



Department of
the Premier and Cabinet

Executive Council Guidelines

February 2022

Approval

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1. Introduction

1.1 Purpose of the Guidelines

These guidelines have been prepared to assist public sector officers in their understanding of Executive Council processes and timeframes, and to guide the preparation of papers for submission to the Executive Council (also see Appendix A – Executive Council Process Flowchart).

1.2 What is the Executive Council

The Executive Council (commonly referred to as ExCo) is established under the [Letters Patent](#), issued by the Queen. It advises the Governor on matters relating to the government of the State. Actions of the Governor in Executive Council may give legal form to Cabinet decisions, which have no legal status in their own right.

Section 60 of the [Interpretation Act 1984](#) provides that a reference to the “Governor” in any Act or other legislation shall be taken to mean the “Governor in Executive Council”.

The Executive Council deals with a wide variety of business, including, but not limited to:

- making regulations and amendment regulations;
- making proclamations for the commencement of Acts;
- approving resocialisation programmes for offenders;
- making parole orders;
- making some judicial and non-judicial appointments and accepting some resignations;
- authorising some prisoner transfers;
- reconstitutions of the Ministry.

1.3 Membership of the Executive Council

The Executive Council consists of all Ministers, who are appointed as members of Executive Council when they are sworn in as Ministers. The Governor presides over meetings of the Executive Council, but is not a member of the Executive Council.

1.4 Role of Executive Government Services

Executive Government Services (EGS) in the Department of the Premier and Cabinet (DPC) provides executive support to the Executive Council. Its responsibilities include:

- providing advice on Executive Council practices and requirements;
- liaising with the Official Secretary to the Governor, Ministerial offices and departments on Executive Council arrangements;
- providing secretariat support for meetings of the Executive Council;
- maintaining Executive Council records; and

- being custodian of the State Seal.

Contact Executive Government Services

Email: exco@dpc.wa.gov.au

Telephone: 6552 5666

2. Confidentiality

2.1 General Principles

Members of the Executive Council swear an oath of allegiance when they are appointed, committing to maintain the confidentiality of all matters that come before the Executive Council.

Some actions taken by the Governor in Executive Council may subsequently become public information, such as the publication of regulations in the Government Gazette, however information contained in an Explanatory Note and any attachments informs the deliberations and decisions of the Executive Council and should be treated as confidential.

Agencies responsible for the preparation and custody of Executive Council documentation and the implementation of decisions should generally disclose this material only where it is necessary to give effect to a decision.

2.2 *Freedom of Information Act 1992*

Under the provisions of the *Freedom of Information Act 1992*, where an application is made for the release of Executive Council documents, these documents are not required to be released if they contain an exempt matter. The definition of exempt matter includes an agenda, minute or other record of the deliberations or decisions of the Executive Council.

Exceptions are Executive Council documents that were created:

1. **before** 1 November 1993 and at least 15 years have elapsed since they came into existence; or
2. **after** 1 November 1992 and at least 10 years have elapsed since they came into existence.

3. Meeting Logistics

3.1 Quorum

Under the *Letters Patent*, a quorum consists of two members of the Executive Council, with the Governor presiding. Meetings are also attended by a Clerk of the Executive Council who assists with the formalities.

In the absence of the Governor, a deputy of the Governor or an Administrator will Chair Executive Council meetings.

3.2 Scheduled Meetings

The Executive Council meets fortnightly, usually on Tuesday mornings at Government House.

Meeting dates are scheduled in consultation with the Governor and published on the [Department of the Premier and Cabinet website](#).

Ministerial offices are notified in advance as to which meeting(s) their Ministers are rostered to attend. Should a Minister be unable to attend a scheduled meeting, that Minister's office is responsible for organising the attendance of an alternative Minister. EGS should be advised as soon as possible when alternative arrangements have been made.

3.3 Special Meetings

Matters sometimes arise which require urgent Executive Council consideration prior to the next scheduled meeting. Ministerial offices should contact EGS as soon as the need for a special meeting arises.

The requesting Minister is responsible for ensuring there will be a quorum of two Ministers in attendance.

EGS will liaise with Government House to secure a meeting date and time. Ministerial offices or departments should not contact Government House directly.

3.4 Caretaker period

Caretaker period refers to the period between the issue of the writs for the election and the point in time when the outcome of the election is clear or a new Ministry is sworn in.

During the caretaker period, meetings of the Executive Council continue as scheduled. In general, the only matters considered are those that are assessed as routine, non-contentious, or of such importance that they cannot be deferred.

