



Development of Primary and Subsidiary Legislation Policy

1. Purpose

The Minister is responsible for over thirty-five Acts within the Health portfolio. These Acts and the associated subsidiary legislation cover a diverse range of policy issues and provide the framework for the WA health system.

This Policy outlines the minimum mandatory requirements for the making (develop or amend) of primary and subsidiary legislation and when seeking legislative advice.

This Policy is a mandatory requirement under the *Legal Policy Framework* pursuant to sections 26(2)(l) and 20(1)(b) of the *Health Services Act 2016*.

This Policy is also a mandatory requirement for the Department of Health pursuant to section 29 of the *Public Sector Management Act 1994*.

2. Applicability

This Policy is applicable to all WA health system entities.

3. Policy Requirements

- 3.1. Staff members must not seek to develop or amend legislation without prior consultation with Legal and Legislative Services.
- 3.2. Staff members must submit all proposals for the development or amendment of primary or subsidiary legislation to Legal and Legislative Services.
- 3.3. Staff members must use the *Request for Legal Advice or Legislative Assistance form* for all legislative proposals and attach all the relevant supporting documentation. The form is available from the [Legal and Legislative Services intranet page](#) and must be submitted to Legal and Legislative Services at legal.services@health.wa.gov.au
- 3.4. **Health Service Providers** must not:
 - engage in communication with the following bodies in respect of legislative proposals or the preparation of legislation without prior consultation with the Director of Legal and Legislative Services:
 - Better Regulation Unit
 - Cabinet Services within the Department of Premier and Cabinet
 - Executive Council
 - Parliamentary Counsel's Office
 - Joint Standing Committee on Delegated Legislation.

Ensure you have the latest version from the [Policy Frameworks](#) website.

- seek advice from or provide advice to the Director General, Minister or Cabinet in respect of any legislation proposal without prior consultation with Legal and Legislative Services

3.5. Department of Health Staff must:

- not engage in communication with the following bodies in respect of legislative proposals or the preparation of legislation without prior consultation with the Director of Legal and Legislative Services:
 - Cabinet Services within the Department of Premier and Cabinet;
 - Executive Council;
 - Parliamentary Counsel's Office; and
 - Joint Standing Committee on Delegated Legislation.
- consult with the Director Legal and Legislative Services prior to advising the Director General or the Minister of the concept of legislative development or change, or any proposal regarding legislation.

4. Compliance monitoring

The Department of Health is responsible for conducting periodic audits of policy compliance on behalf of the Department CEO as the System Manager. As deemed necessary, the Department CEO as the System Manager may request compliance evidence be submitted by Health Service Providers and Divisions of the Department of Health to the Legal and Legislative Services in relation to the requirements of this Policy.

5. Related documents

- *Request for Legal Advice or Legislative Assistance form available on the Legal and Legislative Services intranet page.*

6. Supporting information

The following information is not mandatory but informs and/or supports the implementation of this Policy:

- *Department of Justice WA, Parliamentary Counsel's Office, [Getting Government Legislation Drafted and Enacted: Guidelines and Procedures](#)*

7. Definitions

The following definition(s) are relevant to this Policy.

Term	Definition
Primary legislation	Primary legislation (also called 'statutes') refers to Acts which are laws made when a Bill is passed by both Houses of Parliament and assented to by the Governor in Executive Council (known as 'Royal Assent'). Acts may be enabling in nature (contain provisions which give effect to a particular policy/action) and/or may amend or repeal existing laws.

Staff member	<p>Staff member means a person employed:</p> <ul style="list-style-type: none"> • in a health service provider and includes: <ul style="list-style-type: none"> ○ the chief executive of the health service provider; ○ a health executive employed in the health service provider; ○ a person employed in the health service provider under section 140 of the <i>Health Services Act 2016</i>; ○ a person seconded to the health service provider under section 136 or 142 of the <i>Health Services Act 2016</i>. ○ a person engaged under a contract for services by a Health Service Provider. • In the Department of Health and includes <ul style="list-style-type: none"> ○ any person employed pursuant to Part 3 of the <i>Public Sector Management Act 1994</i> including the Chief Executive Officer ○ a person engaged under a contract for services by the Department of Health.
Subsidiary legislation	<p>Subsidiary legislation (also called subordinate/secondary legislation) refers to any proclamation, regulation, rule, local law, by-law, order, notice, rule of court, local or region planning scheme, resolution, or other instrument, that is made pursuant to any written law and having legislative effect.</p> <p>Whereas an Act dictates what must be done; subsidiary legislation dictates how it is done. The approving authority for subsidiary legislation is set out under an enabling Act (generally the Governor or relevant Minister).</p>
WA health system entity	<ul style="list-style-type: none"> • All Health Service Providers as established by an order made under section 32(1)(b) of the <i>Health Services Act 2016</i> • Department of Health as an administrative division of the State of Western Australia pursuant to section 35 of the <i>Public Sector Management Act 1994</i>. <p>Note: Contracted health entities are not considered WA health system entities.</p>

8. Policy contact

Enquiries relating to this Policy may be directed to:

Title: Director Legal and Legislative Services

Directorate: Legal and Legislative Services

Email: legal.services@health.wa.gov.au

9. Document Control

Version	Published date	Effective from	Review date	Effective to	Amendment (s)
MP0019/16	1 July 2016	1 July 2016		22 February 2018	Original version
MP0019/16	22 February 2018	22 February 2018		31 January 2021	Major amendment
MP0019/16	7 December 2021	7 December 2021	December 2024	Current	Policy Review – Minor Amendment
<ul style="list-style-type: none"> • Policy transitioned to the current Policy template. • Rewording to remove repetition • Complete policy review was undertaken, a new review cycle will now commence. 					

10. Approval

Initial approval	Dr David Russell-Weisz, Director General, Department of Health
	01 July 2016
Current version approved	Nicole O’Keefe, Assistant Director General, Strategy and Governance, Department of Health
	2 December 2021

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