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Guidelines for drafting proclamations and Orders in Council

This document provides guidance to agencies that propose to draft their own proclamations and Orders in Council for submission to the Executive Council. Template documents in Microsoft Word format are also made available for downloading so that agencies can use them for their own purposes.

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

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Other useful documents

See the following documents for additional information:

- Getting Government Legislation Drafted and Enacted:
https://department.justice.wa.gov.au/P/parliamentary_counsel.aspx
- Cabinet Handbook:
<https://www.dpc.wa.gov.au/RoleOfGovernment/Pages/CabinetHandbook.aspx>
- Executive Council Guidelines:
<https://www.dpc.wa.gov.au/RoleOfGovernment/Pages/ExecutiveCouncilGuidelines.aspx>

Guidelines for drafting proclamations and Orders in Council

Introduction

This document provides guidance to agencies that propose to draft their own proclamations and Orders in Council for submission to the Executive Council. Template documents in Microsoft Word format are also made available for downloading so that agencies can use them for their own purposes.

The *Executive Council Guidelines* (April 2018), published by the Department of the Premier and Cabinet, strongly recommends that agencies seek advice from the Parliamentary Counsel's Office (**PCO**) when preparing submissions of a legal, complicated or non-routine nature. Contact details are set out above.

Important note

The guidance in this document is necessarily of a general nature, and may not take account of specific or unusual circumstances. It is not legal advice. Agencies should always seek their own advice in order to make sure that a proclamation or Order in Council is suitable and will be legally effective.

Proclamations

Proclamations are generally of 2 kinds.

First, there are commencement proclamations that are used to bring Acts or parts of Acts into operation. PCO drafts all of these proclamations, and instructions to draft these proclamations must be provided to PCO in the normal way.

Second, there are general purpose proclamations that are used to do a whole range of miscellaneous things. These include summoning or proroguing the Legislative Council and the Legislative Assembly, and dissolving the Legislative Assembly (*Constitution Act 1889* section 3), appointing or altering the dates of public holidays (*Public and Bank Holidays Act 1972* sections 5, 7 and 8), fixing dates for the election of senators for WA (*Election of Senators Act 1903* section 2) and declaring circuit towns (*Supreme Court Act 1935* section 46). PCO does not draft all of these proclamations, but is available to provide advice to agencies that propose to draft them themselves.

This document explains the format of proclamations, and makes available for downloading a template document in Microsoft Word format for agencies to use for their own purposes. An example document and Explanatory Notes are also provided.

Orders in Council

Orders in Council are also used to do a whole range of miscellaneous things. These include constituting water reserves (*Country Areas Water Supply Act 1947* section 9), placing Crown land under management (*Conservation and Land Management Act 1984* section 8C), exempting electricity generators from licensing requirements (*Electricity Industry Act 2004* section 8) and constituting port areas (*Port Authorities Act 1999* section 24). PCO does not draft all Orders in Council, but is available to provide advice to agencies that propose to draft them themselves.

A standard format for Orders in Council is also desirable. The format that PCO uses for Orders in Council follows the standard format for other subsidiary legislation drafted by PCO. This document makes available for downloading a template document in Microsoft Word format for agencies to use for their own purposes. An example document and Explanatory Notes are also provided.

Format for proclamations

PCO has introduced an updated format for proclamations to make it similar to the format for Bills and subsidiary legislation.

The key features of the format are as follows:

- a citation is included. This makes it easier to distinguish between different proclamations and to cite a particular proclamation in another instrument, and enables proclamations to be listed and indexed more readily;
- in a commencement proclamation, the reference to the year and number of the Act to be commenced is not required;
- the list of the Governor's honours is not required;
- specific reference to the Governor acting with the advice and consent of the Executive Council is replaced with a simple reference to the "Governor in Executive Council" as in other instruments. The effect is the same;
- provision for the date on which the proclamation is signed is not required. The definition of a proclamation in the *Interpretation Act 1984* section 5 means that publication in the *Gazette* is essential before there is a proclamation. The date on which a proclamation is signed is therefore irrelevant to its legal effectiveness, and the inclusion of the date of signing may appear to give it a significance that it does not have;
- the archaic phrase "Given under my hand" and the reference to the Public Seal of the State are not required. Proclamations are still sealed;
- the statement "By command of the Governor" that formerly appeared at the end of the proclamation, immediately before the Ministerial countersignature, is omitted as it is neither necessary nor helpful. This statement is also now omitted from subsidiary legislation.