4. Preparation of Submissions

All Executive Council submissions must contain a Minute and an Explanatory Note.

Some submissions may also include an instrument and/or supporting papers.

Unless the Minute has been drafted by the Parliamentary Counsel's Office (PCO) or the State Solicitor's Office (SSO), it is strongly recommended that agencies seek advice from their legal team when drafting a submission to ensure that it achieves the necessary outcome.

4.1 Minute

The Minute gives legal effect to the action being taken by the Governor. It should clearly state what action the Governor is being asked to take, and under what legislative authority the Governor has the power to act.

Unless the Minute has been drafted by PCO or SSO, templates are available for drafting of the Minute, see Appendix B.

The Minute is signed by:

1. the Minister(s) responsible for the Act under which the submission is being made;
 - where a Minute goes over one page, the Minister(s) must sign each page
2. the Premier; and
 - where a Minute goes over one page, the Premier must sign each page
 - EGS will arrange for the Premier's sign off once the submission is lodged
3. the Governor, once approved in Executive Council.

EGS will arrange for the Premier to review the submissions and countersign them, prior to their presentation to the Governor.

The Minute should:

- begin with "The Council advises the Governor to ..."
- be drafted by Parliamentary Counsel's Office if it relates to the making of a proclamation for the commencement of operation of an Act or part of an Act, or the making of regulations or amendment regulations;
- ask the Governor to do something, such as make, order, approve or not approve something;
- state the Act(s) and the section(s) of the Act(s) under which the Governor has the power to act (note that this may not be necessary if the Minute is asking the Governor to make a related instrument such as a proclamation, instrument of appointment or regulations);
- not ask the Governor to do something retrospectively, unless the relevant Act expressly empowers the Governor to do so;
- express names, titles and terms in full, avoiding the use of acronyms or abbreviations;
- provide for the signatures of the Minister, the Premier and the Governor;

- be printed single sided on A4 paper, with no hole punches or staples; and
- if it has been drafted by PCO, contain a version control reference number in the Minute footer, which matches the version control reference number in the related instrument (see 4.2) and the Counsel's Certificate (see 4.4).

4.2 Instrument (if applicable)

Most Executive Council submissions will also have a formal instrument, such as a proclamation, regulations, commissions, or instruments of appointment.

Some instruments will require the Governor's signature, in addition to their signature on the Minute, such as proclamations. Where that is the case, the Minute and/or Explanatory note should identify and request their signature on the instrument.

Instruments should:

- be provided single sided, unbound, and with no hole punches
- where they are regulations, a second copy should also be provided, which can be double sided and stapled.

4.3 Explanatory Note

The Explanatory Note explains to the Governor what action the Governor is being asked to take and why. It forms part of the record relating to the decision or action.

A template for an Explanatory Note is available at Appendix C and includes guidance on the nature of information and the level of detail that should be provided.

The Explanatory Note should:

- be on letterhead (usually agency letterhead)
- have a title
- begin with the standard "Disclaimer" (refer to the template for example text)
- contain the following headings (please do not delete, if not applicable)
 - **Proposal** (describes the legislative authority for the proposal, what the Governor is being asked to do and why, and any relevant background)
 - **Approval process** (explains who has recommended the submission for the Governor's consideration, such as Cabinet, the responsible Minister or a Board or other statutory entity)
 - **Regulatory Impact Assessment** (applicable if the submission relates to a regulatory proposal; confirms that the proposal is exempt from the requirement for a regulatory impact assessment, or has been assessed as having a low economic impact, or has undergone the preparation and publication of a Consultation Regulatory Impact Statement and a Decision Regulatory Impact Statement)

- **Consultation** (describes what consultation has been undertaken, the outcome of the consultation and, if applicable, how any disagreement is being managed)
- **Appointments** (if applicable, explains why the appointee is considered the most suitable person for appointment)
- **Relation to Policy** (explains if and how the proposal is relevant to a Government policy or initiative)
- **Sensitivity** (describes any contentious aspects of the proposal and how they are being managed)
- where a heading does not apply, retain the heading with the clarification “Not applicable.”
- be signed by the agency CEO or senior executive
- include a declaration that the details contained in the submission are accurate and complete (just above the CEO signature, see template for example)
- be printed single sided on A4 paper with not hole punches or staples.

4.4 Supporting Papers

Other supporting papers may be included that provide further information to the Governor on what they are being asked to do. This could include be maps, plans, resumes or, where the submission relates to the making of a proclamation or regulations and has been drafted by PCO, a Counsel’s Certificate.

