabinet of the ERC decisions (see *ERC Handbook*).

3. Approval for drafting

A proposal for subsidiary legislation —

- does not have to be approved by Cabinet (but may be);
- must —
 - satisfy the Regulatory Impact Assessment requirements for an exclusion category; or
 - have had a Preliminary Impact Assessment and, if required, a Regulatory Impact Statement completed and approved by the BRU; or
 - have a Minister for Finance Exemption approved;
- in most cases must be approved by the Minister responsible for the Act concerned before drafting commences.

Approval of the Attorney General must be obtained for the drafting of subsidiary legislation in advance of the passage of the empowering Bill.

4. Drafting instructions

See A5.

5. PCO to be requested to draft

See A7.

A copy of the Minister's approval must be provided to PCO.

6. Drafting subsidiary legislation

See A9.

Drafting priorities are not usually assigned to subsidiary legislation but may be.

7. Role of instructing officer

See A10.

Draft subsidiary legislation does not have to be submitted to Cabinet.

8. Making subsidiary legislation

The enabling Act will specify who subsidiary legislation is made by. It could be —

- the Governor in Executive Council;
- the Minister responsible for the Act;
- a statutory body or officer.

When a draft of subsidiary legislation has been settled between the instructing officer and the drafter, PCO sends (usually by email) the subsidiary legislation, a Counsel's Certificate, an Information Sheet and any other documents (e.g. Executive Council minute) to the instructing officer. The instructing officer must read carefully the Information Sheet and any additional notes in the Counsel's Certificate.

It is the instructing officer's job to take the steps necessary for the subsidiary legislation to take effect.

If the subsidiary legislation has to be made by the Governor in Executive Council, it must be accompanied by —

- a draft Executive Council minute (PCO drafts it);
- the Counsel's Certificate (PCO drafts it);
- an explanatory note (the instructing officer prepares it).

9. Publication

Note the following —

- Subsidiary legislation must be published in the *Government Gazette* in order for it to have effect.
- Publication should take place as soon as possible after notification of Executive Council approval is received or the Minister or other statutory body or officer has signed the subsidiary legislation.
- It is the instructing officer's job to arrange publication with SLP.
- The department responsible for subsidiary legislation pays for its publication. SLP sends the instructing officer an invoice for the cost.

10. Consideration by Parliament

After their publication, regulations, rules, by-laws and certain other forms of subsidiary legislation —

- must be tabled before each House of Parliament (PCO attends to this);
- are considered by Parliament's Joint Standing Committee on Delegated Legislation;
- are disallowable by either House of Parliament.

The Joint Standing Committee on Delegated Legislation requires certain information about subsidiary legislation that it considers. See Premier's Circular No. 2014/01 (15/02/2014).¹

It is the instructing officer's job to provide that information.

¹ See —
<https://www.dpc.wa.gov.au/GuidelinesAndPolicies/PremiersCirculars/Pages/Default.aspx>

Special arrangements apply where the passing of primary legislation results in consequential amendments to several items of delegated legislation administered by different agencies, and one agency acts in a coordinating role for the other agencies. PCO will advise on these arrangements during the drafting process.

11. Publication of new and amended versions of subsidiary legislation

As soon as practicable after subsidiary legislation is published, a copy of it is made available on the WA legislation website.

If subsidiary legislation amends other subsidiary legislation, the WA legislation website will show the other subsidiary legislation as amended as soon as practicable after it is amended.

12. Reprints of subsidiary legislation

Reprints of subsidiary legislation are published from time to time under the *Reprints Act 1984*. The current versions (and some past versions) of all subsidiary legislation are available on the WA legislation website.

Reprints incorporate all amendments made to the subsidiary legislation that are in operation at the date shown on the reprint. Any amending provisions not yet in operation appear in notes at the end of the reprint.

13. Other useful documents

See A22.

Appendix B1 — Process for drafting and making subsidiary legislation