Providing electronic versions of proclamations or Orders in Council to State Law Publisher

If the templates made available in these guidelines are used, the State Law Publisher (SLP) may be able to use the electronic file for the purposes of publishing the proclamation or Order in Council in the *Gazette*. This may mean that SLP does not need to rekey the document for publication. Agencies considering this process should consult with SLP.

Absence of Governor from Executive Council

If a proclamation or Order in Council is to be submitted to the Executive Council when the Deputy Governor or Administrator is acting for the Governor, the proclamation or Order in Council, and the accompanying Executive Council minute paper, are still made out as if the Governor were presiding in Executive Council. The document will be over-stamped by Executive Government Branch staff to reflect who will be exercising the Vice Regal function.

Templates

This section provides downloadable templates in Microsoft Word 2010 for proclamations and Orders in Council. You can use these to create your own documents.

This section also contains example documents, with explanatory notes. These are designed to provide general guidance about the format and content of proclamations and Orders in Council. Do not copy the example documents to create your own document. The example documents are not designed as templates. Download a template instead.

Downloadable templates

Click on one of the following links to download a template:

[Proclamation template](#)

[Order in Council template](#)

How to use the templates

Each template is formatted using a basic set of Microsoft Word 2010 styles. To see these styles, view a template in Outline View or Draft View.

You can draft your own proclamation or Order in Council by downloading a template, saving it to your own computer system and inserting the required text between the square brackets. Delete the square brackets once you have done this. You may also need to modify the introductory provisions to suit your own circumstances.

Once you have downloaded and saved a template, the parts of the template highlighted in yellow should be filled in first. To make things easier, filling in the first 2 yellow-highlighted parts of the template (the name of the empowering Act and the citation) will also include this material in the appropriate position in the other parts of the template (shown as grey-highlighted text). The citation of the document will also be included in a running head on page 2 and any subsequent pages. To use this feature of the template, select the yellow-highlighted text (including the square brackets but not the paragraph mark at the end of the line) and type your text. Then save the document. Saving the document puts the name of the empowering Act and the citation into the grey-highlighted parts of the document and the citation into the running head.

You can add provisions by copying a whole provision (such as a subclause) from the template and inserting it where you want it. Make sure that additional provisions follow the correct structure for the document (for assistance, see the relevant example document). The template will not alert you if the structure is incorrect. You can simply delete unnecessary provisions.

The templates do not contain automatic numbering. You will need to check the numbering of the provisions of your draft and make sure that it is correct.

Example documents and explanatory notes

The following example documents and explanatory notes are designed to provide general guidance about the format and content of proclamations and Orders in Council. The guidance is necessarily of a general nature, and does not take account of specific or unusual circumstances. It is not legal advice. Agencies should always seek their own advice in order to make sure that a proclamation or Order in Council is suitable and will be legally effective.

Example documents and explanatory notes

Example proclamation and explanatory notes

[Name of empowering Act]¹

²[] **Proclamation [year³]**

Made under the [*name of empowering Act*]⁴ section [number]⁵ by the Governor⁶ in Executive Council.

1. Citation

This proclamation is the [] *Proclamation [year]*⁷.

2. Commencement

This proclamation comes into operation as follows —

- (a) clauses 1 and 2 — on the day on which this proclamation is published in the *Gazette*;
- (b) the rest of the proclamation — on [*insert date*]⁸.

3. Naming conventions and formatting⁹

- (1) The individually numbered components of a proclamation are called clauses, which can be subdivided into subclauses.¹⁰
- (2) A subclause can be subdivided into paragraphs, as follows —
 - (a) this is a paragraph of a subclause, and it can be further subdivided into subparagraphs as follows —
 - (i) this is a subparagraph; and
 - (ii) this is a second subparagraph, and shows how the text in a subparagraph is formatted;and
 - (b) this is another paragraph, and shows how the text in a paragraph is formatted.
- (3) This is the third subclause of this clause, and refers to Schedule 1.
- (4) A subclause (or a paragraph) can break into paragraphs (or subparagraphs) that form a list of things like the following —
 - (a) cats;
 - (b) dogs;
 - (c) fish.

(5) A proclamation can contain a Table.

Table

Heading	Heading

Schedule 1¹¹

[cl. 3(3)]¹²

Governor¹³

[L.S.]¹⁴

[Minister]¹⁵

Explanatory notes for example proclamation

¹ The name of the Act under which the proclamation is made is included here. If the proclamation is made under more than one Act, include the names of each Act in alphabetical order. If the proclamation is made under the Royal prerogative, insert “Royal prerogative” instead.