The following applies to all supporting papers:

- Supporting papers should be provided single sided and with no staples or hole punches.
- If a supporting paper is in colour, six copies should be provided with the submission.
- If a bound document is a supporting paper, one bound and one unbound copy should be provided with the submission.

4.5 The State Seal

The State Seal is held by EGS at the Department of the Premier and Cabinet.

When a document, such as a proclamation, requires the State Seal and following approval by the relevant Minister(s), EGS will arrange for one to be affixed and/or embossed prior to its submission to the Executive Council.

On documents where the State Seal is required, sufficient space should be allowed for a 62 mm diameter seal.

5. Lodging Submissions

5.2 Lodging Submissions

Note: EGS can assist and provide advice on submission format and presentation prior to the documents being signed by the Minister and formally submitted.

Submissions must be lodged with EGS by the Ministerial office in hard copy; EGS is unable to accept submissions directly from agencies.

In cases of emergency, alternative document transmittal protocols detailed in Appendix D may apply. EGS will notify Ministerial offices, should this become necessary.

Once a submission is received, EGS will review it to ensure that it contains all required documents and information and will advise the relevant Ministerial office if a submission is incomplete or any clarification is required.

Sometimes Executive Council action may be required to give effect to a Cabinet Decision. Wherever possible, the Executive Council submission should be lodged together with the related Cabinet submission and EGS advised of the date the submission requires consideration by Executive Council. This allows the Executive Council submission to be reviewed and any issues addressed ahead of Cabinet approval for the proposal, enabling EGS to place the submission directly on the agenda for the next Executive Council meeting.

Please note: that unless a statute expressly authorises it, the Governor cannot approve a matter retrospectively. This means that the Governor's actions are either effective from the date of the Executive Council meeting or a later date specified in the Minute.

When planning a submission, it is important to factor in sufficient time for it to be considered by Cabinet (if required) and Executive Council. If the submission relates to subsidiary legislation, it will also require publication in the Government Gazette before it can come into operation. Careful attention should be paid to the expiry date of terms of appointment, the intended effective date of new regulations/fees, and other similar deadlines.

5.1.1 Submission deadline

Submissions must be lodged by 4:00pm on the Wednesday prior to a scheduled meeting. This enables them to be reviewed and any queries or omissions addressed prior to the agenda being finalised for distribution to the Governor and rostered Ministers the following day.

Submissions received after the deadline will be placed on the agenda for the next meeting.

5.1.2 Late submissions

In exceptional circumstances, a late submission may be accepted. Please advise EGS as early as possible if you have a time-critical submission and anticipate it will not be possible to submit it prior to the deadline.

5.1.3 Timing considerations for lodgement of subsidiary legislation submissions

Under the *Interpretation Act 1984* section 41(1)(a), where an Act confers a power to make subsidiary legislation, any subsidiary legislation made under that power must be published in the *Government Gazette*. Any subsidiary legislation drafted by PCO will be automatically published following the legislation being made by the Governor in Executive Council.

Subsidiary legislation is usually drafted to come into operation on the day after publication in the *Government Gazette*, or on a date specified in the legislation.

If the subsidiary legislation is drafted to come into operation on the day after publication in the *Government Gazette*, it should not be submitted to Executive Council for consideration until it is appropriate for the subsidiary legislation to come into operation.

5.2 Agenda compilation

Following agenda close-off, submissions are compiled for distribution to the Governor and rostered Ministers, providing attendees with approximately three working days to review them before the scheduled meeting.

At any stage prior to the meeting, the Governor or rostered Ministers may request further information or clarification in relation to a submission. EGS will pass on these requests immediately to the relevant Ministerial office. It is important to respond by the specified deadline so that any queries or concerns are adequately addressed before the meeting.

5.3 Withdrawal of submissions

Occasionally, a submission may be withdrawn. This may occur prior to the meeting, at the request of the relevant Minister or because the Governor has asked for further information that cannot be provided within the required timeframe.

If a submission has been lodged and needs to be withdrawn, the Ministerial office should advise EGS as soon as possible.

If the submission has already been distributed as part of an agenda, EGS will advise the Governor that the submission is to be withdrawn.

On the advice of the Ministerial office, EGS will either return all paperwork to the Ministerial office or will list the submission for a subsequent meeting.

On rare occasions, a submission may be withdrawn during a meeting because an issue is raised during its consideration that cannot be adequately addressed at the time. If this occurs, EGS will notify the Ministerial office immediately and advise on the next steps.

