



# ACT CABINET HANDBOOK

CHIEF MINISTER, TREASURY AND  
ECONOMIC DEVELOPMENT  
DIRECTORATE

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# PART A: CABINET IN THE ACT

## ACT Machinery of Government Series

The *ACT Machinery of Government* series is a compilation of guidance material outlining key governance conventions, procedures, and standards. The series comprises:

- > [Ministerial Code of Conduct](#)
- > [Cabinet Handbook \(this document\)](#)
- > [Wellbeing Impact Assessment Templates and Resources](#)
- > [Governance Principles – Appointments, Boards and Committees Handbook](#)
- > [Assembly Process Handbook](#)
- > [Developing legislation and working with PCO](#)
- > [Guidance on ACT Caretaker Conventions](#)

## The ACT Cabinet Handbook

The ACT Cabinet Handbook (the Handbook) outlines the procedures and conventions for the operation of the Cabinet and its supporting processes.

These procedures and conventions encompass the entire Cabinet process through preparation, lodgement, and consideration of Cabinet business, as well as ongoing administrative aspects of the maintenance of Cabinet records.

## The Executive

The Executive is made up of the Chief Minister and ministers appointed by the Chief Minister. The Chief Minister allocates portfolio responsibilities to ministers and directorates through the [Administrative Arrangements](#).

The powers of the Executive are set out in section 37 of *the Australian Capital Territory (Self Government) Act 1988* (Cwlth) and include:

- > governing the Territory with respect to matters specified in Schedule 4 (of the Act);
- > executing and maintaining enactments and subordinate laws;
- > exercising such other powers as are vested in the Executive by or under a law in force in the Territory or an agreement or arrangement between the Territory and the Commonwealth, a State or another Territory; and
- > exercising prerogatives of the Crown so far as they relate to the Executive's responsibility mentioned in paragraph (a), (b) or (c).

## Cabinet conventions

Cabinet is not established by legislation; it operates by convention and practice.

Cabinet operates through collective, consensus-based decision making. The convention of collective ministerial responsibility for decisions is central to a Cabinet-led system of government. Cabinet decisions are binding on ministers as government policy, and ministers are expected to give their support in public debate to the decisions of government.

## Ministerial conduct

Ministers must not announce initiatives or expenditure commitments without Cabinet authority. In exceptional cases where prior Cabinet consideration is not possible, the Chief Minister's agreement should be obtained in writing prior to any such announcement.

Ministers must not make public statements about items on the Cabinet agenda that might pre-empt Cabinet's deliberations. It is inappropriate for ministers to comment publicly on matters outside their portfolio without prior agreement of the relevant minister and Chief Minister unless the public comment is clearly made in accordance with the Parliamentary Agreement between parties.

Government officials should be cognisant of these requirements when briefing or preparing documents for ministers.

The convention of collective responsibility is underpinned by strict confidentiality surrounding Cabinet papers and discussions in Cabinet. Absolute confidentiality allows ministers to discuss proposals frankly while developing a collective position. This confidentiality extends to Cabinet committee and subcommittee meetings. The Ministerial Code of Conduct is available [here](#).

## Confidentiality

ACT Government officials present during meetings have privileged access to discussions conducted by ministers. The nature and content of those discussions must not be disclosed. Notes of Cabinet's decisions are recorded by the Cabinet Secretary and the Cabinet Notetaker. Notes of Cabinet deliberations must not be made by other officials. The Cabinet notebook is a working document for the purpose of drafting formal Cabinet decisions and does not record the views of individual ministers.

Ministers and official attendees are responsible for ensuring they do not compromise the confidentiality of Cabinet deliberations. Only government-issued electronic equipment such as phones, tablets and laptops may be brought into the Cabinet Room (including the anteroom) to allow ministers and official attendees to access Cabinet materials. All personal electronic devices must not enter the Cabinet Room or anteroom. Personal electronic devices may include phones, wireless appliances (headphones, keyboards) car keys, key fobs and smart watches. During highly sensitive, commercial-in-confidence or classified discussions, the Chair may direct that all electronic devices be removed and stored outside of the Cabinet room for the duration of the discussions.

A Cabinet document is information that has been submitted (or that a minister proposes to submit) to Cabinet for its consideration and that was brought into existence for that purpose, or that is an official record of Cabinet. Cabinet documents must never be emailed.

For this purpose, Cabinet documents include:

- > Cabinet agendas (including Cabinet committees and subcommittees);
- > Cabinet decisions; and
- > all documents considered by Cabinet, or brought into existence for the purpose of being considered by Cabinet or a committee of Cabinet, including:
  - Cabinet Number Requests;
  - Cabinet Submissions;
  - Business Papers;
  - Cabinet Appointments;
  - Discussion Papers;
  - Supplementary Papers;
  - Cabinet briefs;

- Business Cases and Treasury briefs
- supporting documentation and attachments (such as presentations, communications plans, implementation plans, Wellbeing Impact Assessment and Open Access decision summaries); and
- updates and corrections.

Cabinet documents are strictly confidential and are the property of the ACT Government. Confidentiality is protected in the following ways.

- > Cabinet records are managed by the eCabinet system (secure electronic document and record management system).
- > Cabinet documents are delivered to ministers and chiefs of staff through a secure drive.
- > Cabinet documents (including drafts and attachments) must contain the appropriate Dissemination Limiting Marker (**CABINET**) at the top and bottom of each page.
- > Directors-general are ultimately responsible for maintaining the security of Cabinet material and associated documents within their directorate and may delegate the task of managing these materials to the directorate Cabinet Liaison Officer (CLO).
- > Cabinet documents and decisions are distributed on a need-to-know basis and copies are destroyed or deleted once they are no longer required. An individual's employment as an ACT Government official does not, of itself, warrant access to Cabinet documents.

See [Part E](#) for document security procedures.

## Matters considered by Cabinet

Ministers should not make public announcements that raise community expectations of a future course of action by the government unless the action has been previously approved by Cabinet.

Ministers must presume that all government policies, strategies, positions, and plans are to be brought to Cabinet for consideration before implementation or public announcement, unless written approval is given by the Chief Minister. This presumption extends to discussion papers, draft policies and bills for public consultation.

