



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 [Getting Private Members Legislation Drafted and Enacted](#)

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

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## Table of Contents

<b>Abbreviations and references .....</b>	<b>1</b>
<b>A. Acts of Parliament .....</b>	<b>2</b>
1. The need for legislation.....	2
2. Formulation of Government’s legislative program.....	2
3. Developing a proposal for legislation.....	2
4. Proposal put to Cabinet by Minister responsible .....	4
5. Drafting instructions for the proposed legislation.....	4
6. Cabinet approves the drafting of the proposed legislation .....	5
7. PCO to be requested to draft .....	5
8. The proposed legislation must have a drafting priority .....	6
9. The proposed legislation is drafted by PCO .....	6
10. Role of the instructor in the drafting process .....	6
11. Draft Bill put to Cabinet for approval to print by responsible Minister .....	7
12. Cabinet approves the Bill’s printing for introduction and notifies PCO .....	7
13. Amendments resulting from briefings for Government or Opposition MPs.....	7
14. Printing the Bill .....	8
15. Introduction and passage through Parliament.....	8
16. Assent .....	8
17. Publication of an Act.....	9
18. Commencement of an Act.....	9
19. Proclamation.....	9
20. Publication of amended versions of Acts.....	9
21. Reprints of Acts .....	10
22. Editorial versions of Acts.....	10
Appendix A1 — Process for drafting and enacting Government Bills.....	11
Appendix A2 — Legislation Standing Committee of Cabinet (LSCC) .....	12
<b>B. Subsidiary legislation (regulations etc.) .....</b>	<b>14</b>
1. Need for subsidiary legislation .....	14
2. Developing a proposal for subsidiary legislation.....	14
3. Approval for drafting.....	14
4. Drafting instructions.....	14
5. PCO to be requested to draft .....	15
6. Drafting subsidiary legislation .....	15
7. Role of instructing officer .....	15
8. Making subsidiary legislation .....	15
9. Publication .....	16
10. Consideration by Parliament .....	16
11. Publication of new and amended versions of subsidiary legislation .....	17
12. Reprints of subsidiary legislation.....	17
13. Editorial versions of subsidiary legislation .....	17
Appendix B1 — Process for drafting and making subsidiary legislation .....	18
Appendix B2 — Publication of Subsidiary legislation on the WALW or in the <i>Gazette</i> ..	19

## **Abbreviations and references**

BRP	Better Regulation Program guidance, available at <a href="#">Better Regulation</a>
BRU	Better Regulation Unit (of Treasury)
Cabinet Handbook	<a href="#">Cabinet Handbook</a>
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	<a href="#">Expenditure Review Committee Handbook</a>
Executive Council Guidelines	<a href="#">Executive Council Guidelines</a>
LSCC	Legislation Standing Committee of Cabinet
MP	Member of Parliament
Parliamentary Procedures Guide	<a href="#">Parliamentary Procedures Guide</a>
PCO	Parliamentary Counsel's Office
PEGS	Parliament and Executive Government Services, DPC
PSC	Public Sector Commission
WALW	<a href="#">WA legislation website</a>

## **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;
- commitment or desire to enact uniform legislation throughout Australia;
- public service administrative needs;
- legal advice or court case.

### **2. Formulation of Government's legislative program**

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 LSCC, decides which legislative proposals will be included in the Government's legislative program 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 program (including the drafting priority allocated to each Bill) and present a revised program to Cabinet for endorsement.

The Parliamentary sitting calendar is made available on the [Parliament website](#).

### **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 BRP before approval to draft. The BRU must be consulted in the early stages of any potentially economically significant regulatory proposal;
- considering the financial and resource implications and, if need be, consulting DoT and referring the matter to the ERC (see ERC Handbook);
- considering accountability issues and, if need be, consulting the 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 impact on the *Freedom of Information Act 1992* or the *Freedom of Information Regulations 1993*, consulting with the Information Commissioner;

- 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 the Executive Director, Court and Tribunal Services or Department of Justice, so that it can be considered and approved by 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.

