

C A B I N E T G U I D E

Executive Council
Advising the Governor



IMPORTANT NOTE:

The information in this Guide is current as of the date of publication but the procedures it describes are subject to change.

Please check with the Department (see the contacts listed below) if you intend to rely on this information after February 2018.

February 2017

Department of the Premier and Cabinet
State Administration Centre
200 Victoria Square
ADELAIDE SA 5000
8429 5107



GPO Box 2343
ADELAIDE SA 5001

www.dpc.sa.gov.au

Contents

Introduction	1
Applying this Guide.....	1
The Governor	2
The Lieutenant-Governor.....	2
The Membership and Role of Executive Council	2
Legislative Base.....	2
Membership of Executive Council.....	3
Role of Executive Council.....	3
Advice to Executive Council.....	3
Executive Council Matters	3
Matters for consideration by Cabinet prior to submission to the Executive Council.....	3
Other Matters.....	4
The Governor and the Parliament.....	4
Money Bills or Clauses and the Governor's Messages.....	4
Executive Council Meeting Procedures	5
Weekly Executive Council Meetings.....	5
Executive Council Meeting Agenda.....	6
Special Executive Council Meetings	7
Ceremonial Meetings	7
Executive Council Process	8
Preparing for Executive Council Meetings	8
Role of Cabinet Office	8
The Clerk of Executive Council	8
Cabinet Coordination Staff	9
Public Seal of the State	10
Publication in the Government Gazette	10
Additional Parliamentary Business	10
General Information	10
Parliamentary Papers	11
Annual Reports of Agencies and Statutory Authorities.....	12
Council Business in Detail	12
Assent to Bills.....	12
Proclamations.....	13
Regulations.....	16
Appointments.....	22
Acting Ministers.....	24
Notices.....	26
Appendix	28

Introduction

This publication outlines the role and function of the Governor and Executive Council in the governance of South Australia. It provides information about the requirements for the preparation of matters considered by Executive Council and the way that it operates.

The guide is one of a suite of Cabinet guides which are available at the following link:
intra.sa.gov.au/site/cabinet/

Applying this guide

The guide will be useful for Ministerial office staff, Chief Executives, agency and statutory authority staff who are involved in the preparation of matters for the approval of the Governor in Executive Council.

Contacts

Cabinet Coordination staff can assist with queries about Executive Council requirements and can be contacted via email or by phone:

Director

lachlan.pontifex@sa.gov.au

Phone: 0408 543 004

Manager

michael.brougham@sa.gov.au

Phone: 8429 5107

Senior Executive Council Clerk

melanie.hazell@sa.gov.au

Phone: 8429 5132

Executive Council Clerk

brooke.dyer@sa.gov.au

Phone: 8429 5114

Senior Cabinet Officer

andrea.smith2@sa.gov.au

Phone: 8429 5128

Cabinet Officer

amy.farrell2@sa.gov.au

Phone: 8429 5111

Location

Cabinet Coordination staff are located in Cabinet Office:
State Administration Centre
200 Victoria Square
Adelaide SA 5000

The Governor

The *Australia Act 1986 (Cth)* provides that the Queen's representative in each State of Australia is the Governor, who exercises all of the Queen's powers in relation to the State.

The Governor is appointed by Commission, signed by Her Majesty on the recommendation and advice by the Premier. The Governor holds office at Her Majesty's pleasure, but it has been convention for the Governor to hold the Commission for a term of between five and seven years.

The *Constitution Act 1934* confers certain powers on the Governor, while the *Administrative Arrangements Act 1994* includes provisions relevant to the administration of the State. The Governor's powers and functions are derived from statute and from the prerogative.

Prerogative powers of the Governor include the power to prorogue, dissolve and summons Parliament, the power to assent to Bills, the power to recommend measures to the Houses of Parliament, the exercise of the prerogative of mercy and the power to enter into contracts.

With some exceptions, in the exercise of these powers the Governor must act upon the advice of his Ministers, given in Executive Council.

The Lieutenant-Governor

The Lieutenant-Governor is appointed by the Governor on the advice and consent of the Premier. They are appointed by Commission, signed by the Governor under the public seal of South Australia.

Between appointments of the Governor and when the Governor is absent or incapacitated, the Lieutenant-Governor performs the Governor's official role and functions. This includes presiding at meetings of the Executive Council and approving matters - usually as Governor's Deputy.

If the Lieutenant-Governor is unavailable the Chief Justice will be commissioned to act as Governor's Deputy.

The Membership and Role of Executive Council

Legislative Base

Section 66 of the *Constitution Act 1934* recognises Executive Council as the institution through which the Government as a whole formally gives advice to the Governor. Unlike Cabinet, Executive Council is not a deliberative body.

Section 23 of the *Acts Interpretation Act 1915* provides that the Governor cannot exercise a statutory power (cannot do "...any act, matter or thing authorised or required by..." any Act) except with the advice and consent of the Executive Council.

This means that Ministers cannot generally advise the Governor directly on the exercise of statutory powers. The exceptions are:

- Ministers of the Crown are appointed by the Governor alone (section 68 of the *Constitution Act 1934*), and
- land grants and Crown leases are issued by the Governor on the advice of the responsible Minister only.

Membership of Executive Council

Every Minister is a member of Executive Council. A quorum for Executive Council is the Governor and two Ministers with the Governor presiding.

Role of Executive Council

The role of Executive Council is to advise the Governor on the exercise of the powers of the Governor in Council. The Governor in Council gives legal effect to many of the decisions and actions of government. Many of the statutes enacted by the South Australian Parliament have delegated a form of legislative authority to the Governor in Executive Council, enabling it to make 'subordinate legislation'. Administrative action under numerous Acts, such as appointments and approving deeds and leases, can only be carried out by the Governor in Council.

Advice to Executive Council

The Premier, as leader of the Government, advises the Governor on the appointment of Ministers and members of Executive Council. While Cabinet is the mechanism through which Ministers determine their collective view, making Cabinet central to the operation of a Westminster system of Government, it has no legal status. The Governor in Council is the formal mechanism for administration of the State. In effect, Executive Council is the Cabinet with the Governor presiding.

For this reason decisions are sometimes described as being made by, and the power to act given to, the "Governor in Council". The Governor in Council is the Governor acting by and with the advice and consent of Executive Council.

Any matter requiring an Executive Council decision requires a prior Cabinet decision. This is the most efficient way for Executive Council to formulate the advice it gives to the Governor and it ensures that the advice is always unanimous.

Executive Council Matters

Matters for consideration by Cabinet prior to submission to the Governor in Council

Where a matter requires the approval of both Cabinet and Executive Council, the matter must first be considered by Cabinet. Following Cabinet approval the matter is then submitted to the Governor in Council. If, because of urgency, both documents need to be presented at the same time, such action should be discussed initially with Cabinet Office.

An example of matters for which prior Cabinet approval is necessary before proceeding to an Executive Council meeting include:

- the issuing of proclamations bringing new Acts or amending legislation into operation
- the making of regulations
- appointments to boards and committees
- significant appointments, and
- matters that various Acts require the Governor in Council to approve.

This list is not intended to be exhaustive. Each agency must be familiar with its legislation, both principal and subordinate, and with matters requiring approval of the Governor in Council.

Advice about whether a matter should be submitted to the Governor in Council can be sought from Cabinet Office.

The Cabinet Coordination unit in Cabinet Office checks each Cabinet document to be submitted to the Governor in Council and will advise the responsible Minister's office of any corrections, amendments or additional documentation required.

Where revised versions of Cabinet documents are required, they are re-signed by the Minister and then resubmitted and made available to all Ministers. If circumstances do not allow for re-signing by the Minister prior to the nominated Cabinet meeting, arrangements can be made, with the agreement of the Minister and Cabinet Office staff, for the revised Cabinet document to be signed in the Cabinet meeting.

Other Matters

The Governor and the Parliament

There are two Houses of the Parliament. The House of Assembly has forty-seven members each of whom represents a single electorate. The presiding officer is the Speaker. The Legislative Council has twenty-two members each elected by the whole State. The presiding officer is the President.