Other issues considered by Cabinet include:

- > the ACT Budget, and proposals to vary Budget allocations;
- > proposals to introduce principal or amending legislation;
- > documents produced for or are to be tabled in the Legislative Assembly;
- > ministerial statements;
- > cross-portfolio issues;
- > appointments needing ministerial approval or endorsement;
- > appointments of a Chief Executive Office to a Territory Authority by someone other than a minister (for noting only);
- > government submissions and responses;
- > matters that would commit government to a new or altered policy position, including the release of strategies or legislation for consultation and responses to significant reviews or reports commissioned by the Government or Statutory Authorities;
- > matters affecting Commonwealth, state and territory relations;
- > intergovernmental agreements; and
- > direct land sales.

Directorates should contact the Cabinet Office in the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) for clarification on whether an item must be brought to Cabinet if the issue/initiative does not fit into one of the above categories.

Cabinet committees and subcommittees are meetings dedicated to specific high priority issues. Committee and subcommittee membership is determined by the Chief Minister based on relevant portfolio responsibilities and associated relevant senior officials.

## Caretaker period

By accepted convention, special arrangements apply to the operation of the government in the period immediately before and after an election. Decisions that bind the incoming government are not normally made during this period. Cabinet does not normally meet during the caretaker period.

*Guidance on ACT Caretaker Conventions* provides detailed directives on the operation of government and the interaction between ministers and the public service during this period. Guidance material on ACT Caretaker Conventions is available [here](#).

## Chief Minister

The Chief Minister is chair of Cabinet and determines the shape, structure and operation of Cabinet.

As Chair of Cabinet, the Chief Minister sets Cabinet's agenda and determines when and how meetings take place. The Chief Minister leads and guides discussion to achieve a collective response and ensures the clarity of decisions.

The Chief Minister is also responsible for the establishment of Cabinet committees and subcommittees, including their terms of reference and membership.

The Chief Minister is supported by their Office, in particular the Chief of Staff and Head of Governance, who support the day-to-day management of associated Cabinet processes.

## Cabinet Secretary

The Head of Service is the Cabinet Secretary. The Cabinet Secretary attends all Cabinet meetings (including Cabinet committees and subcommittees), signs Cabinet decisions and advises the Chief Minister on Cabinet procedures. The Deputy Director-General, Policy and Cabinet (CMTEDD) is Deputy Cabinet Secretary. When required, the Head of Service may appoint an acting Cabinet Secretary.

## Cabinet Notetaker

The Cabinet Notetaker attends all Cabinet, Cabinet committee and Cabinet subcommittee meetings, and takes notes necessary to support the preparation of Cabinet decisions. The Executive Branch Manager (EBM), Cabinet, Assembly and Government Business (CAGB) in CMTEDD is the regular Cabinet Notetaker.

The Senior Director, CAGB in CMTEDD is the Deputy Cabinet Notetaker. When required, the Cabinet Secretary may delegate the role of Cabinet Notetaker to an alternative officer. The Executive Group Manager, Finance and Budget Division, is permitted to take notes alongside the official Cabinet Notetaker during relevant Expenditure Review Committee (ERC) meetings, to assist with the preparation of ERC Budget recommendations.

## Policy and Cabinet Division

CMTEDD's Policy and Cabinet Division (PCD) supports the Chief Minister and Cabinet, providing coordinated policy advice and secretariat support. The functions of PCD include:



- > consulting with directorates on the policy content and across-government implications of proposed submissions;
- > providing advice to the Chief Minister on each matter considered by Cabinet;
- > monitoring and providing advice on the implementation of government policies and initiatives; and
- > providing advice on the government's forward policy agenda.

Directorates must consult PCD as early as possible in the development of major policies and programs. PCD can provide advice on timing, priorities and process steps for bringing information and submissions for consideration to Cabinet.

PCD is also able to advise on whole of government policy development requirements, including regulatory reform policies, Wellbeing Impact Assessment and the process for assessing regulatory impact.

## Treasury

Treasury supports Cabinet's consideration of budget and financial matters. The functions of Treasury include:

- > supporting the Chief Minister and Treasurer in the administration and operation of the ACT budget process;
- > monitoring and providing advice on the implementation of government budget priorities;
- > consulting with directorates on across-government budget and financial implications of matters considered by Cabinet;
- > assisting directorates to undertake regulatory impact assessments considered by Cabinet; and
- > providing an independent assessment and assurance to Cabinet regarding the budget and financial implications of all matters considered by Cabinet.

Directorates must consult the Finance and Budget Group (FABG) within Treasury as early as possible in the development of policies and programs. Treasury can provide advice on potential financial and regulatory impacts, budget considerations and steps for bringing information and business cases for consideration by ERC and Cabinet.

Treasury agreement to the costings and financial impact Cabinet papers (both expenditure and, if applicable, forecast revenues) or nil financial impact is a prerequisite to lodgement of all Cabinet papers (with the exception of appointments). Cabinet Office will not circulate a paper without agreement from Treasury. The Cabinet package must be provided to Treasury with a reasonable timeframe for consideration **prior** to the due date for circulation.

## Cabinet Office

Cabinet Office is a unit within PCD. It:

- > provides administrative support to the Chief Minister and Cabinet;
- > assists the Chief Minister and the Cabinet Secretary to manage the Cabinet forward agenda;
- > performs Cabinet liaison functions for areas of CMTEDD;
- > provides advice and training to officials on Cabinet processes;
- > monitors and enforces compliance with the Cabinet Handbook;
- > manages the eCabinet system;
- > coordinates the Cabinet Liaison Officer (CLO) Network;
- > maintains the archive of Cabinet papers;

- > manages the Open Access release of Cabinet decision summaries as per the requirements of the *Freedom of Information Act 2016*; and
- > manages the release of Executive Documents under the *Territory Records Act 2002*.

For assistance, contact [CabinetOffice@act.gov.au](mailto:CabinetOffice@act.gov.au).

## Cabinet Liaison Officers

Directors-General delegate the task of managing Cabinet material and associated documents within their directorate to nominated Cabinet Liaison Officers (CLOs) who:

- > provide a central contact point between the directorate, the Cabinet Office and other directorates on Cabinet business;
- > coordinate Cabinet business for their directorate and related statutory authorities;
- > provide the Cabinet Office with forecasts of Cabinet business for their directorate;
- > ensure procedures and processes set out in the Cabinet Handbook and by Cabinet Office are followed in their directorate;
- > perform compliance and assurance checks on Cabinet material generated by the directorate prior to lodgement;
- > monitor the timely implementation of Cabinet decisions in their directorate; and
- > under the direction of directors-general, are accountable for managing and recording appropriate access to, and storage of, Cabinet papers for their directorate.