*Statutes (Repeals and Minor Amendments) Bills* provide a vehicle to make minor amendments and repeals that do not affect the substance of the law. Special procedures apply to the drafting of these Bills. DoJ coordinates these Bills. See Appendix A2.

The *Legislation Act 2021* Part 3 confers powers on the Parliamentary Counsel to make editorial changes to legislation, as long as the changes do not change the effect of the law. These include powers to correct minor errors and inconsistencies (section 34). Part 3 replaces the *Reprints Act 1984*. As a result, some matters that might previously have been included in *Statutes (Repeals and Minor Amendments) Bills* might be able to be dealt with under the *Legislation Act 2021* Part 3.

Agencies that identify the need to make a minor amendment to an Act should continue to follow the Guideline published by the [Department of Justice: Guideline for agencies – Statutes \(Repeals and Minor Amendments\) Bills](http://www.wa.gov.au) ([www.wa.gov.au](http://www.wa.gov.au)).

The Department of Justice will consult with PCO about whether the proposed amendment should be dealt with under Part 3.

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 allocated to the Bill and other Bills on the Government’s legislative program 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 is consistent with the BRP in that the Better Regulation Principles have been applied to the development of the proposal and approved as such by the agency Director General or Chief Executive Officer, and —
  - the responsible agency has assessed the proposal as having no economically significant impacts; or
  - a Regulatory Impact Statement was completed, and a notice of advice was issued by the BRU; or
  - a Treasurer's Exemption was granted;
- 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. State 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. See also the [Cabinet Submission Checklist](#).

#### 5. Drafting instructions for the proposed legislation

Drafting instructions —

- are prepared or overseen by a person (the instructing officer), who should be a very senior officer of the department concerned, totally conversant with the legislative proposal and its background and 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 government); and
  - the BRP has been observed (see 4 above).
- 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 or the legislation of any other jurisdiction that is available on the Internet.

### **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
- a drafting priority has been allocated to the legislation (see 8 below).

When drafting will commence is determined by its drafting priority and the availability of drafting resources (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 allocated (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;
- attach —
  - drafting instructions (see 5 above) even though they accompanied the Cabinet submission;
  - background material that will assist the drafter to understand the subject matter involved;
  - any legal opinion that may assist, including SSO opinions (there is no need to seek approval from SSO to provide these to PCO);



- 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](mailto: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.

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 instructor by email of the name of the drafter who will do the drafting. How quickly a drafter is assigned to a job depends on the drafting priority and the availability of drafting resources.

## **8. The proposed legislation must have a drafting priority**

A drafting priority for the legislation may have already been allocated by Cabinet when setting the legislative program (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 allocate a drafting priority to the legislation when it next meets (see *Appendix A2*) and inform PCO of this. Between meetings of the LSCC, the Chair of the LSCC may allocate an interim drafting priority to the legislation.

## **9. The proposed legislation is drafted by PCO**

Drafts of the proposed legislation are produced for comment until it is acceptable to the instructor 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 allocated to it;
- how well thought out and written the drafting instructions are;
- how conversant the instructor is with the subject matter;
- how complex the subject matter is and how long the proposed legislation needs to be;
- how quickly the instructor answers questions by the drafter and comments on drafts produced for comment;
- the extent of consultation on drafts with other agencies or persons and the need for drafts to be revised in the light of consultation feedback;
- how much work with the same or a higher priority PCO has.

## **10. Role of the instructor in the drafting process**

It is the job of an instructor —

- 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 seek SSO advice on any legal issues or legal policy issues that arise in the course of drafting;
- to seek Ministerial or Cabinet approval for any matters that are proposed for inclusion in the Bill and are not covered by the Cabinet approval to draft.

Comments from instructors on drafts of legislation produced by PCO are an essential part of the process of settling a draft. Comments can be provided in a number of ways, for example in narrative comments in an email, in a separate document or in a table that lists each provision of a draft and states whether the provision is acceptable or comments on it. It is important that the drafter is able to relate comments to particular provisions in the draft. Instructors can help by clearly identifying each provision that their comments relate to.