6. After the meeting

6.1 Decisions of the Governor in Executive Council

If the Governor determines to take the action recommended in the submission, the Governor will sign the Minute and, if applicable, any accompanying documents (such as a proclamation, commission or parole order).

Immediately after the meeting, EGS will process the approved submissions and provide copies of the signed Minutes and other documents, if applicable, to Ministerial offices.

Original signed Minutes are retained by EGS for record keeping purposes.

Where a submission relates to the making of subsidiary legislation, EGS will also provide a copy of the signed Minute to the Parliamentary Counsel's Office (see section 6.3) to facilitate publication in the *Government Gazette*.

6.2 Errors

Occasionally, after the Governor has taken the recommended action during an Executive Council meeting, the Ministerial office or the agency may identify an error in the submission which affects the intended outcome and which requires correction.

6.2.1 Correcting errors made in subsidiary legislation submissions

In the case of subsidiary legislation, such as regulations, an error cannot be remedied by revoking the submission. The making of further regulations, containing amendments that will correct the error, will be required.

In the event such an error is identified, PCO should be contacted immediately for advice.

6.2.2 Correcting other errors

In the case of errors detected in submissions other than those relating to subsidiary legislation, legal advice should be sought immediately either from an agency's legal team or from SSO.

It may be possible to correct an error by submitting a new Minute that asks the Governor to revoke the previous Minute and to exercise again their power to act in order to correct the error, however this should not be done without legal advice to ensure the subsequent submission achieves the intended outcome.

When preparing a submission where a previous Minute is to be revoked, the new Minute must refer to the number and date of the Minute to be revoked. A copy of the previous Minute should also be included with the submission.

6.3 Subsidiary legislation - publication

Subsidiary legislation is defined in the Interpretation Act 1984 section 5 as "any proclamation, regulation, rule, local law, by-law, order, notice, rule of court, local or region planning scheme, resolution, or other instrument, made under any written law and having legislative effect".

Under the Interpretation Act 1984 section 41(1)(a), where an Act confers a power to make subsidiary legislation, any subsidiary legislation made under that power must be published in the *Government Gazette*.

In the case of subsidiary legislation drafted by PCO, publication is organised by PCO and will occur automatically within a short timeframe following the legislation being made by the Governor in Executive Council.

Refer also to **5.1.4 Timing considerations for lodgement of subsidiary legislation submissions.**

6.4 Subsidiary legislation – compliance with Joint Standing Committee on Delegated Legislation requirements


The [Joint Standing Committee on Delegated Legislation](#) scrutinises subsidiary legislation to ensure that it:

- is within power;
- has no unintended effect on any person's existing rights or interests;
- provides an effect mechanism for the review of administrative decisions; and
- contains only matter that is appropriate for subsidiary legislation.

Once subsidiary legislation has been published, it must be submitted for to the Committee for scrutiny, together with supporting explanatory material. The [Premier's Circular 2021/07 – Subsidiary Legislation Explanatory Memoranda](#) details these requirements.

Further enquiries should be directed to the Committee on 9222 7428 or at delleg@parliament.wa.gov.au.

Appendix A – Executive Council Process Flowchart



RESPONSIBILITY	ACTION
Agency	Agency prepares and collates documents for the Executive Council submission, including the Minute, Explanatory Note and any supporting documentation
Agency	Agency CEO approves the Executive Council submission and signs the Explanatory Note
Agency	Agency provides the Executive Council submission to the Ministerial office
Ministerial office	Minister reviews and approves the Executive Council submission
Ministerial office	Ministerial office submits the signed Executive Council submission to Executive Government Services DEADLINE: 4 pm on the Wednesday prior the meeting
Executive Government Services (DPC)	Executive Government Services reviews the Executive Council submission and, if complete, adds it to the agenda for the next meeting. Executive Government Services will contact the Ministerial office if
Executive Government Services (DPC)	Executive Government Services distributes papers to the Governor, relevant Ministers and the relevant ExCo Clerk for their consideration ahead of the meeting. DEADLINE: Thursday before the meeting
Executive Government Services (DPC)	Executive Government Services provides Executive Council submissions to the Premier for consideration and signing.
Executive Government Services (DPC)	Executive Government Services distributes any late papers to the Governor, relevant Ministers and the relevant ExCo Clerk. DEADLINE: Monday before the meeting
EXECUTIVE COUNCIL MEETING TUESDAY	
Executive Government Services (DPC)	Executive Government Services processes the approved documents and provides approved documents to the relevant Ministerial office. If a submission is withdrawn, Executive Government Services will notify Ministerial offices and return the original submission. DEADLINE: Tuesday, after the meeting

Appendix B – Executive Council Minute Template

Executive Council

Western Australia

Department File No.