## Parliamentary agreements

Where political parties enter into a parliamentary agreement that results in the ministerial appointment of a member from a minority party, the parliamentary agreement will detail any exceptions to conventions outlined in this handbook.

The Cabinet Office maintains a record of current parliamentary agreements and can provide advice on specific procedures.

## Parliamentary & Governing Agreement for the 10th Assembly

The Parliamentary and Governing Agreement between:

Andrew Barr MLA, Leader of the Australian Labor Party ACT Branch

Yvette Berry MLA, Deputy Leader of the Australian Labor Party ACT Branch

The ACT Labor MLAs elected for the 10th Assembly

and

Shane Rattenbury MLA, ACT Greens Leader

The ACT Greens MLAs elected for the 10th Assembly

was affirmed on 2 November 2020. Mr Barr has appointed Mr Rattenbury and two other Greens MLAs to be ministers (Greens ministers). The Greens ministers are members of Cabinet.

Greens ministers have been appointed in the same manner and will have and enjoy, except as specified below, all the rights, entitlements, and responsibilities of any other minister.

Greens ministers will be provided with the same Cabinet papers at the same time as every other minister.

Cabinet documents are only to be provided to ministerial staff in accordance with the Cabinet Handbook. The procedures and conventions outlined in the Handbook are always to be adhered to by all ministerial staff.

The Parliamentary and Governing Agreement for the 10th Legislative Assembly is available [here](#).

## Process to exempt Greens ministers from Cabinet solidarity

Greens ministers are bound by Cabinet solidarity unless they expressly reserve their position through the process outlined in this section.

Should Cabinet papers raise a matter of serious concern to the Greens ministers, the concern must be raised with the Chief Minister and discussed when the matter is scheduled for Cabinet discussion. Further information can also be requested.

Wherever possible, decisions of Cabinet and the operation of the government will be by consensus. If consensus cannot be reached, at the conclusion of the initial Cabinet discussion of any matter, Greens ministers can:

- a) agree to support the proposal in principle, but bring written amendments to Cabinet for further consideration;
- b) agree to support the proposal in principle, but reserve the right to move amendments during the debate on the matter in the Assembly; or
- c) vote against the proposal in the Assembly (other than for the ordinary annual appropriation bills of government).

As constructive members of a Cabinet government, Greens ministers will not exercise this capacity except in exceptional circumstances. Greens ministers will provide Cabinet with a written explanation for the reasons they cannot support a particular proposal, which may be included in the Cabinet decision.

Once Greens ministers advise that they reserve the right to move amendments in the Assembly or vote against a proposal, they shall excuse themselves from any further Cabinet discussion on the proposal. Greens ministers are entitled to explain this position publicly, while maintaining the confidentiality of Cabinet deliberations.

## Consultation with non-Executive MLAs

Information sharing mechanisms are in place so that Cabinet ministers may consult with non-Executive Labor and Greens MLAs as follows.

## Process to waive Greens ministers from Cabinet confidentiality

Greens ministers are subject to Cabinet confidentiality provisions unless the Chief Minister has expressly agreed to waive these provisions for the purposes of consultation with other Greens MLAs on a specific issue. Where Greens ministers wish to consult with another Greens MLA, they must first seek written agreement from the Chief Minister.

Greens ministers will remain responsible at all times for maintaining Cabinet confidentiality when consultation with the other Greens MLAs occurs.

## Sharing information with non-Executive Greens MLAs

The following arrangements have been established to facilitate briefings for non-Executive Greens MLAs.

- > Each Wednesday, the ACT Greens Leader will be provided with a draft copy of Cabinet agendas for the following week.
- > Four working days before each meeting:

- Cabinet Office will provide Cabinet papers to all ministers via the secure drive; and
  - the ACT Greens Leader will request briefings from the relevant portfolio ministers (by close of business).
- > On Monday, portfolio ministers' offices will provide verbal briefings to the ACT Greens Leader and non-Executive Greens MLAs if requested.

## Sharing information with non-Executive Labor MLAs

The following arrangements have been established to facilitate briefings for non-Executive Labor MLAs.

- > Each Wednesday, the Head of Governance and Cabinet in the Chief Minister's Office will be provided with a draft copy of Cabinet agendas for the following week, which will be provided to non-Executive Labor MLAs.
- > Four working days before each meeting:
  - Cabinet Office will provide Cabinet papers to all ministers via the secure drive; and
  - the Head of Governance and Cabinet in the Chief Minister's Office will request briefings from the relevant portfolio ministers (by close of business).
- > On Monday, portfolio ministers' offices will provide verbal briefings to non-Executive Labor MLAs if requested.

# PART B: CABINET, COMMITTEES AND SUBCOMMITTEES

## Chair

Meetings of Cabinet are chaired by the Chief Minister (or, if the Chief Minister is absent, the next most senior minister present). The Chief Minister may appoint a designated chair for Cabinet committees and subcommittees (in their absence, the most senior minister present will chair the meeting).

## Attendance

Cabinet meetings are attended by all ministers, the Cabinet Secretary, the Chief Minister's ministerial staff and the Cabinet Notetaker. The chair of the meeting may agree to additional attendees to support decision making.

Cabinet committees and subcommittees membership is set by the Chief Minister. Committee meetings are attended by all nominated ministers, those ministers with portfolios relevant to the matters considered, and relevant senior officials. Cabinet subcommittees are attended by those ministers with portfolios relevant to the meeting topic, relevant directors-general and participating ministers' chiefs of staff.

The Chief Minister may authorise attendance at Cabinet committees and subcommittees of other relevant senior officials or subject matter experts. To seek authorisation, the responsible portfolio minister's office must request additional attendees via the Head of Governance and Cabinet in the Chief Minister's office.

All ministers and officials are expected to attend scheduled meetings unless leave arrangements have been previously agreed by the Chief Minister. Ministers are to schedule official travel and leave to allow for their attendance at meetings.

A minister may seek the Chief Minister's agreement to attend Cabinet remotely when travelling for the purpose of attending a ministerial council meeting or when unable to attend in person due to illness. Only in exceptional circumstances, may a minister otherwise seek the Chief Minister's consideration of their, or an official's, remote attendance.