PCO sends drafts in PDF format to instructors. Some PDF software allows users to annotate and save comments directly into the PDF. PCO finds comments in this format very difficult to access, and it is very difficult to print out the draft with the comments showing. Instructors are therefore requested not to provide comments on drafts in this format.

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

When drafting is complete, 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 latest draft of the Bill (PCO provides a PDF of the draft to the instructor for this purpose. There is no special format for this draft.);
- identifies any material changes to the proposal for legislation that have occurred since Cabinet gave its approval to draft the legislation;
- 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.

In considering the time needed to obtain Cabinet approval to print, instructors should bear in mind the "10 working day rule" that applies to Cabinet submissions. Cabinet submissions must be received by PEGS before 10 am on a Monday to be listed for consideration at the Cabinet meeting on the second Monday following, unless a waiver of the rule is obtained from the Premier. See further the [Cabinet Handbook](#) section 8.2.

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

## **13. Amendments resulting from briefings for Government or Opposition MPs**

The Minister will usually seek Caucus endorsement of the Bill and may arrange for other parties in Parliament to be briefed on the Bill. The latest version of the Bill is used for this purpose, and PCO does not prepare copies of the Bill in any special format for Caucus consideration or briefings.

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 further contact with the BRU and 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;
- 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 PEGS. The instructor must also notify PCO immediately if there is any reason why printing of the Bill should be delayed.

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 an Act, PCO will also prepare a marked up version of that Act showing how it is proposed to be amended by the Bill. Copies of the marked up version can be provided to the instructor on request, and are made available on the Parliament website when the Bill has been introduced.

#### **15. Introduction and passage through Parliament**

The instructor —

- 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 during passage are prepared by the Clerk of the Parliaments and forwarded through PCO and DPC to the Governor for Royal Assent.

The 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. Publication of an Act

As soon as practicable after an Act is assented to, a copy of it is made available on the WALW where it can be downloaded and printed. These versions of Acts have official status under the *Legislation Act 2021*. See [FAQ5](#) on the WALW.

## 18. Commencement of an Act

When an Act comes into operation depends on what it says. 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 the Act is silent about commencement, it will operate 28 days after assent. However, PCO practice is to include a commencement clause in all Bills.

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 on the WALW before it has effect (PCO arranges this).

## 20. Publication of amended versions of Acts

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

Current versions of all Acts (and some past versions) are available on the WALW. Versions of Acts on that website that incorporate their amendments now have official status under the *Legislation Act 2021*. See [FAQ5](#) on the WALW. These versions take the place of reprints previously produced under the *Reprints Act 1984*, but reprints continue to have official status.

The WALW also makes available compare documents that show the changes that have been made between versions of an Act, either by amending legislation, under the *Reprints Act 1984* or under the editorial powers in the *Legislation Act 2021* Part 3. 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 were published from time to time under the *Reprints Act 1984*.

Reprints incorporate all amendments made to the Act that are in operation at the date shown on the reprint. A table identifying any amending provisions not yet in operation appears at the end of the reprint. Reprints could also incorporate certain editorial changes.

On 1 July 2023, the *Reprints Act 1984* was repealed by the *Legislation Act 2021* s. 45. Versions of Acts with their amendments incorporated are now published under the authority of the *Legislation Act 2021*. All editorial changes to legislation are now made under Part 3 of that Act.