Minute No.

The Council advises the Governor

.....

Minister for

.....

Premier

Date of Meeting

Approved

Governor

Appendix C – Executive Council Explanatory Note Template

EXECUTIVE COUNCIL EXPLANATORY NOTE

Disclaimer: This Explanatory Note has been prepared as an aid to understanding this Executive Council submission and must not be substituted for any part of the submission nor made available for public information.

PROPOSAL

This section should clearly explain:

- What is the legislative authority for the proposal? Specify the relevant Act and section.
- What the Executive Council is advising the Governor to do.
- What problem does the proposal resolve? Or is it a routine process?
- Any relevant background information.

Table that must be included if the proposal is changing fees and charges:

Type of fee charged / fee cap imposed	Date last amended (Increase or Decrease)	Old fee / fee cap (\$)	New fee / fee cap (\$)	Increase / Decrease (%)	Increase / Decrease (\$)	% of cost recovery achieved	Cross subsidisation (Yes / No)

APPROVAL PROCESS

This section should clearly explain who has recommended and approved the proposal prior to its submission to the Executive Council.

REGULATORY IMPACT ASSESSMENT

This section is applicable if the submission relates to a regulatory proposal. If it does not, the section should say “Not applicable”.

If the section is applicable, it should confirm that the proposal:

- is exempt from the requirement for a regulatory impact assessment; or
- has been assessed as having a low economic impact; or
- has undergone the preparation and publication of a Consultation Regulatory Impact Statement and a Decision Regulatory Impact Statement.

Please refer to the [Better Regulation Program Information paper for agencies](#) for more information.

CONSULTATION

This section should clearly explain:

- what consultation has been undertaken regarding the proposal.
- the outcome of the consultation, including details of positive and negative feedback and how any negative feedback has or will be addressed.

- whether legal advice was sought and, if so, a summary of relevant details of the advice.

APPOINTMENTS

This section should:

- set out why the proposed appointee is considered the most suitable person.
- provide brief background on the appointee.

A copy of the appointee's Curriculum Vitae, including details of two referees, should also be attached as a supporting paper.

Where a submission is not an appointment, do not delete this header, simply insert "Not applicable".

RELATION TO POLICY

This section should clearly explain:

- How is the proposal related to Government policy or a Government initiative?
- Is a public announcement planned? When and how will this occur?

SENSITIVITIES

This section should clearly explain:

- Does the proposal involve any sensitive or contentious issues? This could include information that is commercially sensitive, or information and/or decisions that could be considered contentious.
- Clear explanation of how the sensitive/contentious issue has been or will be resolved.
- For criminal matters – are there any victim or offender issues which require consideration?

The details contained in this submission are accurate and complete.

Agency CEO/Deputy

Appendix D – Procedures During Emergency Situations

These procedures are to be read in conjunction with the Executive Council (ExCo) Guidelines, and will apply until further notice.

1. Attendance

(ITEM 3 – EXCO MEETINGS)

With approval from the Governor, Executive Council may be held using remote communication (as per section 45A of the Constitution Acts Amendment Act 1899).

2. Delivery of submissions

(ITEM 6 – LODGING SUBMISSIONS)

If it is not possible for a Minister's office to deliver an original submission to Executive Government Services, an electronic version containing an electronic signature can be lodged via Microsoft Teams (Teams). Executive Government Services will arrange for the Premier to countersign the submission either originally as is customary, or digitally if necessary.

3. ExCo files

If it is not possible for Executive Government Services to prepare hard copies of ExCo files, or to deliver hard copies to particular Ministers, an electronic copy of the file will be distributed to recipients using Teams. Late items will be distributed in the same manner.

Executive Government Services will inform recipients when files have been uploaded onto Teams.

ExCo files uploaded onto Teams are to be treated with the highest level of confidentiality. Under no circumstances are there to be copies made (including screenshots or photographs) or shared. Papers will have security controls preventing editing and will be removed from Teams after the conclusion of the meeting.

With approval of the Governor, Ministers may use electronic devices to access papers during ExCo meetings.

4. ExCo decisions

If Ministers' offices are not accessible in person, Executive Government Services will forward copies of the approved ExCo documents to the relevant Executive Officers via Teams.

For documents such as commissions and proclamations, including those that include the Great Seal, the signed original will be held by Executive Government Services until it is able to be retrieved.