Where Cabinet meetings are conducted remotely, participants must connect to the meeting from a secure and private network, ensuring access to a space that is private and replicates the security compliance requirements of Cabinet confidentiality.

## Quorum

There is no formal quorum for Cabinet meetings. The quorum is decided by the chair of the meeting, taking into account the importance of the items under consideration, and the presence of appropriate ministers and the Cabinet Secretary.

## Setting the Cabinet agenda

The Chief Minister settles the agenda for each Cabinet, committee and subcommittee meeting on advice from Cabinet Office. Any items not lodged on time for a particular meeting will not be considered for listing unless by prior agreement from the Chief Minister's office and will be rescheduled to a later meeting date.

The Cabinet Office manages cabinet number requests to add items to the agenda for Cabinet consideration. Requests by directorates to add an item should:

- > have a preferred target date for consideration by Cabinet;
- > specify the category of the Cabinet business proposed;
- > confirm consultation with a relevant ministerial adviser;
- > provide clear timing imperatives and outline any sensitivities around the item proposed; and
- > provide a plan for consultation and preparation of advice.

[Part C](#) of this handbook contains further details about what information and actions are required before an item can be proposed for inclusion on a future agenda.

Cabinet's deliberations focus on significant issues that are the collective responsibility of the government, many of which involve whole of government coordination. Cabinet should not deal with routine matters that can properly be handled by individual ministers within portfolio responsibilities, or that might be addressed by correspondence between ministers.

## Out of Session Cabinet

The Chief Minister may schedule an out of session Cabinet to consider and make decisions on certain Cabinet business outside of a formal Cabinet meeting.

Appropriate Cabinet business to be scheduled for an out of session Cabinet process includes:

- > papers for noting; and
- > non-controversial Cabinet appointments.

The Chief Minister's Office may also identify other Cabinet business as suitable for an out of session process. This could include (but not limited to):

- > ministerial statements;
- > papers for tabling;
- > legislation for introduction (where policy approval has already been agreed by Cabinet); and
- > other non-controversial government business.

Operational information for the Out of Session Cabinet process is included in [Part C](#).

## Sponsoring minister

Matters for consideration by Cabinet are brought forward in papers sponsored by ministers or the Cabinet Secretary. Ministers are responsible for the proposals they bring forward, notwithstanding that drafting may have been undertaken largely by officials.

Verbal briefings or presentations may also accompany papers to enhance comprehension of the issues at hand. However, ministers must seek the agreement of the Chief Minister's Office to make a presentation to Cabinet or a Cabinet committee.

In seeking approval to make a presentation a minister should:

- > where possible, provide a copy of the proposed presentation (of not more than 10 slides), which must include appropriate DLM markings; and
- > indicate the purpose of the presentation.

Proposals may be sponsored by more than one minister. Where many ministers have an interest, it is generally preferable for responsibility to be allocated to one or two key ministers and for the other ministers to be thoroughly consulted during the preparation of the proposal.

## Acting arrangements

Where a sponsoring minister is unable to attend a Cabinet meeting, a paper may be sponsored by an alternate minister. Normally, when formal acting arrangements are in place, the minister acting would sponsor the paper. If no acting arrangements are in place, the Chief Minister would normally sponsor the item.

It is the responsibility of the drafting directorate to provide briefings and support to ensure that the sponsoring minister has all details necessary to present the item to Cabinet. Directorates are responsible for monitoring scheduled ministerial absences to ensure that acting ministers are adequately briefed.

## Conflicts of interest

Ministers must declare any private pecuniary or other interests held by themselves or members of their immediate families in matters under discussion in Cabinet, committee or subcommittee meetings. Officials and ministerial staff attending Cabinet, committee and subcommittee meetings must make similar declarations.

When considering whether there is a potential or apparent conflict of interest to be declared, ministers and officials should adopt a broad interpretation. Declarations should be made in all cases where an interest exists that could not be said to be shared with the rest of the community.

Any such declarations will be recorded by the Cabinet Notetaker in the Cabinet Notebook. Cabinet may excuse a minister or official from the discussion or agree explicitly to them taking part.

## Meeting notes

The Cabinet Notetaker takes notes of Cabinet's deliberations during discussions in a Cabinet Notebook. These notes are not a verbatim record of discussions and are used solely for the purpose of supporting the preparation of Cabinet decisions and identifying items where Cabinet requests additional information.

## Decisions

The Cabinet Secretary signs Cabinet decisions, which are circulated to ministers and directorates in due course following the Cabinet meeting. Decisions classified as restricted will only be circulated to directorates with an identified need to know the outcome, with these decisions to be handled in accordance with the [ACT Government Protective Security Policy Framework](#).

If a minister or official is concerned about the accuracy of a Cabinet decision, this should be drawn to the attention of the Chief Minister or the Cabinet Secretary as soon as possible. Any amendments agreed by the Chief Minister are brought to the attention of Cabinet in an amended Cabinet decision.

## Cabinet committees

Cabinet committees have specified decision-making powers. The same requirements for conduct of meetings, preparation of advice and security of information apply to Cabinet committees.

## Expenditure Review Committee of Cabinet

The Expenditure Review Committee (ERC) supports a holistic approach to government budgets, decision-making and reporting, including consistent, meaningful and measurable strategic and accountability indicators based on wellbeing. The functions of ERC are summarised at Table 1.

ERC meets most frequently during the annual Budget process with special ERC Budget meetings identified for consideration of budget proposals.

Budget ERC and subsequent Cabinet consideration of Budget proposals is governed by Budget Process Rules (BPRs). BPRs are established at the commencement of each annual Budget cycle and provide a common framework and requirements to support the consideration of matters in the development of the Budget. The BPRs apply to new budget proposals, including those brought forward outside the budget process, that have financial implications.

ERC also considers enterprise bargaining negotiation (EBAN) matters prior to and during negotiations of new enterprise bargaining agreements within the term of government. The Minister for Industrial Relations and Workplace Safety is a standing member for all ERC EBAN matters.

All Cabinet proposals that contain financial impacts must first be considered by the ERC. The ERC considers all longer-term policies (e.g., strategies and legislation), expenditure, revenue, capital, savings and investment proposals.