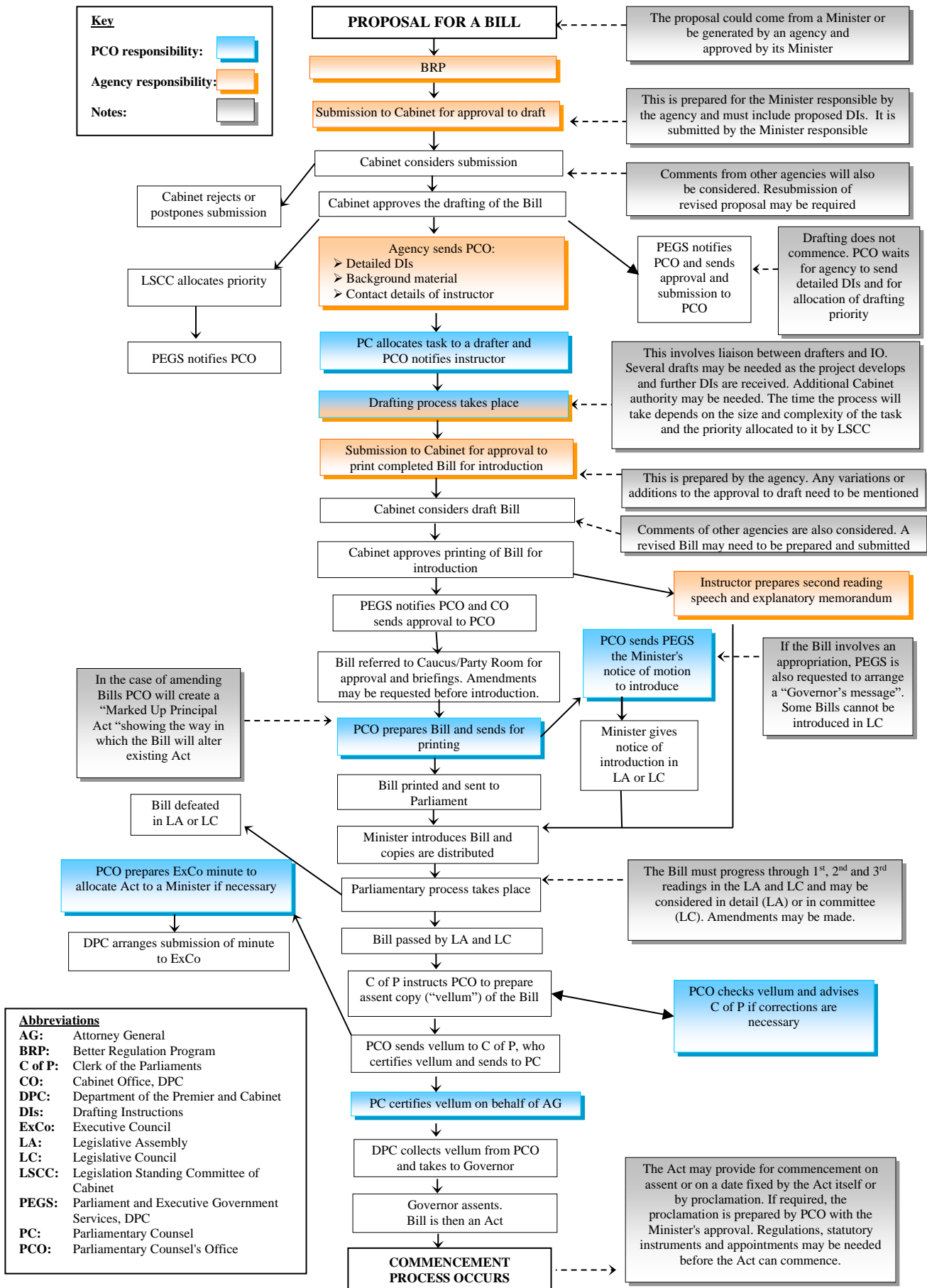
## 22. Editorial versions of Acts

The *Legislation Act 2021* Part 3 authorises the Parliamentary Counsel to make editorial changes to keep laws up-to-date with contemporary drafting practice, simplify laws, and correct errors. This power to make editorial changes cannot, however, be used to change the effect of a law.

The *Legislation Act 2021* section 40 provides that an editorial change made to a law is treated in the same way as an amendment. It has the same effect as if the law had been amended by another law commencing on the day on which the change is made.

Editorial changes are noted in the Compilation table and the Editorial changes table. The Compilation table notes the creation of a new version of a law that contains editorial changes, while the Editorial changes table notes the provisions that have been editorially changed. To see the editorial changes included in a version of a law, see the compare document for that version on the WALW.