² This is the citation (or title) of the proclamation. To make proclamations easy to find and index, the name of the Act under which they are made (minus “Act” and the year of enactment) should form the first part of the citation. So, for example, if a proclamation is made under the *Dangerous Goods Safety Act 1994*, the first part of the proclamation should be “Dangerous Goods Safety”. If it is possible, it is also helpful to provide a short description of the subject matter of the proclamation (in brackets) after the name of the empowering Act. So, for example, if this proclamation related to explosives, the proclamation might be called “Dangerous Goods Safety (Explosives) Proclamation 2013”. If a second or subsequent proclamation with the same name is to be submitted in the same year, it should be distinguished by the inclusion of a number in the citation. So, for example, a second proclamation would be called “Dangerous Goods Safety (Explosives) Proclamation (No. 2) 2013”. Do not put “(No. 1)” in the citation of the proclamation, even if it is known that a second or subsequent proclamation will be made in the same year.

³ This should be the year in which the proclamation is to be submitted to the Executive Council.

⁴ As for note 1.

⁵ Include a reference to the particular provision of the Act under which the proclamation is made.

⁶ Even if the proclamation is to be submitted to a meeting of the Executive Council from which the Governor will be absent, it is still prepared as if the Governor were to preside. Executive Government Branch staff will over-stamp the proclamation with the proper title of the person who is to act for the Governor (which may be the Deputy Governor or the Administrator).

⁷ The citation given here must match the citation to which note 2 relates.

⁸ The definition of a proclamation in the *Interpretation Act 1984* section 5 means that publication in the *Gazette* is essential before there is a proclamation. So unless authorised by its empowering Act, a proclamation is not effective until it is published. Very often, a proclamation can simply come into operation on publication, and an express commencement provision is unnecessary. This is also the case if the operative part of the proclamation provides for its own commencement, such as where a proclamation specifies that something is to happen on a specific date or on the occurrence of an event.

However, if the proclamation needs to take effect at some time after publication, a commencement provision should be inserted to that effect. Usual PCO practice is to draft subsidiary legislation so that the formal provisions (citation and commencement) come into operation on the day of gazetting. Remaining provisions are then brought into operation on a later day. The suggested commencement provision for proclamations follows this practice. Agencies need to determine for themselves when the operative parts of a proclamation should come into operation.

⁹ This is a clause heading, and is included for illustrative purposes only. A suitable heading should be included for each clause of a proclamation. It should be short, and suitably descriptive of the effect of the clause.

The rest of this clause illustrates how a clause of a proclamation is formatted, and what the individual parts of a clause are called.

¹⁰ If a clause is not divided into 2 or more subclauses, the body of the clause is formatted like a subclause but is not numbered.

¹¹ Note that, in a proclamation, a Schedule does not begin on a new page. A Schedule is numbered as Schedule 1, even though it is the only Schedule in the proclamation. A Schedule can be used in a proclamation for a number of different purposes. For example, a map or legal description of a relevant area or location might be included.

¹² This is a shoulder reference. It should include the particular clause that refers to the Schedule.

¹³ As for note 6. The provisions for the Governor's signature, Public Seal and signature of the submitting Minister should be placed at the very end of the proclamation. They should not be placed between the body of a proclamation and a Schedule.

¹⁴ This is where the Public Seal of the State is fixed. When the proclamation is printed in the *Gazette*, "[L.S.]" appears in place of the Seal. The letters L.S. are an abbreviation for the Latin phrase *locus sigilli*, which means "the place of the seal".

¹⁵ The portfolio of the Minister who is submitting the proclamation to the Executive Council.

Example Order in Council and explanatory notes

[Name of empowering Act]¹

²[] **Order [year³]**

Made by the Governor⁴ in Executive Council.⁵

or

Made under the [*name of empowering Act*]⁶ section [number]⁷ by the Governor⁸ in Executive Council.

1. Citation

This order is the [] *Order [year]*⁹.

2. Commencement

This order comes into operation as follows —

- (a) clauses 1 and 2 — on the day on which this order is published in the *Gazette*;
- (b) the rest of the order — on the day after that day.¹⁰

3. Terms used¹¹

In this order —

cat means an animal of the species *felis catus* or a hybrid of that species;

dog means an animal of the species *canis familiaris* or *canis familiaris dingo*;

fish means an aquatic organism of any species (whether alive or dead), and includes —

- (a) the eggs, spat, spawn, seeds, spores, fry, larva or other source of reproduction or offspring of an aquatic organism; and
- (b) the following —
 - (i) a part only of an aquatic organism (including the shell or tail);
 - (ii) live rock and live sand.