Recommendations are generally proposed by the ERC, and final agreement to decisions ratified by Cabinet. However, ERC may:

- > make decisions in relation to its consideration of regular reporting on the delivery of the Budget or territory investment decisions (e.g., Capital Works Reporting under the *Financial Management Act 1996* and unsolicited bid process); and
- > make decisions for proposals with modest financial impacts that are consistent with existing government policy. However, this is limited to consideration of modest expense or revenue proposals that require consideration outside the annual budget process such as commitments entered into under national partnership agreements, or matters associated with Ministerial Council initiatives.

ERC may elect to defer any matter to Cabinet for a decision.

In exceptional circumstances, Cabinet may consider a matter and authorise ERC to make a final decision consistent with a Cabinet decision, for example authorising an officer to enter into a commercial agreement on behalf of the Territory.

*Table 1: Functions of ERC*

Business	Purpose	ERC business type	Decision Making
<b>Budget business case</b>	A Budget business case formally considered during the annual Budget process.	• ERC Budget	• ERC recommendation to be subsequently considered by Cabinet.
<b>Cabinet business with budget and/or financial impacts considered outside of the Budget process</b>	Cabinet Submissions considered at any time that have a budget and/or financial impact (either revenue or expense). Examples may include commitments under National partnership agreements or matters considered at ministerial council meetings.	• ERC Budget	<ul style="list-style-type: none"> <li>• Interim decision for proposals with modest financial impact that are consistent with existing government policy. Interim decisions may be subsequently reconsidered by Cabinet in the context of the annual Budget.</li> <li>• ERC recommendation to be subsequently considered by Cabinet.</li> </ul>
<b>Indicative Land Release Program</b>	Cabinet Submissions which include the budget/financial impact of the change in estimated returns to government from land sales over the forward years.	• ERC Budget	• ERC recommendation to be subsequently considered by Cabinet.
<b>Proposed legislation and longer-term policies that will or may have future budget and/or financial impacts</b>	Cabinet Submissions considered at any time which seek agreement to government strategies or long-term policy matters that may not have an immediate budget/financial impact, but that will or may give rise to future budget and/or financial impacts.	• ERC Business	• ERC recommendation to be subsequently considered by Cabinet.
<b>Regular reporting on the delivery of the Budget or Territory investments processes</b>	Examples may include consideration of capital works reports (under the <i>Financial Management Act 1996</i> ) and unsolicited proposals reporting.	• ERC Business	<ul style="list-style-type: none"> <li>• Final decision; or</li> <li>• Defer the matter to Cabinet for consideration</li> </ul>
<b>Enterprise bargaining agreement negotiations</b>	Oversee enterprise bargaining arrangements with a view to the successful negotiation of new Enterprise Bargaining Agreements to replace those that expire during the government's term.	• ERC EBAN	• ERC recommendation to be subsequently considered by Cabinet.



## Security & Emergency Management Committee of Cabinet

The Security and Emergency Management Committee (SEMC) provides strategic direction to the ACT Government's preparations for emergencies under an all-hazards planning framework. SEMC meets on an 'as required' basis, with security briefings to be provided to Cabinet at least twice a year. SEMC decisions do not require further endorsement by Cabinet.

SEMC comprises all ministers and directors-general. Subject to a relevant item of business being on the SEMC agenda, the following senior officials are normally also in attendance:

- > the Chief Police Officer, ACT Policing;
- > the Commissioner of the Emergency Services Agency;
- > the Chief Health Officer; and
- > the Senior Executive responsible for Security and Emergency Management.

Papers for consideration by SEMC are generally progressed through the Security and Emergency Management Senior Officials Group (SEMSOG), which is chaired by the Director-General of the Justice and Community Safety Directorate (JACS).

Papers for consideration at SEMC that are for noting only may be signed off at director-general level of the responsible directorate.

By agreement from the EBM CAGB, consideration of issues by SEMSOG may replace the exposure draft circulation stage in the preparation of Cabinet papers for SEMC.

In addition to the usual Dissemination Limiting Marker (**CABINET**), papers for consideration by SEMC may be classified PROTECTED and must be marked and handled accordingly. Papers for SEMC may, on occasion, carry higher national security classifications. The EBM CAGB must be informed that an item with a national security classification is on the SEMC agenda prior to the lodgement of the paper and meeting.

All officials present at SEMC and SEMSOG meetings must hold a national security clearance at a minimum to the level of the material being discussed. The EBM CAGB will notify attendees if the meeting is scheduled to discuss matters that require a national security clearance.

Cabinet will provide strategic leadership to the ACT Government's response to a major incident requiring whole-of-government coordination. In this role, it would be supported by advice from SEMSOG and the Emergency Controller (if one has been appointed under the *Emergencies Act 2004*).

In the event of an emergency, SEMC is supported by SEMSOG.

## Cabinet subcommittees

Subcommittees of Cabinet are a less formal meeting between ministers and officials to facilitate informed development of proposals, track the progression of government initiatives and act as a clearing house for some Cabinet items. The Chief Minister creates subcommittees, determines membership and defines the scope of the subcommittee. The same requirements for conduct of meetings, preparation of advice and security of information apply to Cabinet subcommittees.

## Decision making powers of subcommittees

Subcommittees do not hold the same decision-making powers as Cabinet and Cabinet committees as they are intended solely as a forum to discuss issues and debate potential policy responses. The subcommittee process is designed to provide greater flexibility for papers to be brought forward in conceptual form and without the same stringent formal circulation requirements as Cabinet submissions. Further details on developing items for subcommittees are outlined in [Part C](#).

## Current subcommittees

Cabinet subcommittees may be formed on a case-by-case basis in response to rising issues, or to focus on strategic government priorities. These may be long-running or time limited. A list of current subcommittees and their terms of reference is available through the Cabinet Office.

## PART C: PREPARATION OF CABINET ITEMS

Cabinet submissions are documents that support a minister to put a proposal to the Cabinet or a Cabinet committee.

As ministers take collective responsibility for the decisions of Cabinet and are bound by the principle of Cabinet solidarity to support and advocate Cabinet outcomes, it is imperative that they have sufficient time to consider well informed advice in advance of any Cabinet discussion.

The requirements in relation to Cabinet paper format, consultation and timeframes seek to support collective decision-making by providing assurance that advice is considered, complete and robust. Exemption from or variation to any aspect of these requirements should only be sought in exceptional circumstances and will require prior agreement.