## Appendix A1 — Process for drafting and enacting Government Bills



## Appendix A2 — Legislation Standing Committee of Cabinet (LSCC)

### 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 that are 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 year indicated in brackets.
B(year)	Bill to be introduced in the second half of the year indicated in brackets.
SP	Special long term project for introduction in future years, however, requiring drafting in the current year. To be restricted to very large exercises.
NIL	No priority.

LSCC decisions are referred to Cabinet for endorsement.

### 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

Other attendees at LSCC meetings include the following —

- Chiefs of Staff or policy advisers to support member Ministers
- the Parliamentary Counsel
- the Director, PEGS
- the Manager, PEGS (secretariat support).

### 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.

### **Amalgamation of amendments**

Wherever possible, LSCC will liaise with the responsible Minister to amalgamate proposed amendments to any 1 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. The policy and procedures for these Bills were previously set out in Premier's Circular No. 2010/01 *Statutes (Repeals and Minor Amendments) Bill*. That circular has now been rescinded, but DoJ and PCO will continue to follow the procedures set out in that circular.



## **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 comply with the processes set out in the ERC Handbook.

### **3. Approval for drafting**

A proposal for subsidiary legislation —

- does not have to be approved by Cabinet (but may be);
- must comply with the BRP. The BRU must be consulted in the early stages of any potentially economically significant regulatory proposal. The briefing note seeking the Minister's approval to the drafting of the subsidiary legislation should indicate that —
  - the responsible agency has assessed the proposal as having no economically significant impacts; or
  - a Regulatory Impact Statement was completed for the proposal; or
  - a Treasurer's Exemption was granted;
- 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.

PCO now includes certain amendments to subsidiary legislation in omnibus instruments. These are instruments that amend more than 1 principal instrument, and are usually used where a large number of items of subsidiary legislation need to be amended consequentially as a result of the passage of a new Act or a significant amendment Act, or to implement changes to fees and charges.

Instructors should bear in mind the possibility of using an omnibus amending instrument when providing instructions for amendments to a number of items of principal subsidiary legislation within their Minister's portfolio. This is particularly the case with respect to changes to fees and charges.

## **5. PCO to be requested to draft**

See A7.

A copy of the Minister's approval must be provided to PCO. Instructors do not need to provide PCO with evidence of compliance with the BRP or the ERC Handbook. In particular, instructors do not need to provide PCO with ERC approval of changes to fees and charges when providing instructions to PCO, nor to notify PCO when ERC approval has been obtained. It is the Minister's responsibility to ensure compliance with the BRP and the ERC Handbook.

## **6. Drafting subsidiary legislation**

See A9.

Drafting priorities are not usually allocated 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 instructor and the drafter, PCO emails the subsidiary legislation, a Counsel's Certificate, an Information Sheet and any other documents (e.g. Executive Council minute) to the instructing officer. The instructor must read carefully the Information Sheet and any additional notes in the Counsel's Certificate.

If changes to an item of subsidiary legislation (or any of the accompanying documents, such as the ExCo minute) are required after PCO has issued a final version, agencies must ask PCO to make the changes and issue revised PDF versions. Agencies must not make changes to any of the documents themselves.

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 instructor prepares it).

## 9. Publication

Note the following —

- Subsidiary legislation must be published on the WALW or in the *Gazette* in order for it to have effect.
- The commencement provision of each item of subsidiary legislation will indicate whether it will be published on the WALW or in the *Gazette*. PCO will alert agencies as to the publication requirements of their instruments via the “Important Information page” emailed at the Final Version stage.
- If an agency has any query about whether a particular instrument will be published on the WALW or in the *Gazette*, please email PCO at [pco@pco.wa.gov.au](mailto:pco@pco.wa.gov.au). **In particular, agencies who draft their own instruments must not tie commencement or any other aspect of the instrument to publication on the WALW without first consulting PCO.**
- Publication must 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.
- If drafted by PCO and made by the Governor in Executive Council, PCO will automatically arrange publication on the WALW or in the *Gazette*.
- If drafted by PCO and made by a body other than the Governor in Executive Council, it is the instructing officer’s responsibility to arrange publication on the WALW or in the *Gazette*.
- The department responsible for subsidiary legislation pays for publication in the *Gazette*. There is no charge for publication on the WALW.
- See Appendix B2 for details of publication of subsidiary legislation on the WALW or in the *Gazette*.