The Parliament has two primary functions. With the Governor the two Houses of Parliament make new laws and amend existing laws. In addition, the two Houses of Parliament are responsible for the oversight and accountability of the Ministry.

Each Parliament lasts for four years unless dissolved earlier on special grounds by the Governor. Upon dissolution all seats in the House of Assembly and (usually) half of the seats in the Legislative Council are open for election. The election is managed by the Electoral Commissioner and is initiated by the writs issued by the Governor in Council.

The Governor opens each new session of Parliament in the Legislative Council by reading a speech prepared by the Government which outlines the policies the Government intends to pursue and the legislation proposed to be introduced during the coming session.

The Governor and the Parliament – Money Bills or Clauses and Governor's Messages

Section 59 of the *Constitution Act 1934* (the Act) provides that:

It shall not be lawful for either House of the Parliament to pass any vote, resolution, or Bill for the appropriation of any part of the revenue, or of any tax, rate, duty, or impost, for any purpose which has not been first recommended by the Governor to the House of Assembly during the session in which such vote, resolution, or Bill is passed.

Section 61 of the Act provides that a money Bill, or a money clause, may only originate in the House of Assembly. This issue may therefore be relevant in connection with making arrangements for the introduction of a Bill.

A money Bill is defined by section 60(4) of the Act as a Bill:

- for appropriating revenue or other public money
- for dealing with taxation
- for raising or guaranteeing any loan, and

- for providing for the repayment of any loan.

Section 60(3) of the Act says that a Bill, or a clause of a Bill, will be taken to deal with taxation if it provides for the imposition, repeal, remission, alteration or regulation of taxation.

The Legislative Council cannot consider a money clause in a Bill and so such a clause introduced in the Legislative Council will be printed in erased type.

Parliamentary Counsel identifies money clauses when settling a draft Bill for introduction and will notify Cabinet Office if a Governor's message is required in relation to a particular Bill.

Cabinet Office staff prepare a message, arrange for the Premier to sign a memorandum to the Governor and arrange with Government House staff for the signing of the message by the Governor and its presentation to the House.

However, the Minister's office or the instructor should also inform Cabinet Office about the introduction of the Bill in the House of Assembly so that Cabinet Office can coordinate the receipt by the House of the Governor's message with the introduction of the Bill.

In addition, after any Bill has been passed, a message is presented to both Houses of Parliament advising that the Bill has been assented to by the Governor.

Once a Bill has been assented to by the Governor in Council, Cabinet Office staff prepare a message, arrange for the Premier to sign a memorandum to the Governor and arrange with Government House staff for the signing of the message by the Governor and its presentation to both Houses of Parliament.

Executive Council Meeting Procedures

Weekly Executive Council Meetings

Meetings of Executive Council are held at Government House once a week, usually on a Tuesday. If Monday is a public holiday then the Executive Council meeting will occur on a Wednesday.

A quorum of Executive Council is the Governor, or other Presiding Officer if the Governor is unavailable (usually the Lieutenant-Governor), plus two Cabinet Ministers, one usually being the Premier. The Clerk of Executive Council is also present.

Ministers' attending Executive Council arrive ten minutes prior to the start of the meeting and before the Governor enters the Executive Council meeting. This enables time for the Premier or his 'deputy' to sign the official Executive Council documentation before formally submitting them to the Governor for approval.

If a Minister attending Executive Council has declared a conflict of interest on a matter listed on the Cabinet agenda, their obligations in relation to these conflicts apply equally to any subsequent decisions of Executive Council. The Minister's assistant will be notified of the conflict declaration and its effect on a matter that will be presented to the Governor in the Executive Council meeting and the Clerk of Executive Council will advise the Governor in advance of the meeting.

Only the Governor, Executive Councillors and the Clerk attend Executive Council meetings. In practical terms, this means that Ministers are unavailable to their staff for the short period of each meeting.

The Clerk of Executive Council ensures all documentation is prepared and the Ministers are ready to greet the Governor. The Clerk then informs the Governor that the Ministers are in attendance for the meeting. The Governor enters the Executive Council chamber

and the Ministers rise to greet him. The Governor takes his place at the head of the table and the Ministers take their seats.

The Clerk of Executive Council, moves to the right of the Governor and the meeting begins when the Governor signals to the Clerk to present the minutes of the previous week's meeting and of any additional meetings in the intervening period. The Clerk certifies that the minutes are in accordance with the decisions made at the meeting(s); and asks whether the Governor wishes to take them as read. When the Governor assents, the Clerk hands the minutes to the Governor for signing and remains standing to the Governor's side for the remainder of the meeting.

The Premier then takes the first item of business, recites the Council's advice and passes the documents to the Governor for signature. Once the Governor has signed the documents they are passed to the Minister seated on the Governor's right. That Minister countersigns the documents, as evidence that there was a quorum for the meeting.

This process is repeated until all items of business have been completed, with the Clerk ensuring that all the necessary documents are signed before the meeting ends.

It is not usual for the Governor to ask questions of a policy nature in the meeting. Ministers do not discuss matters of a party political nature in Executive Council.

The Governor signals when the meeting is over.

Executive Council Meeting Agenda

Executive Council meetings invariably follow the same general format outlined below.

1. **Acts** requiring assent.
2. **Proclamations**, so that Acts that are to be brought into operation immediately can be assented to and proclaimed to begin operating in the correct formal order.

Proclamations bringing new Acts or amending legislation into operation are the most common type of proclamation issued by the Governor in Council. Other proclamations include:

- the committal of legislation to the administration of responsible Ministers or the transfer of responsibility for particular provisions
 - the creation and abolition of public service administrative units and statutory corporations (and the transfer of assets and liabilities)
 - the conferral of jurisdiction on judicial officers
 - various controls on the use of land (reserving it for mining, charitable, church or a variety of public purposes and releasing those controls)
 - the opening and closing of roads, and
 - the creation and amendment of national parks and conservation parks and reserves and various technical declarations, such as authorising testing equipment, banning dangerous products or substances and recognising complementary interstate laws.
3. **Regulations**, so that an Act can be assented to, then proclaimed to come into operation and then have the necessary supporting regulations made in the same meeting.
 4. **Board and Committee appointments**, including: members to various government boards and committees.
 5. **Major appointments**, including: Governor's Deputy, acting Ministers, judges, magistrates, certain public officials and justices of the peace. Commissions for certain appointments are issued in the Sovereign's name but signed by the

Governor in Council (after being prepared by Cabinet Office and occasionally by the Office of the Parliamentary Counsel).

6. **Miscellaneous matters**, that various Acts require the Governor (rather than individual Ministers or senior officials) to approve.

Special Executive Council Meetings

On some occasions, urgency may require that a matter be approved before the next scheduled meeting of Executive Council. In such cases, the relevant Minister is required to obtain the Premier's agreement before seeking approval from the Governor, through Cabinet Coordination, to summon a special sitting of Executive Council. Ministers or their offices should not approach Government House direct.

At the time of seeking this approval the Governor is informed of the reasons for summoning a special meeting and arrangements for holding the meeting are discussed with the Premier's office and Government House staff.

Two Ministers are required to attend a special meeting: one usually being the initiating Minister, the other a Minister whose attendance is organised by the initiating Minister.

Ceremonial Meetings

New Ministers are formally sworn in before the Governor in Council. These ceremonial meetings of the Council are usually public events held at Government House and attended by invited guests and the media. They arise whenever a new Government is formed following an election or as a result of a Ministerial re-shuffle.

In either case, the Premier or Premier-elect confidentially advises the Chief Executive of the Department of the Premier and Cabinet of the plans for a new Ministry and the Chief Executive asks Cabinet Office to make the necessary formal arrangements.

