

Premier's Circular

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TITLE

SUBSIDIARY LEGISLATION – EXPLANATORY MEMORANDA

POLICY

Section 42 of the *Interpretation Act 1984* requires certain instruments of subsidiary legislation¹ to be tabled in both Houses of Parliament within 6 sitting days after their publication in the *Government Gazette* or on the *Western Australian Legislation* website (WAL website). Section 42 also makes such instruments subject to parliamentary disallowance.

There are also other Acts (empowering Acts) that require instruments of subsidiary legislation (and quasi-legislation) made under those Acts to be tabled in both Houses of Parliament. These empowering Acts may make the instruments subject to parliamentary disallowance, either by:

- applying section 42 of the *Interpretation Act 1984* to the instrument²
- or
- prescribing their own disallowance procedure for the instrument.³

The Joint Standing Committee on Delegated Legislation (JSCDL) holds a standing referral to scrutinise all instruments of subsidiary legislation (or quasi-legislation) on behalf of the Parliament of Western Australia. Instruments are referred to the JSCDL on their publication, usually either in the *Government Gazette* or on the WAL website. 'Instrument' means:

- 'subsidiary legislation' as it is defined in section 5 of the *Interpretation Act 1984*⁴
- an instrument, not being subsidiary legislation, that is made subject to parliamentary disallowance under a written law.⁵

¹ Known as regulations, rules, local laws and by-laws: s 42(8).

² For example, section 61 of the *State Records Act 2000* (principles and standards made by the State Records Commission) and section 120AA of the *Mining Act 1978* (orders made by the Governor).

³ For example, section 43 of the *Land Administration Act 1997* prescribes a process for the Parliament to disallow proposals made under sections 42, 44 or 45 of that Act; and section 56 of the *Planning and Development Act 2005* prescribes a process for the Parliament to disallow region planning schemes and non-minor amendments to such schemes.

⁴ '**subsidiary legislation** means 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'.

⁵ This definition of 'instrument' is contained in the JSCDL's [Terms of Reference](#): *Standing Orders of the Legislative Council* Schedule 1, item 10.9

The JSCDL focuses its scrutiny on instruments that are made subject to parliamentary disallowance, either under section 42 of the *Interpretation Act 1984* or an empowering Act.

To enable the JSCDL to carry out its functions, the agency responsible for administering an instrument that is subject to parliamentary disallowance must provide the following documents within 10 business days after the publication date:

1. One electronic copy of the instrument as published in the *Government Gazette* or on the WAL website;
2. One electronic copy of an Explanatory Memorandum (EM), prepared in accordance with this Circular (see Appendix 1), signed by the Chief Executive Officer (CEO) of the agency and initialled or signed by the responsible Minister;⁶
3. One electronic copy of a completed Statutory Procedures Checklist in Appendix 2 format for a region planning scheme or an amendment to it;
4. For amending instruments, if the principal instrument is not published on the WAL website, an electronic copy of the principal instrument with all amendments consolidated up to the date immediately before the most recent amendments take effect;
5. Where the Parliamentary Counsel's Office (PCO) has produced a copy of the principal instrument marked with the amendments made by the instrument under scrutiny, a link to the 'document compare' on the WAL website.

For instruments where notice of a disallowance motion 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 5 business days after publication in the *Government Gazette* or on the WAL website.

Further information regarding the required content of EMs is in Appendix 1.

The documents must be emailed in PDF/A format to delleg@parliament.wa.gov.au. The subject line of the email must clearly identify the instrument under scrutiny.

BACKGROUND

The Parliament of Western Australia established the JSCDL to assist with the scrutiny of instruments of subsidiary legislation (and quasi-legislation) made subject to parliamentary disallowance under either section 42 of the *Interpretation Act 1984* or the instrument's empowering Act.

The JSCDL cannot properly fulfil its scrutiny role without timely provision of explanatory material for each instrument referred to it upon publication. Agencies must provide the required material in a timely manner. These requirements are additional to the statutory requirement to table certain instruments in both Houses of the WA Parliament within (usually) 6 sitting days after publication in the *Government Gazette* or on the WAL website.

⁶ If Act specifically allows subsidiary legislation to be made by a person or entity other than a Minister or the Governor, the EM may be provided directly to the JSCDL without the Minister's signature or initials. A copy of information provided to the JSCDL should be forwarded to the relevant Minister for reference.

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PREMIER

For enquiries contact:	JSCDL Committee Clerk (08) 9222 7300 Parliament House
Other relevant Circulars:	
Circular/s replaced by this Circular:	2023/01, 2025/14