## 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. 2023/01 (23/10/2023).<sup>1</sup>

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

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.

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<sup>1</sup> See —

[Subsidiary Legislation - Explanatory Memoranda - Premier's Circular 2023/01 \(www.wa.gov.au\)](http://www.wa.gov.au)

## **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 WALW.

If subsidiary legislation amends other subsidiary legislation, the WALW will show the other subsidiary legislation as amended as soon as practicable after it is amended. This will assist agencies to comply with Premier's Circular 2023/01.

Versions of subsidiary legislation (as made or with their amendments incorporated) on the WALW now have official status under the *Legislation Act 2021*. See [FAQ5](#) on the WALW. These versions take the place of reprints previously produced under the *Reprints Act 1984*, but reprints continue to have official status.

## **12. Reprints of subsidiary legislation**

Reprints of subsidiary legislation were published from time to time under the *Reprints Act 1984*.

Reprints incorporate all amendments made to the subsidiary legislation that are in operation at the date shown on the reprint. A table identifying any amending provisions not yet in operation appears at the end of the reprint. Reprints could also incorporate certain editorial changes.

On 1 July 2023, the *Reprints Act 1984* was repealed by the *Legislation Act 2021* s. 45. Versions of subsidiary legislation with its amendments incorporated are now published under the authority of the *Legislation Act 2021*. All editorial changes to legislation are now made under Part 3 of that Act.

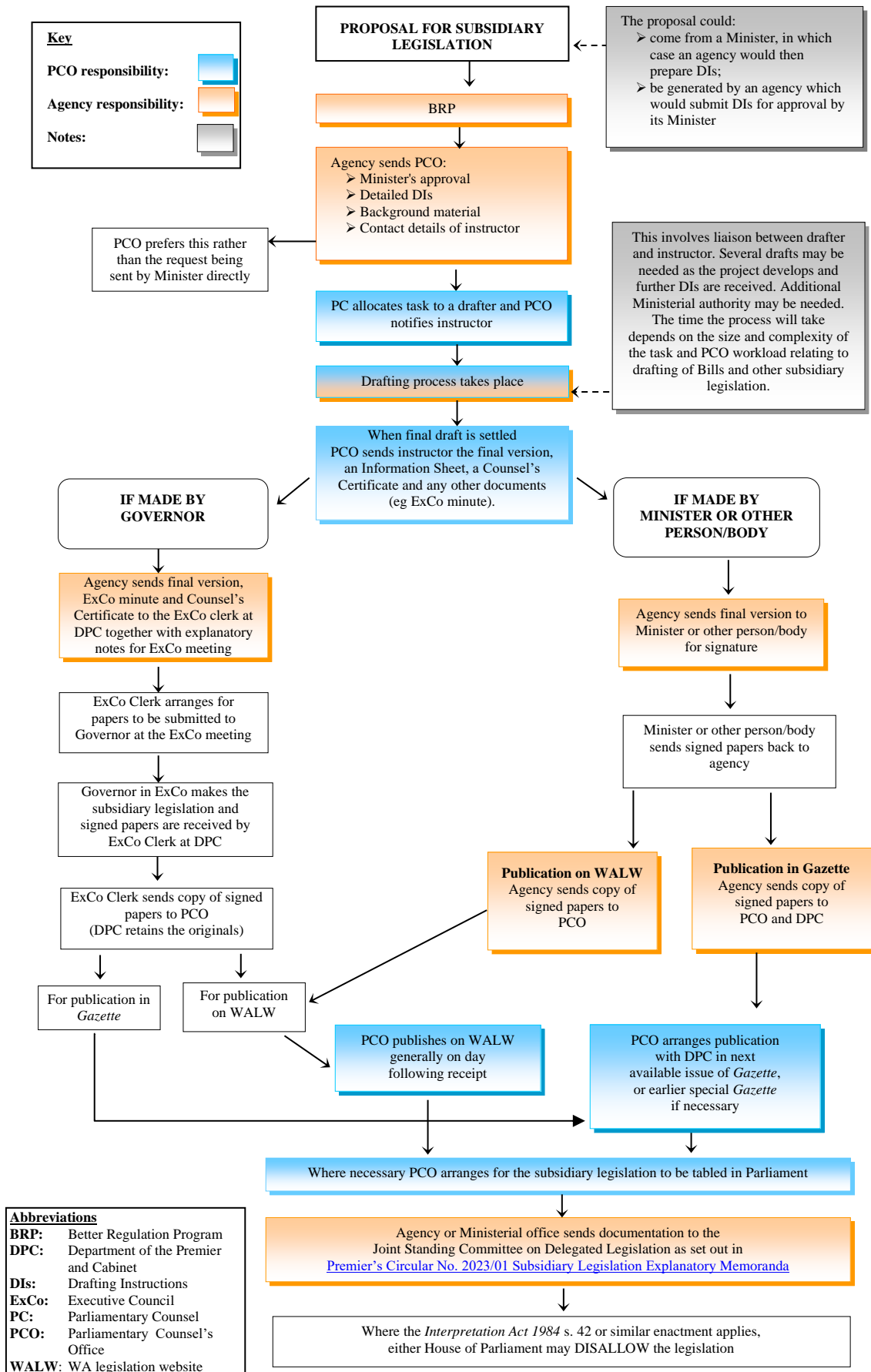
## **13. Editorial versions of subsidiary legislation**

