



## Appendix 1

### EXPLANATORY MEMORANDUM REQUIREMENTS

Ministers must ensure that the JSCDL receives, within 10 business days of a disallowable instrument being published in the *Government Gazette* or on the WAL website, an EM signed by the CEO of the agency and initialled or signed by the responsible Minister.

If an Act specifically allows an instrument to be made by an office holder or entity other than a Minister or the Governor, the EM must be signed by that office holder or the senior officer of that entity (in place of the Minister). A copy of the information provided to the JSCDL should be forwarded to the responsible Minister for reference.

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 the EM within 5 business days after the instrument is published in the *Government Gazette* or on the WAL website.

An EM must contain the following:

1. Title of the instrument.
2. Date of publication of the instrument in the *Government Gazette* or on the WAL website.
3. Statutory head(s) of power in the empowering Act(s); that is, the section(s) providing the authority to make the instrument.
4. Description of the purpose and effect of, and justification for, the instrument.
5. Identification of any unusual or controversial provisions, with particular regard to the JSCDL's [Term of Reference](#) 10.6.
6. Details of consultations undertaken, including stakeholders consulted, a summary of their comments and any action taken in response.
7. Overview of any external material (including standards) incorporated by reference in the instrument (see below for further details).
8. Rationale for changes in penalties and details of the amount of the penalty immediately before the change.
9. Rationale for fees and charges imposed by the instrument (see below for further details).
10. If the minor consequential amendments process is being utilised (see below for further details):
  - a) a statement that the EM is being provided under that process by one responsible agency on behalf of all portfolio areas affected; and
  - b) the identification of any 'tidying up' measures.
11. Name and contact details of relevant officers who may be contacted regarding the instrument.
12. Printed name and signature of the CEO.

## 13. Printed name and signature (or initials) of the responsible Minister.

If any of the above information cannot be provided, the EM must indicate which requirements have not been met and explain why that is the case.

### Fees and charges

The EM must provide the rationale for any fees (including fee caps) and charges that are established, re-imposed (even if the same amount is re-imposed) or amended by the instrument, and details of the amount of the fee or charge immediately before the change (if applicable). This information should be summarised in table form, as shown in this example –

Type of fee charged/ fee cap imposed	Date last amended (increase or decrease)	Old fee/ fee cap (\$)	New/Re- imposed fee/fee cap (\$)	Increase/ Decrease (%)	Increase/ Decrease (\$)	Expected % of cost recovery	Cross- subsidisation (Yes/No)
Grant or renewal of fishing boat licence for							
• A boat less than 6.5 metres long	10.09.11 (decrease)	550.00	85.00	-84.55	-465	25	No
• A boat 6.5 metres long	10.09.11 (Increase)	550.00	600.00	9.09	50	100	No
• A boat longer than 6.5 metres	10.09.11 (increase)	700.00	700.00	0	0	90	No

Descriptions of the following should also be included in the EM:

- The costing systems used to set the individual fees/fee caps or charges in order to reveal the extent of cost recovery (if applicable).<sup>1</sup> Each fee/fee cap and charge should reflect the cost of providing the associated service. If such cost recovery information is not able to be provided, please indicate why.
- The justifications for cross-subsidisation, if applicable.

### Incorporation of external material

On request, electronic and/or hard copies of any material called up (incorporated by reference) in an instrument, including Australian or Australian/New Zealand Standards or other relevant external documents, must be supplied to the JSCDL.

The EM must contain:

- a full description of why it is believed to be necessary or expedient for the material to be incorporated
- confirmation the agency:
  - has copies of Australian or Australian/New Zealand Standards that are available to be inspected by the public free of charge, or if not,

<sup>1</sup> Cross-subsidisation of fees occurs where a department or agency imposes fees which over-recover in order to subsidise other fees which under-recover: see JSCDL (2001–2017), report 75, [Identifying a systemic issue arising out of nine Court and Tribunal instruments](#), Western Australia, Legislative Council, 18 September 2014, p 29; and see *Second Public Sector Performance Report 2010*, Office of the Auditor General, Report 12, November 2010, page 7, together with *Costing and Pricing Government Services*, Government of Western Australia, Department of Treasury and Finance, November 2025 and Treasurer's Instruction 6, *Income and Receipts*, Financial Administration Bookcase; Government of Western Australia, Department of Treasury and Finance, (last updated 2 January 2026).

that it will do so

- advises the public of the availability of Australian or Australian/New Zealand Standards on its website, or if not, that it will do so.

### **Omnibus instruments**

Omnibus instruments amend multiple principal instruments falling within the same Ministerial portfolio.

Agencies may submit one EM covering all amendments made by the omnibus instrument under scrutiny. All other requirements above must be met (such as submitting copies of each principal instrument that is being amended).

### **Minor consequential amendments affecting more than one portfolio**

New or amending primary legislation will sometimes have the effect of necessitating amendments (usually changes to cross-references) to instruments of subsidiary legislation that are the administrative responsibility of portfolio areas other than that of the Minister responsible for the primary legislation. Where this occurs, and the amendments:

- affect multiple principal instruments; and
- are purely consequential on the passing of the primary legislation,

the JSCDL is prepared, in these limited circumstances, to deal with the agency of the responsible Minister alone.

Note that instruments dealt with under this procedure must not include substantive amendments. The instruments may include ‘tidying-up’ measures, and minor technical changes that do not involve new policy but that are consequential on the passing of the primary legislation and directly related to, and necessary for, the effective operation of the primary legislation.

The requirements above must be met in respect of the amended principal instruments. However, the JSCDL will accept an EM from the responsible coordinating agency (signed or initialled as above) on behalf of all portfolio areas affected. Where this occurs, the responsible coordinating agency, or PCO, should advise JSCDL staff in advance of this planned arrangement and if the subsidiary legislation includes ‘tidy ups’. Further information on dealing with minor consequential amendments can be found in [this report](#).<sup>2</sup> The JSCDL have accepted this arrangement as an ongoing arrangement with PCO.

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<sup>2</sup> JSCDL (2017-2021), report 3, *Procedures for dealing with consequential amendments to delegated legislation following enactment of primary legislation*, Western Australia, Legislative Council, 12 October 2017,