### Drafting Cabinet papers

Information being considered by Cabinet must be of the highest standard to aid decision-making. The contents of a Cabinet paper should:

- > be concise and factually correct;
- > clearly outline the policy options and recommended approach; and
- > highlight essential matters relevant to the decision including views of stakeholders.

### Identification of matters

The first stage of the Cabinet process is the identification of items for the Cabinet forward agenda. Directorates are to request an item be placed on the forward agenda once they have agreement from their minister to bring an item to Cabinet (or their director-general for subcommittee items).

### Cabinet number request form

The directorate CLO requests an item be placed on the Cabinet forecast by submitting a Cabinet number request form (CNR) to the Cabinet Office. A CNR should be completed as early as possible. The CNR requires a summary of the issue for consideration by Cabinet and details of the key stakeholder directorates. The officer drafting the Cabinet submission is to provide these details to the CLO, who then seeks confirmation from the sponsoring minister's office(s) before providing the CNR to the Cabinet Office for processing. Incomplete or partially complete forms are not accepted.

Items that are listed on the Cabinet forecast are not automatically placed on the agenda, which is determined on the basis of priority and minister's availability. The agenda is set by the Chief Minister on recommendation from the EBM CAGB.

Where an agenda is oversubscribed, the following criteria are applied in making recommendations to the Chief Minister.

- > what are the hard deadlines for an item (e.g., fixed Assembly timelines, any publicly announced deadline or arising priority issue)?
- > is the item a government priority?
- > has the item undertaken the prescribed circulation?
- > has the item been lodged by the deadline?
- > are there outstanding issues that require further consultation?

At the CNR stage, contact officers in both PCD and Treasury will be assigned to provide whole of government advice on priorities, policy development and financial impacts. The names of these contact officers are provided to the responsible CLO once a Cabinet number has been allocated. Early consultation

with PCD and Treasury should be undertaken prior to circulation, this may include provision of drafts of the Cabinet papers.

## Categories of Cabinet business

The following categories of Cabinet business assist with prioritising items on the Cabinet agenda.

- > **Category 1:** Category 1 items are important and need to follow a full Cabinet circulation process with time for ministers to read, consider and discuss them in Cabinet. They are not able to be rescheduled without consultation between the relevant minister's office and the Chief Minister's Office. Items in this category include:
  - government priorities including all submissions relating to the delivery of:
    - election commitments;
    - the Parliamentary Agreement;
    - all policy approvals for legislation; and
    - any submission relating to a government process, plan, strategy.
  - business related to the ACT Budget.
- > **Category 2:** Category 2 items are normal Cabinet business and are generally less time critical. Items in this category include:
  - government business;
  - community engagement; and
  - general Cabinet business.
- > **Category 3:** Category 3 items are generally items that can be noted or agreed as a group, unless there is an exception. Items in this category include:
  - Cabinet business for noting; and
  - appointments.

## Timing

Ministers should be provided opportunity to consider items well in advance of any critical date to allow modifications to a recommendation or clarifications. Cabinet Office should be alerted if a decision of Cabinet is required by a particular date (such as an intergovernmental agreement or scheduled introduction of a bill).

## Types of business

Cabinet items may be presented in five different categories of papers, each of which have differing circulation requirements as summarised in Table 2.

Figures 1 to 9 illustrate the drafting and consultation process required for each different paper that may be considered by Cabinet, committees or subcommittees.

All Cabinet papers require supporting information and analysis. Based on a paper's purpose, the supporting information requirements are summarised in Figure 8.

## Supplementary Paper

Cabinet papers once final lodged for Cabinet (or ERC for a proposal described in Table 1) are considered final and are not amended prior to Cabinet consideration without the agreement of the Chief Minister.

A minister may seek or be requested to provide supplementary information following initial consideration of a proposal by Cabinet or a committee. Rather than amending final lodged Cabinet papers, a supplementary paper must be used to provide an alternative recommended position, additional information and/or review an assessment of a proposal's wellbeing impact. A supplementary paper

should include any relevant new or updated attachments, for example, a strategy that has been amended following initial consideration by ERC or Cabinet.

A supplementary paper cannot be used to provide advice that may modify the financial impact or budget impact of a proposal without prior agreement from Treasury to costings. This would typically only occur where ERC has recommended that costs be revised with Treasury prior to Cabinet consideration.

Where a supplementary paper is no longer warranted, the responsible minister should write to the Chief Minister explaining why Cabinet attention is no longer required and seek agreement to directly conclude the matter.

## Assembly business

Any document produced for, or to be tabled in the Legislative Assembly must be approved by Cabinet. The Manager of Government Business will bring forward a Cabinet paper identifying items to be tabled and provide a draft Assembly program in the week prior to the sitting. Any urgent or emerging Assembly business to be considered by Cabinet on the sitting week will require prior agreement between the responsible minister's office and the Chief Minister's Office.

## Significant matters affecting Commonwealth, state and territory relations with external bodies

Significant matters affecting Commonwealth, state and territory relations or relations with external bodies require Cabinet consideration as set out below:

- > submissions to intergovernmental or external inquiries (e.g., submission to parliamentary or investigative processes of other jurisdictions);
- > memoranda of understanding; and
- > intergovernmental agreements or partnerships.

Ministers are to engage the Chief Minister's Office regarding the nature and implications of any proposed memoranda, agreement or partnership. The Chief Minister's Office should also be engaged to determine whether a response is required to an invitation to make submission to an intergovernmental or external inquiry.

In exceptional circumstances, a minister may seek the Chief Minister's approval to make a submission to an intergovernmental or external inquiry prior to Cabinet consideration. This may include where there is an unavoidable time imperative. Should the approval be provided by the Chief Minister, the minister is to provide details of the submission to Cabinet as soon as practicable and a Cabinet Number Request should be submitted to bring the paper forward for noting. In seeking the Chief Minister's approval, it should be clear:

- > what time imperative exists for participation;
- > what other extenuating circumstances may inhibit prior consideration by Cabinet; and
- > what steps have been taken to ensure relevant engagement has occurred across government.

All funding agreements with financial implications or require significant in-kind contribution of the ACT Government are to be considered by ERC and Cabinet as described in [Table 1: Functions of ERC](#).

Where a Statutory Authority is considering providing a submission to an inquiry, they should, in the first instance, discuss this with the relevant minister's office noting that in some circumstances it would be more appropriate for a government submission to be provided.