The *Legislation Act 2021* Part 3 authorises the Parliamentary Counsel to make editorial changes to keep laws up-to-date with contemporary drafting practice, simplify laws, and correct errors. This power to make editorial changes cannot, however, be used to change the effect of a law.

The *Legislation Act 2021* section 40 provides that an editorial change made to a law is treated in the same way as an amendment. It has the same effect as if the law had been amended by another law commencing on the day on which the change is made.

Editorial changes are noted in the Compilation table and the Editorial changes table. The Compilation table notes the creation of a new version of a law that contains editorial changes, while the Editorial changes table notes the provisions that have been editorially changed. To see the editorial changes included in a version of a law, see the compare document for that version on the WALW.

## Appendix B1 — Process for drafting and making subsidiary legislation



## **Appendix B2 — Publication of Subsidiary legislation on the WALW or in the *Gazette***

**If the instrument, when made, must be published on the WALW or in the *Gazette*:**

*If made by the Governor in Executive Council:*

- Executive Council will advise PCO when the instrument has been made (by emailing the signed Executive Council minute).
- For instruments that require publication on the WALW, PCO will generally publish the instruments on the WALW on the day following receipt of the signed Executive Council minutes.
- For instruments that require publication in the *Gazette*, PCO will arrange for publication through the Department of the Premier and Cabinet (DPC) in the next available issue of the *Gazette*, or an earlier special *Gazette* if necessary.
- Agencies no longer need to send requests to DPC for publication.

*If NOT made by the Governor in Executive Council:*

- Agencies must send to PCO:
  - a scanned copy of the instrument bearing the signature or seal of the person or body who made it;
  - the date the instrument was made/signed;
  - the name and title/position of the person whose signature appears on the instrument.
- For instruments that require publication on the WALW, PCO will generally publish the instruments on the WALW on the day following receipt of the signed instruments.
- For instruments that require publication in the *Gazette*, PCO will arrange for publication through the Department of the Premier and Cabinet (DPC) in the next available issue of the *Gazette*, or an earlier special *Gazette* if necessary.
- Agencies no longer need to send requests to DPC for publication.