The Clerk of Executive Council liaises with the Premier's office, Parliamentary Counsel, Crown Solicitor's office and Government House to finalise arrangements. Proclamations, delegations and any statutory instruments are prepared by Parliamentary Counsel in consultation with the Clerk of Executive Council and the Crown Solicitor's office. Other supporting documents, such as those evidencing the resignation and appointment of Ministers and the new Ministers' commissions and oaths are prepared by Cabinet Office.

A Cabinet submission, including the settled proclamations and associated documents is prepared for a short Cabinet meeting which is held immediately before the swearing-in ceremony. A separate Executive Council meeting may also be needed for the approval of items, such as new Ministerial titles, committal of Acts to Ministers, etc, before the swearing-in ceremony.

The Clerk of Executive Council briefs the Governor on the proposed arrangements and also prepares an order of events in consultation with Government House and the Premier's office.

The swearing-in ceremony itself follows a pattern of: formal public announcements acknowledging the background to the Ministerial changes; presentation of new Ministers (or Ministers assuming new responsibilities) to the Governor by the Premier; the swearing or affirming of the necessary oaths by Ministers in the presence of the Governor in Council and the commissioning of Ministers to their new offices.

Cabinet Office will circulate an amended Ministry Order of Precedence list after the swearing-in ceremony has taken place.

Executive Council Process

Preparing for Executive Council Meetings

The final instruments giving legal effect to the Governor's decisions in Executive Council are prepared by Cabinet Office. Consultation with Parliamentary Counsel and the Crown Solicitor's office occurs as necessary.

Advance copies of the Cabinet submissions involving matters to be dealt with in Executive Council are forwarded to the Governor two days before the meeting, to give the Governor time to review the documents and to raise any queries.

The Governor and Premier are advised of which Ministers will be attending Executive Council the day prior to the meeting. A Minister who is unable to attend on their rostered meeting day is required to organise a substitute Minister.

All documents for the meeting are finalised and checked the day prior to the meeting and delivered to Government House, in the "Governor's bag" prior to the meeting in order for the Governor to have a final review of the documents.

The documents consist of:

- the submission tabled in Cabinet showing Cabinet's approval
- a meeting Agenda
- a copy of the Executive Council instruments that will be presented to the Governor in the meeting, and
- a copy of the minutes of the last Council meeting.

Occasionally, on reviewing the documents sent before each meeting, the Governor may ask for further information or clarification of a point, mainly to properly understand the approval being sought. These queries are usually made by the Governor through the Clerk of Executive Council but, if the Clerk is not able to supply the necessary information, the protocol is for the Premier, the Attorney-General or the responsible Minister to advise the Governor. The Clerk organises the contact, and any necessary briefing, through the Premier's office.

When a Governor's Deputy has been appointed and will be chairing the Executive Council meeting, the Clerk of Executive Council meets with the Deputy on the afternoon before the meeting to give a detailed briefing on each matter listed on the Council Agenda.

Role of Cabinet Office

The Clerk of Executive Council

The role of Clerk of Executive Council, although not formally created by legislation, is undertaken by officers in the Department of the Premier and Cabinet.

Clerks of Executive Council are appointed by the Governor in Council under the provisions of the Letters Patent and section 68 of the *Constitution Act 1934*. On appointment, a Clerk takes an oath of office and secrecy before the Governor in Council.

Duties of the Clerk of Executive Council include:

- arranging meetings of the Council when convened by the Governor on the advice of the Premier
- making arrangements for the swearing-in ceremonies of new Ministers

- examining all documents prepared for Executive Council to ensure they comply with formal requirements
- ensuring that prior Cabinet approval has been received
- ensuring that the documents are drawn up in accordance with the applicable legislation, and
- communicating to appropriate officers in the agency the approval of matters by the Governor in Council.

Cabinet Coordination Staff

The staff in the Cabinet Office, Cabinet Coordination unit provide advisory, administrative and logistical services for Executive Council. The role of Cabinet Coordination staff includes:

Administrative

- ensuring that all relevant submissions, schedules, commissions, agendas, minutes and related official documentation are properly prepared for Executive Council meetings, comply with all legal and statutory requirements and are formally executed as required
- preparing the official documentation for events such as State elections, changes in the Ministry, appointment of the State Governor and Lieutenant-Governor, and the opening of Parliament
- preparing the Governor's messages to be presented to Parliament and the tabling of Parliamentary papers in both Houses of Parliament
- providing advice about Executive Council outcomes and organising for items to be published in the South Australian Government Gazette, including matters not on the Executive Council Agenda
- organising forwarding of documentation to the Legislative Review Committee
- sealing all public instruments which are made and issued in the name of the Sovereign, and
- maintaining a complete record of matters approved by the Governor in Council as custodians of all Executive Council records.

Advisory

- providing an advisory service on Government processes (format, content, process and timing), and
- checking all Cabinet submissions that require the approval of the Governor in Council, and arranging for any amendments to be made or additional documentation to be provided to ensure they comply with formal requirements.

Logistical

- arranging meetings of the Council, including special Executive Council meetings, when convened by the Governor on the advice of the Premier
- arranging for documents to be presented or tabled in Parliament, for example, the Governor's messages, and
- organising the publication and notification to Ministers offices of resolutions passed by Parliament.

Public Seal of the State

Cabinet Office is the custodian of the Public Seal of the State which is used for sealing all public instruments made and issued in the Sovereign's name, such as proclamations, regulations, notices and commissions. Apart from specific statutory requirements, the Public Seal of South Australia continues to be used mainly for ceremonial and historical reasons.

Publication in the Government Gazette

The *Subordinate Legislation Act 1978* requires that any regulation, rule or by-law made under an Act must be published in the Government Gazette.

The Cabinet Coordination unit in Cabinet Office organises the publication of Executive Council matters in the Government Gazette. This is the main instrument used to promulgate the major decisions of the Governor in Council. Publication in the gazette is necessary to give legal effect to some decisions. If subordinate legislation and some other statutory instruments are not notified or published in the gazette they will not be effective.

At times it is necessary to request a Gazette notice outside the usual Tuesday publication (or Wednesday publication if Monday is a public holiday). If this is required Cabinet Coordination can organise for a supplementary Government Gazette to be published.

Additional Parliamentary Business

General Information

Specific legislation controls the tabling of subordinate legislation and some reports by committees, agencies and statutory offices. Other papers are tabled as a matter of practice or convention: to keep Parliament informed of important ministerial decisions or to facilitate informed debate on important issues.

Parliamentary papers are usually tabled on every Tuesday that Parliament is sitting, but they can be tabled on Wednesday and Thursday, if specifically requested. While the preference is often for a report to be tabled in both Houses of Parliament on the same day there are occasions when only one of the Houses of Parliament is sitting on a particular day, in which case documents are tabled on different days.

Three copies of each document, plus a copy on CD/USB must be sent to Cabinet Coordination with a covering minute attached requesting that the item be tabled in Parliament.

All covering minutes should specify a particular date that the item is to be tabled. Documents can be tabled in one House on one day and in the other House on another day, when they are next sitting. However, the preference is often for the document to be tabled in both Houses on the same day, thus the importance of specifying a particular date in the forwarding minute.

All documents to be tabled must be received by Cabinet Office, marked: *Attention: Senior Executive Council Clerk, Cabinet Coordination* by no later than 9.30am on the day that the item is to be tabled. When an item that must be tabled on a particular day is not received by 9.30am, alternative arrangements will need to be discussed with Cabinet Coordination staff.

When Parliament is sitting, Cabinet Coordination staff provide advice to Chiefs of Staff and Parliamentary officers for each Minister about items to be tabled by all Ministers in both Houses of Parliament. Ministers' offices are informed about when the document was tabled and which Ministers tabled items in each House.

One copy of the document is tabled in each House of Parliament and the Opposition receives the third copy. Cabinet Office does not retain any copies of the documents received.

The House of Assembly has requested that documents for tabling are supplied in an electronic format (preferably compiled into one document). If an electronic version of the document is not received, Cabinet Coordination staff will contact the Minister's office to have one sent as soon as possible so that it can be passed on to the House of Assembly.