## National Cabinet

The policies and procedures guiding the ACT Government's engagement in the National Cabinet are outlined in the National Cabinet Terms of Reference.

Cabinet may consider matters prior to scheduled National Cabinet meetings and agrees the positions the Chief Minister will take during National Cabinet deliberations. Where the scheduling of Cabinet does not support forming a position prior to a meeting of National Cabinet, the Chief Minister will confirm positions with relevant ministers. Material regularly considered by Cabinet include the National Cabinet agenda and any related papers.

All officials attending the Cabinet where National Cabinet matters are considered must hold a national security clearance at a minimum to the level of the material being discussed. Advice on the handling of National Cabinet documents by ACT Government officers is available by contacting [CMDACTIGR@act.gov.au](mailto:CMDACTIGR@act.gov.au).

*Table 2: Cabinet paper types*

Cabinet item	Purpose	Timeframe	Endorsement	Forum/s
<b>Cabinet submission</b> From ministers or Cabinet Secretary	<ul style="list-style-type: none"> <li>• Agree on a course of action</li> <li>• Setting policy</li> <li>• First pass approval for legislation</li> <li>• Government position on Private Members Bill</li> <li>• Government submission/response to an ACT Legislative Assembly Inquiry</li> <li>• Agree to public consultation on draft policy/plan/legislation</li> <li>• Provide information update for noting</li> </ul>	<ul style="list-style-type: none"> <li>• Exposure draft circulated for five working days (lodged four weeks prior to Cabinet meeting)</li> <li>• Final lodged by 10am six working days prior to the meeting</li> <li>• If necessary, final comments due within 48 hours of lodgment</li> </ul>	<ul style="list-style-type: none"> <li>• Exposure draft endorsed by deputy director-general (at minimum)</li> <li>• Final lodged signed by minister or Cabinet Secretary</li> <li>• Final comments endorsed by Executive Branch Manager or above</li> </ul>	<ul style="list-style-type: none"> <li>• Cabinet</li> <li>• Cabinet committees</li> </ul>
<b>Business paper</b> From ministers	<ul style="list-style-type: none"> <li>• Second pass approval for legislation</li> <li>• Ministerial statement</li> <li>• Government response to a petition</li> <li>• Government submission or response to interjurisdictional or external inquiry</li> <li>• Assembly and Executive Motions</li> <li>• Response to an Assembly Resolution</li> <li>• Chief Minister's engagement in the National Cabinet</li> <li>• Settle negotiating positions and agree to Intergovernmental Agreements (IGAs)</li> </ul>	<ul style="list-style-type: none"> <li>• No exposure draft required</li> <li>• Require Cabinet consideration two weeks prior to the sitting week or submission deadline</li> <li>• Must be final lodged by 10am six working days prior to the meeting</li> <li>• Ministerial statements are circulated for briefing only</li> </ul>	<ul style="list-style-type: none"> <li>• Final lodged signed by minister</li> </ul>	<ul style="list-style-type: none"> <li>• Cabinet</li> <li>• Cabinet Committees</li> </ul>
<b>Appointment paper</b> From ministers	<ul style="list-style-type: none"> <li>• Endorse appointments to statutory offices, boards or committees</li> <li>• Note proposed appointments made by statutory authority boards</li> </ul>	<ul style="list-style-type: none"> <li>• No exposure draft required</li> <li>• Must be final lodged by 10am six working days prior to the meeting</li> <li>• Circulated for briefing purposes to PCD &amp; OIRWS</li> </ul>	<ul style="list-style-type: none"> <li>• Final lodged signed by minister</li> </ul>	<ul style="list-style-type: none"> <li>• Cabinet</li> </ul>
<b>Discussion paper</b> From ministers or directors-general	<ul style="list-style-type: none"> <li>• Provide discussion points only for noting</li> <li>• Seek direction on policy development</li> </ul>	<ul style="list-style-type: none"> <li>• No exposure draft required</li> <li>• Must be final lodged by 10am six working days prior to the meeting</li> <li>• Circulated for briefing only</li> </ul>	<ul style="list-style-type: none"> <li>• Final lodged signed by minister or director-general</li> </ul>	<ul style="list-style-type: none"> <li>• Subcommittees</li> </ul>
<b>Supplementary paper</b> From ministers or Cabinet Secretary	<ul style="list-style-type: none"> <li>• Provide additional detail at the request of Cabinet or a Cabinet Committee</li> </ul>	<ul style="list-style-type: none"> <li>• Final lodged by 10am 6 working days prior to the meeting</li> <li>• If necessary, final comments due within 48 hours of lodgment</li> </ul>	<ul style="list-style-type: none"> <li>• Final lodged signed by minister or Cabinet Secretary</li> </ul>	<ul style="list-style-type: none"> <li>• Cabinet</li> <li>• Cabinet committees</li> </ul>

