

Premier's Circular

Number: 2023/01 Issue Date: 19/10/2023 Review Date: 30/06/2025
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TITLE

SUBSIDIARY LEGISLATION – EXPLANATORY MEMORANDA

POLICY

The Joint Standing Committee on Delegated Legislation (JSCDL) scrutinises all regulations, by-laws, rules, local laws, major metropolitan region schemes and other subsidiary legislation Government agencies make on behalf of the Parliament of Western Australia.

Section 42 of the *Interpretation Act 1984* requires certain subsidiary legislation to be tabled in both Houses of Parliament within six sitting days of its publication in the *Government Gazette* or on the Western Australian legislation website. To enable the JSCDL to carry out its functions, the agency responsible for administering the subsidiary legislation must provide the following documents within 10 business days of publication date:

- One hard copy (double sided) and one electronic copy of the subsidiary legislation as published in the *Government Gazette* or on the Western Australian legislation website;
- One hard copy (double sided) and one electronic copy of an Explanatory Memorandum, prepared in accordance with this Circular, signed by the Chief Executive Officer (CEO) of the agency and initialled or signed by the responsible Minister;¹
- One hard copy (double sided) and one electronic copy of a completed Statutory Procedures Checklist in Appendix 2 format for a region planning scheme or an amendment to it;
- If the principal subsidiary legislation is not on the WA legislation website (for example if PCO has not drafted the legislation), but Section 42 of the *Interpretation Act 1984* applies, the Committee requires an electronic copy of:
 - The consolidated principal subsidiary legislation that is amended by the subsidiary legislation, with all amendments up to the date immediately before the most recent amendments take effect;
- Where the Parliamentary Counsel's Office (PCO) has produced a copy of the principal subsidiary legislation marked with the amendments made by the instrument under scrutiny, a link to the 'document compare' on the

¹ If Act specifically allows subsidiary legislation to be made by a person or entity other than a Minister or the Governor, the Explanatory Memorandum may be provided directly to the Committee without the Minister's signature or initials. A copy of information provided to the Committee should be forwarded to the relevant Minister for reference.

Western Australian legislation website.

For subsidiary legislation where notice of a disallowance resolution must be given within fewer than the 14 sitting days provided for in section 42 of the *Interpretation Act 1984*, the agency must provide this documentation within five business days of publication date of the *Government Gazette* or on the Western Australian legislation website.

Further information regarding the required content of explanatory memoranda is in Appendix 1. Hard copies of documents, along with a covering letter, should be addressed to:

The Committee Clerk
 Joint Standing Committee on Delegated Legislation
 GPO Box A11
 PERTH WA 6000

Electronic copies of documents, in either Word or PDF format, must be emailed to delleg@parliament.wa.gov.au. Each document must be sent by a separate email and clearly identified in the subject line of each email.

BACKGROUND

The Parliament of Western Australia established the JSCDL to assist with the scrutiny of subsidiary legislation made subject to section 42 of the *Interpretation Act 1984* or other written laws.

The JSCDL cannot properly fulfil its scrutiny role without timely provision of explanatory material for each item of subsidiary legislation referred to it upon gazettal. Agencies must provide the required material in a timely manner. These requirements are additional to the statutory requirement to table certain subsidiary legislation in both Houses of the WA Parliament within six sitting days of publication in the *Government Gazette* or on the Western Australian legislation website.

Roger Cook MLA
PREMIER

For enquiries contact:	JSCDL Committee Clerk (08) 9222 7300 Parliament House
Other relevant Circulars:	
Circular/s replaced by this Circular:	