Generally, once any document has been tabled in Parliament, the originating agency should not add to, delete from, or amend it in any way. If any change must be made after the report has been tabled, the additional material is required to go through the same tabling procedure as the original document. Alternatively, an error may be corrected in an annual report in the following year.

Parliamentary papers

Each parliamentary sitting week usually begins with the presentation of petitions and the tabling of other papers, including:

Subordinate legislation (regulations, rules and by-laws)

The *Subordinate Legislation Act 1978* requires that any regulation, rule or by-law made under an Act must be published in the Government Gazette, forwarded to the Legislative Review Committee for report (unless the Act enabling the subordinate legislation to be made provides otherwise) and tabled in both Houses of Parliament.

Once published in the Government Gazette all regulations are then tabled in Parliament. This occurs on:

- Thursday after the Executive Council meeting on Tuesday (during a sitting week), or
- on the next available Tuesday that Parliament is sitting (if made during a non-sitting week or the Executive Council meeting is held on a Wednesday due to a public holiday on Monday).

Cabinet Office also assists agencies to have rules and by-laws that are not made by the Governor in Council published in the Government Gazette and, where necessary, forwarded to the Legislative Review Committee prior to being tabled.

Details of those few instruments that are exempt from these requirements may be obtained from the Secretary to the Legislative Review Committee.

Specific tabling process requirements are described below:

- Councils send their by-laws directly to the Legislative Review Committee, which then sends them on to Cabinet Office to organise tabling
- in all other cases a covering minute, including a date that the item is to be tabled, is sent to Cabinet Office requesting that the rules or by-laws be published in the Government Gazette and, as appropriate, forwarded to the Legislative Review Committee and tabled in both Houses of Parliament, and
- documents that do not need to be forwarded to the Legislative Review Committee, are prepared for the tabling in both Houses of Parliament once the document has been published in the Government Gazette.

Parliamentary committee, Ministerial, Government reports or responses to inquiries

Cabinet Office can assist agencies to have a variety of other documents tabled in Parliament, including:

- Ministerial or Government responses to inquiries
- reports by statutory officers or agencies, and
- matters of public interest such as agreements, charters and determinations.

Specific legislation controls the tabling of many of these papers. Others are tabled as a matter of practice or convention: to keep Parliament informed of important ministerial decisions or to facilitate informed debate on important issues.

Annual reports of agencies or statutory offices

Under the *Public Sector Act 2009* there is a legal obligation for a public sector agency to report on its activities annually.

The *Public Sector Act 2009* part 3 section 12(6) states that:

The public sector agency must ensure that the report is accurate, comprehensive, deals with all significant issues affecting the agency and is written and presented in a manner that aids ready comprehension.

The *Public Sector Act 2009* and regulations specify a number of matters that must be included in annual reports and also permit the Commissioner for Public Employment and the Minister responsible for the Act (the Premier) to require agencies to publish additional information in their reports.

Each year *Premier and Cabinet Circular 13: Annual Reporting Requirements* is reissued to reflect the latest reporting requirements.

Agency annual reports are required, under the Act, to be submitted to the relevant Minister within three months after the end of a financial year; that is, by 30 September. The Act requires reports to set out in a prominent position the date on which it was presented to the relevant Minister. The Minister then has 12 sitting days to table the report in both Houses of Parliament.

The annual report of a statutory authority must be tabled in accordance with all legislative requirements. Therefore, where there is an inconsistency between a statutory authorities establishing Act and the *Public Sector Act 2009*, the more stringent time frame prevails.

During the annual reporting period, Cabinet Coordination staff endeavour to table annual reports as soon as possible rather than waiting for the next Tuesday that Parliament is sitting. Further information about the content, style and format of the agency annual reports can be found on the Department of the Premier and Cabinet website.

Executive Council Business in Detail

Assent to Bills

When a Bill has been passed by both Houses of Parliament, it must receive royal assent by the Governor before it can come into force as an Act.

Bills are usually assented to within one or two weeks of being passed in both Houses of Parliament. If it is necessary for a Bill to come into operation as soon as practicable after it has been passed by both Houses, the Minister's office should contact the Clerk of the

House of Assembly or the Clerk of the Legislative Council to ensure that assent proceeds as quickly as possible.

Parliamentary Counsel checks the Bill for accuracy once amendments have been made and it has been printed. Parliamentary Counsel then forwards a memorandum to the Attorney-General notifying him that the Bill is correct and can be assented to by the Governor.

It is the usual practice for the Speaker or President to meet with the Governor at Government House (usually on Wednesday mornings) to formally present recently passed Bills for assent and to sign four copies of each Bill in the presence of the Governor. Government House staff then send the Bills to Cabinet Office to prepare for their assent in Executive Council.

At the same time, having received Parliamentary Counsel's memorandum in relation to each Bill, the Attorney-General addresses a memorandum to the Premier stating:

"I have the honour to report, for the information of His Excellency the Governor, that there is not, in my opinion, any objection in point of law to his assenting, in the name of Her Majesty, to the Bill of 2017 intituled:

An Act to"

This memorandum is forwarded to Cabinet Office from the Attorney-General's Office and a copy given to the Governor before the Act is formally assented to in Executive Council. The original is placed with the official Executive Council documents and retained in Cabinet Office.

The Governor formally assents to Bills in Executive Council. The Bill then becomes an Act and the four signed copies of the Act are returned to Government House staff to distribute. One copy is provided to the Legislative Council, one to the House of Assembly and one to the Supreme Court. The fourth copy remains at Government House.

Following the Governor assenting to an Act, Cabinet Office arranges for a notice to be published in the Government Gazette and notifies the originating Minister's office of the details of the Act and its commencement provisions.

When an Act commences on the date of assent or a commencement date is specified, no further action is required to bring it into operation. However, if the commencement section states that the Act will come into operation on a day to be fixed by proclamation, then a Cabinet submission is required to initiate the necessary proclamation. If the Act is entirely new (not simply amending an existing Act) then a Cabinet submission is also required to initiate a proclamation committing the administration of the Act to a Minister. The committal and commencement of an Act can be contained in one submission.

Following assent of a Bill by the Governor in Executive Council, Cabinet Office completes the process for the Governor's messages for Acts assented to be presented to both Houses of Parliament.

Proclamations

Proclamations are issued by the Governor in Executive Council and must therefore be approved by Cabinet, usually by way of a Sub-Committee submission, although this depends on the nature of the proclamation.

In order to concentrate on major items and more strategic matters Cabinet has agreed that a number of routine matters should be dealt with in Cabinet Sub-Committee. This includes the drafting of and approval to issue proclamations. However, Ministers may consider a proclamation serious enough to warrant its being placed on the full Cabinet agenda for detailed discussion and any Minister may request that a Sub-Committee item be considered by full Cabinet after it has been listed on the Cabinet Agenda.

Guidelines for particular types of proclamations

It is important to ensure that all material relevant to the detail of the proclamation is included in the Cabinet submission, together with the name and contact details of an instructor on the submission.

The following information provides an overview of how the recommendations for some common types of proclamations should be framed and what should be included in the submissions.

Commencement of an Act

In addition to the standard requirements in the Sub-Committee template, the *body of the submission* must address the following matters:

- when both Houses of Parliament passed the Bill
- when the Act was assented to by the Governor in Executive Council
- the main purposes of the Act and its likely impact on the community
- whether parts of the Act have already been brought into operation and when this occurred
- if only certain provisions are to come into operation, which provisions they are and the reasons
- which, if any provisions are being suspended and the reasons
- details of the consultation undertaken about the Act's commencement, and
- the resources required to support the Act's commencement.

In the *recommendation section of the submission* reference must be made to:

- His Excellency the Governor in Executive Council issuing the proclamation
- the full title and year of the Act that is to be brought into operation
- the date that the Act is to be brought into operation
- if only certain provisions are to come into operation, which provisions they are, and
- which, if any provisions are being suspended.

Committal of an Act to a Minister

Only principal Acts (not amending Acts) are committed to Ministers. If administration of the Act is being changed, the reasons for that change should be clearly explained in the body of the submission.