4. Naming conventions and formatting¹²

- (1) The individually numbered components of an order are called clauses, which can be subdivided into subclauses.¹³
- (2) A subclause can be subdivided into paragraphs, as follows —
 - (a) this is a paragraph of a subclause, and it can be further subdivided into subparagraphs as follows —
 - (i) this is a subparagraph; and

- (ii) this is a second subparagraph, and shows how the text in a subparagraph is formatted;
 - and
 - (b) this is another paragraph, and shows how the text in a paragraph is formatted.
- (3) This is the third subclause of this clause, and refers to Schedule 1.
- (4) A subclause (or a paragraph) can break into paragraphs (or subparagraphs) that form a list of things like the following —
- (a) cats;
 - (b) dogs;
 - (c) fish.
- (5) An order can contain a Table.

Table

Heading	Heading

Schedule 1¹⁴

[cl. 4(3)]¹⁵

Clerk of the Executive Council.

Explanatory notes for example Order in Council

¹ The name of the Act under which the Order in Council (**order**) is made is included here. If the order is made under more than one Act, include the names of each Act in alphabetical order.

² This is the citation (or title) of the order. To make orders easy to find and index, the name of the Act under which they are made (minus “Act” and the year of enactment) should form the first part of the citation. So, for example, if an order is made under the *Dangerous Goods Safety Act 1994*, the first part of the order should be “Dangerous Goods Safety”.

If it is possible, it is also helpful to provide a short description of the subject matter of the order (in brackets) after the name of the empowering Act. So, for example, if this order related to explosives, the order might be called “Dangerous Goods Safety (Explosives) Order 2018”.

If a second or subsequent order with the same name is to be submitted in the same year, it should be distinguished by the inclusion of a number in the citation. So, for example, a second order would be called “Dangerous Goods Safety (Explosives) Order (No. 2) 2018”. Do not put “(No. 1)” in the citation of the first order, even if it is known that a second or subsequent order will be made in the same year.

³ This should be the year in which the order is to be submitted to the Executive Council.

⁴ Even if the order is to be submitted to a meeting of the Executive Council from which the Governor will be absent, it is still prepared as if the Governor were to preside. Executive Government Branch staff will over-stamp the order with the proper title of the person who is to act for the Governor (which may be the Deputy Governor or the Administrator).

⁵ It is not usually necessary to cite the particular section of the Act that empowers the order. The reference to the empowering Act before the citation is sufficient. If it is necessary to cite the empowering section, use the alternative formulation. If the order can be made only on the recommendation of a person or body, “on the recommendation of [person or body]” is added.

⁶ As for note 1.

⁷ Include a reference to the particular provision of the Act under which the order is made.

⁸ As for note 4.

⁹ The citation given here must match the citation to which note 2 relates.

¹⁰ The *Interpretation Act 1984* section 41(1) provides that subsidiary legislation made under a written law must be published in the *Gazette* and, subject to section 42 of that Act, comes into operation on the day of publication or, where another day is specified or provided for in the subsidiary legislation, on that day.

Unless authorised by the Act under which it is made, an order cannot come into operation before it is published in the *Gazette*. Usual PCO practice is to draft orders so that the formal provisions (citation and commencement) come into operation on the day of gazetting. Remaining provisions are then brought into operation on the day after gazetting, or on some other date or after some other period. Agencies need to determine for themselves when the operative parts of an order should come into operation.

¹¹ This clause illustrates how a clause that defines terms used in an order is formatted.

¹² This is a clause heading, and is included for illustrative purposes only. A suitable heading should be included for each clause of an order. It should be short, and suitably descriptive of the effect of the clause.

The rest of this clause illustrates how a clause of an order is formatted, and what the individual parts of a clause are called.

¹³ If a clause is not divided into 2 or more subclauses, the body of the clause is formatted like a subclause but is not numbered.

¹⁴ Note that, in an order, a Schedule begins on a new page. A Schedule is numbered as Schedule 1, even though it is the only Schedule in the order. A Schedule can be used in an order for a number of different purposes. For example, a map or legal description of a relevant area or location might be included.

¹⁵ This is a shoulder reference. It should include the particular clause of the order that refers to the Schedule.