The *recommendation section of the submission* must include reference to:

- His Excellency the Governor in Executive Council issuing the proclamation
- the full title and year of the Act that is to be committed
- the Ministerial portfolio that the Act is to be committed to, and
- the *Administrative Arrangements Act 1994*.

Alteration of Council or Park Boundaries

Clear reasons for the proclamation must be given in the body of the submission and it should properly describe the affected areas: including a lay description of the location. If available, a plan of the area should be included as an attachment to the Cabinet submission.

The *recommendation section of the submission* must include reference to:

- His Excellency the Governor in Executive Council issuing the proclamation
- a general description of the location of the affected area
- full technical descriptions of the area to be included in or excluded from the affected area, and
- the full name and year of the Act pursuant to which the proclamation will be made.

Varying controls on the use of land

Clear reasons for the proclamation must be given in the submission and it should properly describe the affected areas: including a lay description of the location. If available, a plan of the area should be included as an attachment to the Cabinet submission.

The *recommendation section of the submission* must include reference to:

- His Excellency the Governor in Executive Council issuing the proclamation
- the date of the original proclamation being revoked or varied
- a general description of the location of the affected area
- a full technical description of the affected area, and
- the full name and year of the Act pursuant to which the proclamation will be made.

Issuing proclamations

Following Cabinet approval, Cabinet Office sends notification to Parliamentary Counsel of what items have been approved, usually no later than the morning after each Cabinet meeting.

Straightforward and urgent proclamations are drafted and settled by Parliamentary Counsel and returned to Cabinet Office in the same week, to have the necessary documentation prepared for their being issued in Executive Council. Proclamations dealing with more complex matters or requiring further input from instructors are completed over a longer period.

Copies of the settled proclamations and the submission (including all attachments) that was tabled and approved in Cabinet are sent to the Governor before each meeting. The original proclamations are dated and the Public Seal of South Australia affixed to them ready for the Executive Council meeting.

The Governor formally issues proclamations in Executive Council by signing an instrument retained in the Council Minutes and by signing across the Public Seal affixed to the original of each proclamation.

The majority of proclamations take effect on the day on which they are made. A retrospective date can only be chosen if expressly contemplated by the enabling Act. A future date is also chosen from time to time - especially with commencement proclamations.

The originals are sent to Government Publishing to verify that they have been properly issued. All proclamations are published in the Government Gazette on the same day as they are issued.

The originals are returned to Cabinet Office where they are filed with the Executive Council records. Relevant documents for Ministerial offices are made available by 12.00noon on Tuesday after the Executive Council meeting. If Monday is a public holiday, then the Executive Council meeting will be held on the Wednesday therefore, the documents for Ministerial offices are made available by 12.00noon on Wednesday.

Regulations

Regulations are the most common form of “subordinate legislation”; that is, binding rules that are made by another body, usually the Governor in Executive Council, with the authority of the Parliament. They provide a lot of the detail within the statutory framework created by Acts and naturally lend themselves to more detail.

Regulations must:

- be within the limits of power to make regulations
- comply with any preconditions set out in the principal Act, such as consultation with specified office-holders or bodies
- be consistent with the purpose and intent of the principal Act, and
- not confer discretionary power, unless the principal Act allows this sort of delegation.

Regulations may also be challenged within the courts on various grounds, including:

- repugnance to the common law
- being unreasonably oppressive or unjust
- being uncertain, and
- being for an improper purpose.

Some of the key rules that apply to the making of regulations are contained in the *Subordinate Legislation Act 1978*, including the requirements that regulations are made by the Governor, published in the Government Gazette, forwarded to the Legislative Review Committee and tabled in both Houses of Parliament. The Act also provides that regulations may be disallowed by either House of Parliament.

Commencement of regulations

The *Subordinate Legislation Act 1978* governs the commencement of regulations (including rules and by-laws).

If the regulations are silent about a commencement date, they will come into operation 4 months after the day that they are made. However, the regulations may specify a date *after* this 4 month period.

They may also specify a date that is earlier than the 4 month period, but this is only possible if the Minister responsible for the administration of the Act certifies that, in his or her opinion, it is necessary or appropriate that the regulations come into operation on an earlier date. The certificate will be attached to the settled regulations and cannot be called in question in any legal proceedings.

Regulations which a Minister might certify should come into operation early, include regulations which:

- simply revoke an existing regulation, without substituting another one for it
- correct an error in another regulation
- are required in connection with an Act which will come into operation as soon as the Governor assents to it
- are of a financial nature, such as those imposing a fee, tax or duty, and
- grant an exemption from complying with certain laws, without prejudicing the rights of any other person.

In these cases Parliamentary Counsel will draft and settle the necessary certificate for the Minister's signature and the Minister must cause a report setting out the reasons for the issue of the certificate to be given to the Legislative Review Committee as soon as practicable after the making of the regulation.

Regulations not required to be laid before Parliament come into operation on the day on which they are made or from such later date as is specified in the regulations.

The date for the commencement of a set of regulations may be specified by reference to the commencement of a provision of an Act. The commencement date cannot be retrospective unless that is authorised by the Act under which the regulations are being made.

If regulations are drafted and settled by Parliamentary Counsel late in the year but are not presented to the Governor in Executive Council until the following year, then the regulations and certificates will need to be re-issued by Parliamentary Counsel.

An Act may alter any of these rules by making special provision for the commencement of its regulations. Sometimes an Act also allows transitional matters to be dealt with by regulation.

Cabinet's approval to draft and make regulations

Although there are advantages in drafting regulations at the same time as, or before, enactment of the principal legislation, there is usually insufficient time for this to occur. If the principal legislation is likely to be amended in the course of its passage through Parliament, to draft regulations in anticipation is likely to be a waste of time.

Sometimes the making of regulations is contemplated in the initial Cabinet approval for the legislative scheme and Parliamentary Counsel is asked to commence drafting once the Bill has been enacted. This causes some administrative difficulty because the Cabinet submission will be with the Minister rather than with Parliamentary Counsel.

It is more usual for a separate Cabinet submission to be prepared once the details of the regulatory scheme have been fully developed. Instructions for each set of regulations must be included in the submission prepared for Cabinet.

Particular attention must be paid to the legislative preconditions for the making of regulations. All Cabinet submissions seeking approval to draft and make regulations must include a specific reference to any preconditions to the making of regulations and sufficient evidence of the precondition's having been met (for example a letter from the person who must be consulted confirming that consultation has taken place) must be attached to the submission.

The proof prepared for the purpose of the Cabinet submission should be retained in the original Cabinet submission docket so that it is a straightforward matter to prove satisfaction of the preconditions if the regulations are subsequently challenged in Court.

After Cabinet approves the instructions for the drafting of regulations, Cabinet Office sends the Cabinet submission containing the instructions and proof of Cabinet's approval directly to Parliamentary Counsel as a matter of urgency. Parliamentary Counsel usually receives the Cabinet submissions by no later than Tuesday morning after the Cabinet meeting. Instructing officers may contact the staff of their Minister, Cabinet Office or Parliamentary Counsel, for advice on Cabinet decisions on the submission seeking approval of the instructions.

Process for approval to draft and make regulations

Regulations are presented to Cabinet in one of two ways, depending on their sensitivity. Where regulations are likely to be contentious, represent a change in government policy, or will have an impact on a number of different ministerial portfolios, a two-step process is followed; in all other cases, a one-step process is followed. Determining which process to follow should be done in consultation with the Minister's office, Parliamentary Counsel, and Cabinet Office.

Approval using one-step process

Under the one-step process, Ministers may ask Parliamentary Counsel to prepare draft regulations. These are then the subject of a full Cabinet submission requesting that Cabinet approve the drafted regulations and recommending that the Governor make the regulations.

In addition to the standard requirements, *the body of the submission* must address the following matters:

- that Parliamentary Counsel have issued a Certificate of Validity, and
- if required, that Parliamentary Counsel have issued a Certificate of Early Commencement that the Minister has signed to enable the regulations to come into operation on (state the date or the wording 'the day on which they are made').

The *first recommendation* must include reference to:

- Cabinet approving regulations, as drafted by Parliamentary Counsel
- the full name and year of the regulations being made
- the full name and year of the Act that the regulations are made under
- the purpose of the regulations, and
- the proposed date of operation.

The *second recommendation* of the submission must include reference to:

- His Excellency the Governor in Executive Council
- the full name and year of the regulations being made
- the full name and year of the Act that the regulations are made under
- the purpose of the regulations, and
- the proposed date of operation.

Approval using 2 step process

Where the regulations are subject to the two-step process, a full Cabinet submission must be prepared prior to the regulations being drafted by Parliamentary Counsel. Parliamentary Counsel will then draft the regulations based on Cabinet's instructions.

Following this, approval to recommend that the Governor make the regulations can be sought from Cabinet Sub-Committee, provided the regulations have been drafted according to the instructions previously approved by Cabinet. If the regulations vary significantly from the instructions previously approved by Cabinet, approval to recommend that the Governor make the regulations needs to be sought from full Cabinet.

In addition to the standard requirements in the Sub-Committee template the *body of the submission* must:

- contain the same information as the submission requesting approval to draft
- state when Cabinet approved the drafting of the regulations
- state whether that the regulations have been drafted according to the instructions previously approved by Cabinet
- address that Parliamentary Counsel have issued a Certificate of Validity, and
- if required, address that Parliamentary Counsel have issued a Certificate of Early Commencement that the Minister has signed to enable the regulations to come into operation on (state the date or the wording 'the day on which they are made').

The *recommendation section of the submission* must include reference to:

- His Excellency the Governor in Executive Council
- the full name and year of the regulations being made
- the full name and year of the Act that the regulations are made under
- the purpose of the regulations, and
- the proposed date of operation.

Documentation provided by Parliamentary Counsel

When a set of regulations has been brought to a satisfactory form, Parliamentary Counsel will endorse the regulations as 'settled' and the regulations will be sent to the relevant Ministerial office.

The following documents will be provided:

- two original versions of the regulation (in some cases, more than one regulation is needed, therefore two copies of each regulation will be returned)
- one original Certificate of Validity (certifying that the proposed regulations are within the powers conferred by the Act under which they are being made, that is, that they are not ultra vires)
- one original Certificate of Early Commencement, pursuant to section 10AA(2) of the *Subordinate Legislation Act 1978* (if the regulations are to come into operation before the usual four month period), and
- a minute to the relevant Minister explaining that the regulations must be signed and a Legislative Review Committee report produced.

Documentation to be signed by the Minister

For both full Cabinet submissions and Sub-Committee submissions the Minister responsible is required to:

- sign the submission
- sign the Certificate of Early Commencement (if coming into operation earlier than 4 months from the day on which they are made), and
- initial both of the regulations (as required by the Certificate).

Documentation to be provided to the Executive Council staff

In addition to Ministerial offices lodging their submissions electronically via ECO, the following original documents must be hand-delivered to Cabinet Office:

- two versions of each regulation
- Certificate of Validity (for each set of regulations)
- Certificate of Early Commencement, if required (for each set of regulations), and
- 14 copies of the Legislative Review Committee report.

Report to Legislative Review Committee

The report to the Legislative Review Committee should address the following matters:

- the policy considerations which resulted in the development of the regulatory or deregulatory proposal
- a summary of any administrative, legal or other arrangements established under the proposed regulations
- if available, appropriate information on the financial impact of the proposal (keeping in mind that this report is to a Standing Committee of the Parliament and not a report to Cabinet)
- an outline of the process of consultation leading to the formulation of the policy position and the preparation of the regulations, and
- if a Ministerial certificate for early commencement of the regulations has been issued (see below), the reasons for the issue of the certificate.

These reports are a very important part of the parliamentary process and the Legislative Review Committee places great reliance on their accuracy and their comprehensiveness.

Particular attention should be paid to the report where the purpose (or one of the purposes) of the proposed regulations is to vary a government fee or charge. In the case of any such regulations, the basis of the variation should be stated in the report, for example, to reflect changes in the Consumer Price Index or to maintain or establish cost recovery.

It is not sufficient for reports to merely advise that consultation has occurred without advising the Committee of details about who was consulted, when they were consulted and the views of those consulted. In the past some reports have only referred to the consultation that occurred in relation to the principal legislation and have not referred at all to any consultation process that might or might not have happened in relation to the regulations before the Committee.

As a consequence of this, the Committee's scarce resources have been applied to following up those agencies seeking information that should have been supplied in the first place.

Accordingly, the Committee has resolved that, if a report does not comply with the requirements set out above, it will recommend disallowance of the relevant regulations on that basis without reference to other policy guidelines adopted by the Committee and endorsed by the Parliament.

It also assists the Legislative Review Committee if the report includes the name and telephone number of a departmental officer who can be contacted about the regulations.

The four-month commencement period specified in section 10AA(1) of the *Subordinate Legislation Act 1978* gives the Committee time to effectively scrutinise regulations. In contrast, when a section 10AA(2) certificate is issued, regulations have usually commenced before they come to the Committee's attention. Consequently, its recommendations may be more difficult to implement and any disallowance of the regulations is more problematical given the resultant disruption of their operation.

Agencies should be mindful of the rationale for section 10AA(2) and the role of the Committee in reviewing regulations, in order to ensure that this provision is used out of necessity not simply convenience.

The Legislative Review Committee has resolved that, if a report outlining the reasons for early commencement is not given, it will move a motion for the regulation's disallowance.

How regulations are made

Section 10 of the *Subordinate Legislation Act 1978* sets out the process for making most regulations. Occasionally, a particular Act provides for its regulations to be made in a different manner.

After Cabinet approval, Cabinet Office arranges for the settled regulations to be presented to the Governor in Executive Council. This usually happens on the Tuesday after the Cabinet meeting that approves the making of the regulations unless Cabinet specifies a different date for presentation to the Governor. If Monday is a public holiday, then the Executive Council meeting will be held on the Wednesday.

Copies of settled regulations and the submission (including all attachments) that was tabled and approved in Cabinet are given to the Governor before each meeting. The original regulations are dated and the Public Seal of South Australia affixed to them ready for the next Executive Council meeting.

The Governor formally makes regulations in Executive Council by signing an instrument retained in the Council Minutes and by signing across the Public Seal affixed to the original of each regulation.

The originals are sent to Government Publishing to verify that they have been properly issued. All regulations are published in the Government Gazette on the same day as the Executive Council meeting at which they are made.

Procedures after regulations have been made

Once the regulations have been published in the Government Gazette, Government Publishing will return seventeen copies of the regulations to Cabinet Office. The originals are also returned for filing with the Executive Council records.

Cabinet Office then sends fourteen copies of the regulations to the Legislative Review Committee along with fourteen copies of the report and the original Certificate of Validity. The remaining three copies are for tabling in Parliament.

Regulations must be laid before both Houses of Parliament within 6 sitting days of being made. All regulations approved by Executive Council are automatically tabled by Cabinet Office.

The tabling will occur as follows on:

- Thursday after the Executive Council meeting on Tuesday (during a sitting week), or
- on the next available Tuesday that Parliament is sitting (if made during a non-sitting week or the Executive Council meeting is held on a Wednesday due to a public holiday on Monday).

(see the tabling section of this Guide for more information).

Cabinet Office will arrange for relevant documents still in its possession to be available for collection by Ministerial offices by late Wednesday afternoon.

After a regulation is laid before each House of Parliament:

- the Legislative Review Committee inquires into and considers the regulation (armed with the report prepared for the Committee forwarded by Cabinet Office), and
- there is a period of 14 sitting days (which need not fall within the same session of Parliament) within which a Member of Parliament may give a notice of motion for the disallowance of the regulation.

If a regulation is not laid before each House within the required time, the disallowance motion must be given within 6 sitting days of a report on the failure being made by the Committee.

The regulation ceases to have effect when disallowed.

If a regulation is disallowed, notice of the resolution is published in the Government Gazette. By arrangement with Parliament House staff, Cabinet Office will ensure that the relevant Ministerial office is aware of the publication of the resolution.

Appointments

Appointments by the Governor in Council must be approved by Cabinet. All appointments made by the Governor in Council commence from the date of Executive Council approval or a later nominated date.

Appointments by Ministers may be brought to Cabinet for approval or for noting as a matter of courtesy although it is not a requirement.

Appointments to major boards or committees or appointments with significant implications for the State or the Government should be brought to Cabinet even though Ministers have the power to make the appointments alone.

The relevant legislation will state whether the Governor or the Minister has the power to make the appointment.

Assistance in complying with appointment procedures, including those leading to the drafting of Cabinet submissions, is available from the boards and committees staff in the Department of the Premier and Cabinet and from Cabinet Office staff.

The Commissioner for Public Employment and the Crown Solicitor should be consulted whenever necessary in relation to major appointments.

The Cabinet Note procedures set out below are not appropriate in relation to most judicial and some other major appointments. In these cases special care is needed to ensure that any legislative preconditions to appointment have been observed and are properly reported to Cabinet and the Governor in Council. Any queries in relation to these appointments (including how to “lock” Cabinet Notes or submissions) should be discussed with Cabinet Office staff.

Preparing an appointment Cabinet Note

If an appointment to a board or committee is to be considered by Cabinet, it is usual for a Cabinet Note to be prepared in the required template including:

- Title of Cabinet Note.
- Proposal (*the intention to appoint members of the board or committee*).
- Background (*the functions, underpinning legislation, terms and conditions of appointment and the permitted number of members of the board or committee*).
- Discussion (*existing membership, current expiry date of appointment, criteria for filling the position, gender balance, remuneration and conditions, consultation undertaken, resource implications, communication strategy, whether the appointment is being made due to a vacancy or to increase the number of board or committee members and the method of appointment e.g., whether the appointment is to be made by the Governor in Executive Council, the Minister or a Chief Executive*).
- Summary (*reference to Cabinet noting the proposed appointments, reference to His Excellency the Governor in Executive Council making the appointment, the full name of the appointee - including middle names where relevant, the full title and position, the full name of the board or committee as set out in the legislation, the commencement date and expiry date of the appointment, the provisions and full name and year of the Act under which the actual appointment is to be made and any relevant terms and conditions of appointment*):
 - that Cabinet note the intention to recommend that His Excellency the Governor in Executive Council make the appointment (if required under the Act)
 - the full name of the proposed appointee(s), including any middle names
 - the full title of the position as set out in the legislation, including any deputy positions
 - the full name of the board or committee as set out in the legislation
 - the provisions and full name and year of the Act under which the appointment is being made
 - the commencement and expiry date (where relevant) of the proposed appointment or the proposed term of the appointment where the actual dates are uncertain
 - relevant terms and conditions of appointment, and
 - appropriate reference to any separate documents such as contracts of employment, establishing the full terms and conditions of appointment.
- Attachments (*any relevant background documents such as contracts of employment, resignation letters, determinations and advice*).

Once Cabinet has discussed the Cabinet Note, prospective appointees can be approached to obtain the details necessary to complete the final submission. If changes are made to the proposed appointees, e.g. name removed or another name added after the meeting, a Cabinet submission or subsequent Cabinet Note are required to be prepared.

If there are no changes to the proposed appointees and the appointment is to be made by the Minister, the prospective appointees can be appointed and officially notified of the appointment by the Minister.

If there are no changes to the proposed appointees and the appointment is to be made by the Governor in Council, the prospective appointees can be approached to obtain the details necessary to complete the Sub-Committee submission.

Preparing an appointment Cabinet submission

It is usual to lodge a Sub-Committee submission, using the Sub-Committee appointment template, to ensure that appointments are properly approved by Cabinet.

The Sub-Committee submission is required to accurately reflect the written terms of appointment formally made and all recommendations must also include the same information that was detailed in the initial Cabinet Note.

If any employment agreements or contracts are necessary these documents will need to be signed by both parties (the Minister and the appointee) prior to the submission being lodged for Cabinet.

CVs for all appointees must be attached to the Sub-Committee submission and any relevant background documents such as contracts of employment, resignation letters, determinations, advice, etc.

The Governor formally makes appointments in Executive Council by signing instruments prepared by Cabinet Office, if necessary in consultation with the Crown Solicitor.

Cabinet Office arranges for the appointments to be published in the Government Gazette on the day on which they are made (without details of the conditions attaching to appointments).

Cabinet Office also arrange for relevant documents still in its possession to be made available for collection by Ministerial offices by 12.00noon on Tuesday after the Executive Council meeting. If Monday is a public holiday, then the Executive Council meeting will be held on the Wednesday therefore, the documents for Ministerial offices are made available by 12.00noon on Wednesday.

Commissions

Commissions are issued in the Sovereign's name but signed by the Governor in Council. A copy of the commissions are filed in a separate series of volumes that stretch back to the earliest days of the South Australian colony.

Acting Ministers

The Premier may, from time to time, agree to one Minister discharging the ministerial responsibilities of another. In practice, this arrangement would normally operate for short periods, for example: when a Minister is indisposed or outside the jurisdiction and it would be difficult for him or her to properly discharge the duties of the office.

Under the *Constitution Act 1934*, the power to appoint an Acting Minister arises because the substantive Minister is, "*unable to carry out the duties of the Office*". With advances in electronic communication, the exact circumstances when one Minister should act for another are a matter of judgement but issues, such as ease of accessibility for urgent matters, must be taken into account.

As a matter of practice, acting Ministers are appointed when Ministers are taking leave; interstate or in remote areas of the state for extended periods; are overseas.

The substantive Minister remains in office while any acting arrangement is in place and the appointment is valid only for the specified term. This means that both Ministers have the power to carry out the functions of the office and care must be taken to avoid the potential problems of this dual holding of the same power.

Proposals for such arrangements must be brought to Cabinet Sub-Committee and appointments made before the Minister is absent. Appointments cannot be back-dated.

The Governor appoints a Minister to act in the office of another Minister for a specific period of time and a notice of the appointment must be published in the South Australian Government Gazette on the day of the Executive Council meeting. Cabinet Office arranges for the appointments to be published.

Premier's approval

When a Minister intends to travel or take leave, approval must be sought from the Premier in the first instance.

A Minute signed by the Minister is sent to the Premier (marked for the attention of the personal assistant to the Chief of Staff) setting out the proposed travel or leave and requesting approval. Once the Premier has approved the travel or leave, a copy of the minute (with the approval) will be forwarded to the Minister's office and to Cabinet Office. A Sub-Committee submission, including the Premier's approval as an attachment, can then be lodged seeking Cabinet approval.

At certain times throughout the year, the Premier's Chief of Staff will request information relating to all Ministers' intention to travel overseas or to take leave over a specified period. This information is given to the Premier's Chief of Staff for the Premier's information and is no substitute for the formal processes set out above.

Submissions for Acting Ministers due to travel arrangements

Submissions requesting the appointment of an Acting Minister because of a Minister's trip should contain three recommendations.

The first recommendation is for Cabinet to approve the travel and should include the destination and reason for the travel, the Minister's full name and all portfolios, date of the premier's approval, and date of travel and return.

The second recommendation is for Cabinet to note who will be accompanying the Minister and should include reference to Cabinet noting who will be accompanying the Minister, the Minister's full name and the details of the people travelling with the Minister.

The third recommendation is for the Governor in Executive Council to appoint an Acting Minister. This recommendation must include reference to the appointment being made by His Excellency the Governor in Executive Council, the absent Minister's full name and all portfolios, the Acting Minister's full name and all portfolios, all portfolios the Acting Minister will be assuming ("Acting" must be placed in front of all portfolios) and the dates the Minister will be absent.

Submissions for Ministers on leave

Submissions requesting the appointment of an acting Minister due to leave, only need to contain one recommendation: for the appointment of an Acting Minister.

Ministers' leave during the Christmas school holidays

In October of each year, the Premier's Chief of Staff will send a Minute to all Chiefs of Staff requesting advice regarding their Minister's intention to apply for leave during the Christmas school holiday period.

Proposed commencement date and end date of the leave and arrangements for another Minister to act during the Minister's absence must be forwarded to the Chief of Staff by the due date specified in the Minute.

It is the responsibility of each Minister's office to arrange for a Minister to act in all of the absent Minister's portfolios.

The Premier will approve the leave after ensuring that at least two Ministers are on duty at all times to ensure a quorum in the case of an emergency and a Minister has not agreed to act for another Minister while they themselves are on leave.

Cabinet Office advises each Minister's office when the request for leave from their Minister has been approved by the Premier and prepares an omnibus Cabinet submission for approval of all Ministerial leave and all Acting Ministerial appointments over the holiday period. The Cabinet submission is usually lodged for Cabinet in the first week of December.

The appointment of Acting Ministers is scheduled for the Executive Council meeting immediately before the start of each Minister's leave. Cabinet Office advises each Minister's office when appointments affecting their Minister are scheduled for Executive Council.

Notices

Notices issued by the Governor in Council

Most official notices must be issued by the Governor in Council and therefore are required to be approved by Cabinet, usually in the form of a Cabinet Sub-Committee submission.

The policy grounds or technical reasons for the issue of the notice should be explained in the body of the submission and the recommendation sections must include reference to:

- His Excellency the Governor in Executive Council issuing the notice
- the precise provisions of the Act or power pursuant to which the notice is issued
- a brief summary of the purpose of the notice, and
- the proposed date of operation (if required).

Instruments dealing with more complex matters or requiring further input from instructors are completed over a longer period. It is important to ensure that all material relevant to the detail of the notice is included as an attachment to the submission, together with the name and contact number of an instructor.

Notices are generally drafted by Parliamentary Counsel prior to the Cabinet submission being considered by Cabinet. The original 'settled' notice must be hand-delivered to the Executive Council staff.

Once the notice is formally issued by the Governor in Council, Cabinet Office arranges for it to be published in the Government Gazette.

Ministerial Notices

Parliamentary Counsel will, at the request of a Minister, government department or agency, advise and assist them in the preparation of Ministerial notices and other instruments made under an Act by a person or body other than the Governor, but the relevant department or agency is primarily responsible for the preparation of such instruments. Assistance may also be sought from the Crown Solicitor's office.

If requested, the Cabinet Coordination staff can arrange for Ministerial notices and Rules to be published or alternatively Ministerial offices can liaise directly with Government Publishing who can be contacted on 8207 1045. When dealing directly with Government Publishing Ministerial offices will need to ensure that they meet their deadlines which are detailed on the website: www.governmentgazette.sa.gov.au

If Ministerial offices want Cabinet Coordination to arrange the publishing of non-Executive Council documents, then they will be required to be published in the Gazette on the Tuesday or Wednesday that Executive Council is meeting.

Appendix

This appendix provides examples of recommendations for submissions seeking approval for the following matters:

- proclamations
- regulations
- appointments
- notices
- Ministerial travel, and
- Ministerial acting arrangements.

Proclamations

A whole Act is coming into operation

Recommend that His Excellency the Governor in Executive Council issue a proclamation declaring (*insert date*) as the date that the (*insert full title and year of the Act*) will come into operation.

Certain provisions are to come into operation

Recommend that His Excellency the Governor in Executive Council issue a proclamation declaring (*insert date*) as the date of operation of sections 22, 24, 30, 31, 34, 35, 43 and 46(2) of the (*insert full title and year of the Act*).

Certain provisions are to be suspended

Recommend that His Excellency the Governor in Executive Council issue a proclamation declaring (*insert date*) as the date of operation of the (*insert full title and year of the Act*), but suspending sections 22, 24, 30, 31, 34, 35, 43 and 46(2) until a day or time to be fixed by subsequent proclamation or proclamations.

Committal of an Act to a Minister

Recommend that His Excellency the Governor in Executive Council issue a proclamation to commit the administration of the (*insert full title and year of the Act*) to the Minister for (*insert Ministerial portfolio*), pursuant to the Administrative Arrangements Act 1994.

Alteration of Council or Park Boundaries

Recommend that His Excellency the Governor in Executive Council issue a proclamation to alter the boundaries of the (*insert full title, section and location of the council or park*) to include (*insert relevant details*) pursuant to (*insert relevant section and full title and year of the Act*).

Varying controls on the use of land

Recommend that His Excellency the Governor in Executive Council issue a proclamation revoking the proclamation made on (*insert date*), which declared land near (*insert full title, section and location of land*) as (*insert land usage information, land title and full title and year of the Act*).

Regulations

Recommendation for approval of drafted regulations

That Cabinet approve the *(insert full title and year of the regulations)* made under the *(insert full title and year of the enabling Act)*, as drafted by Parliamentary Counsel, to *(insert a brief description of the purpose of the regulations)*, noting that the regulations will come into operation on *(insert date)*.

Submission for making regulations

That Cabinet recommend that His Excellency the Governor in Executive Council make the *(insert full title and year of the regulations)* made under the *(insert full title and year of the enabling Act)*, to *(insert a brief description of the purpose of the regulations)*, noting that the regulations come into operation on *(insert date)*.

Appointments

Appointments made by the Governor in Executive Council

That Cabinet recommend that His Excellency the Governor in Executive Council appoint *(insert full name of appointee)*, the *(insert title of nominee)*, and *(insert full name of appointee)* as *(insert title of position to be held)* of the *(insert full name of body)*, for a term commencing on *(insert commencement date and expiry date)*, pursuant to *(insert section and full title and year of the Act)*.

That Cabinet recommend that His Excellency the Governor in Executive Council appoint *(insert full name of appointee)* to the position of *(insert title of position to be held)* of the *(insert full name of body)*, for a term of *(insert length of time of appointment)* from the date of Executive Council approval, pursuant to *(insert full title and year of the Act)*.

That Cabinet recommend that His Excellency the Governor in Executive Council appoint the following persons to the *(insert full name of body)*, for a term commencing from the date of Executive Council approval and expiring on *(insert date)*, pursuant to *(insert section and full title and year of the Act)*:

- *(insert full name of appointee)* (Member)
- *(insert full name of appointee)* (Deputy Member to *(insert full name)*).

That Cabinet recommend that His Excellency the Governor in Executive Council appoint *(insert full name of appointee)* as *(insert title of the position)* for a term of *(insert length of time of appointment)* commencing on *(insert commencement and expiry dates)*, upon the terms and conditions set out in Attachment B - pursuant to the provisions of the *(insert section and full title and year of the Act)*.

Ministerial Travel

Recommend that Cabinet:

- approve overseas travel to *(insert destinations)* for the Honourable *(insert full name of the Minister)*, *(MP/MLC)*, *(insert all portfolios)*, as approved by the Premier on *(insert date of approval)*, from *(insert commencement date)* until *(insert return date)*, inclusive, for the purpose of *(insert itinerary summary)*
- note that the Honourable *(insert full name of the Minister)*, *(MP/MLC)*, will be accompanied by *(insert names and titles of those accompanying the Minister)*.

Ministerial Acting Arrangements

Recommend that His Excellency the Governor in Executive Council appoint the Honourable *(insert full name of the Minister)*, *(MP/MLC)*, *(insert all portfolios)* to be also Acting Minister for *(insert ministerial portfolios)* and Acting Minister for *(insert ministerial portfolios)* for the period from *(insert commencement date)* until *(insert return date)* inclusive, during the absence of the Honourable *(insert full name of the Minister)*, *(MP/MLC)*.

Notices

Notice issued by the Governor in Executive Council

Recommend that His Excellency the Governor in Executive Council issue a notice approving the *(insert title of notice)* as a *(insert proposed use, relevant information and dates as appropriate)* - pursuant to *(insert section and full title and year of the Act)*.