Figure 1: Cabinet submission

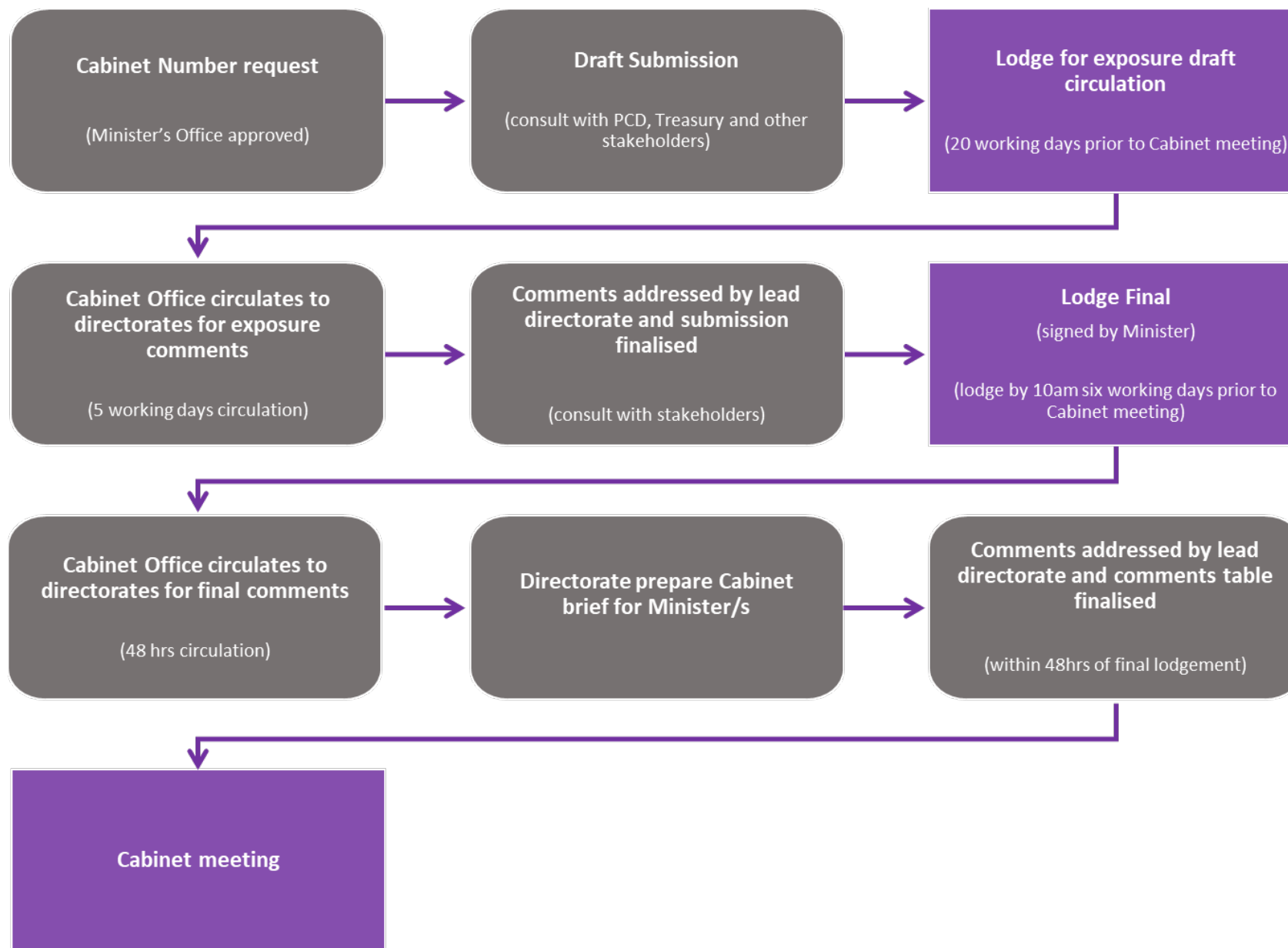


Figure 2: Expenditure Review Committee Consideration

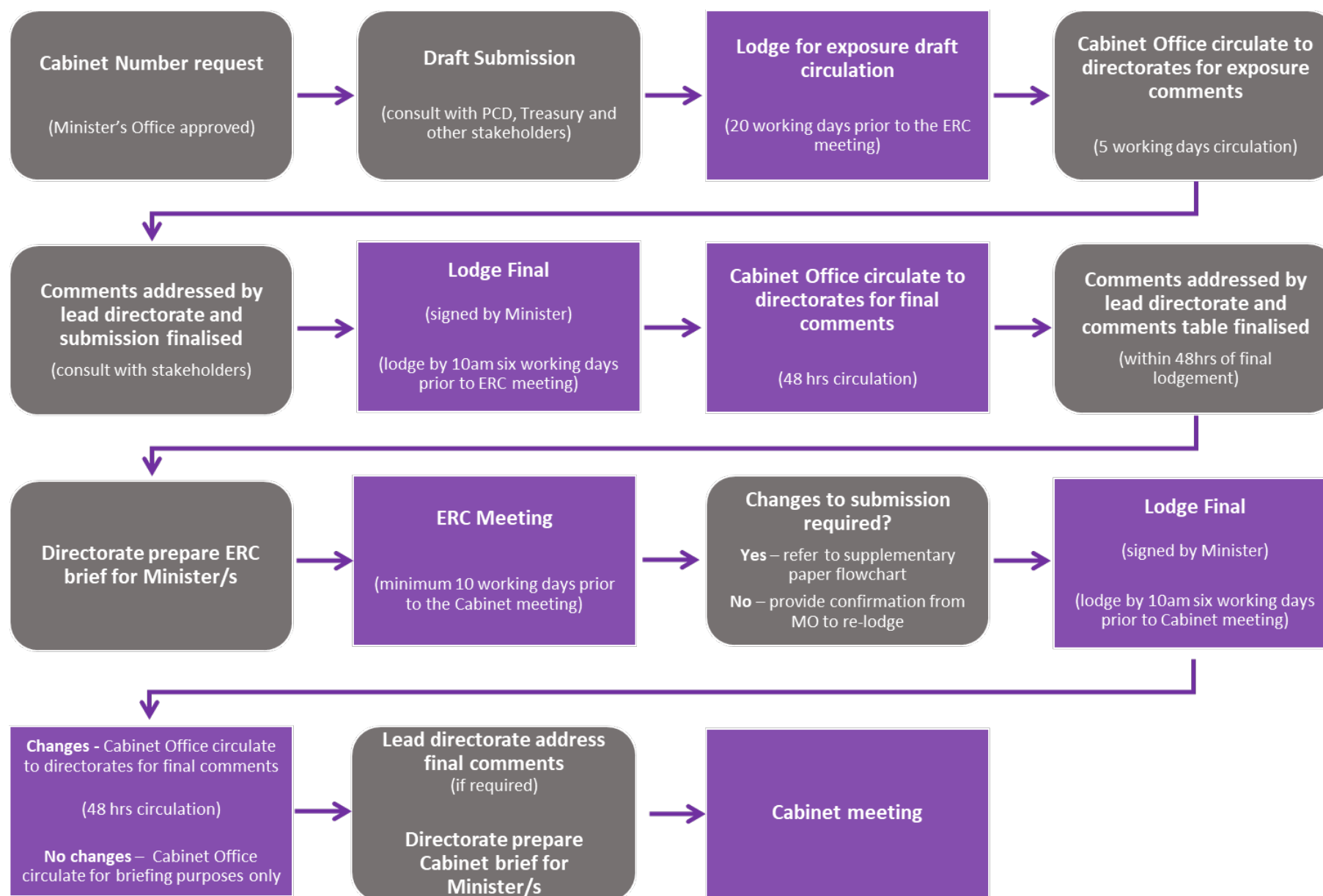




Figure 3: Cabinet Business Paper

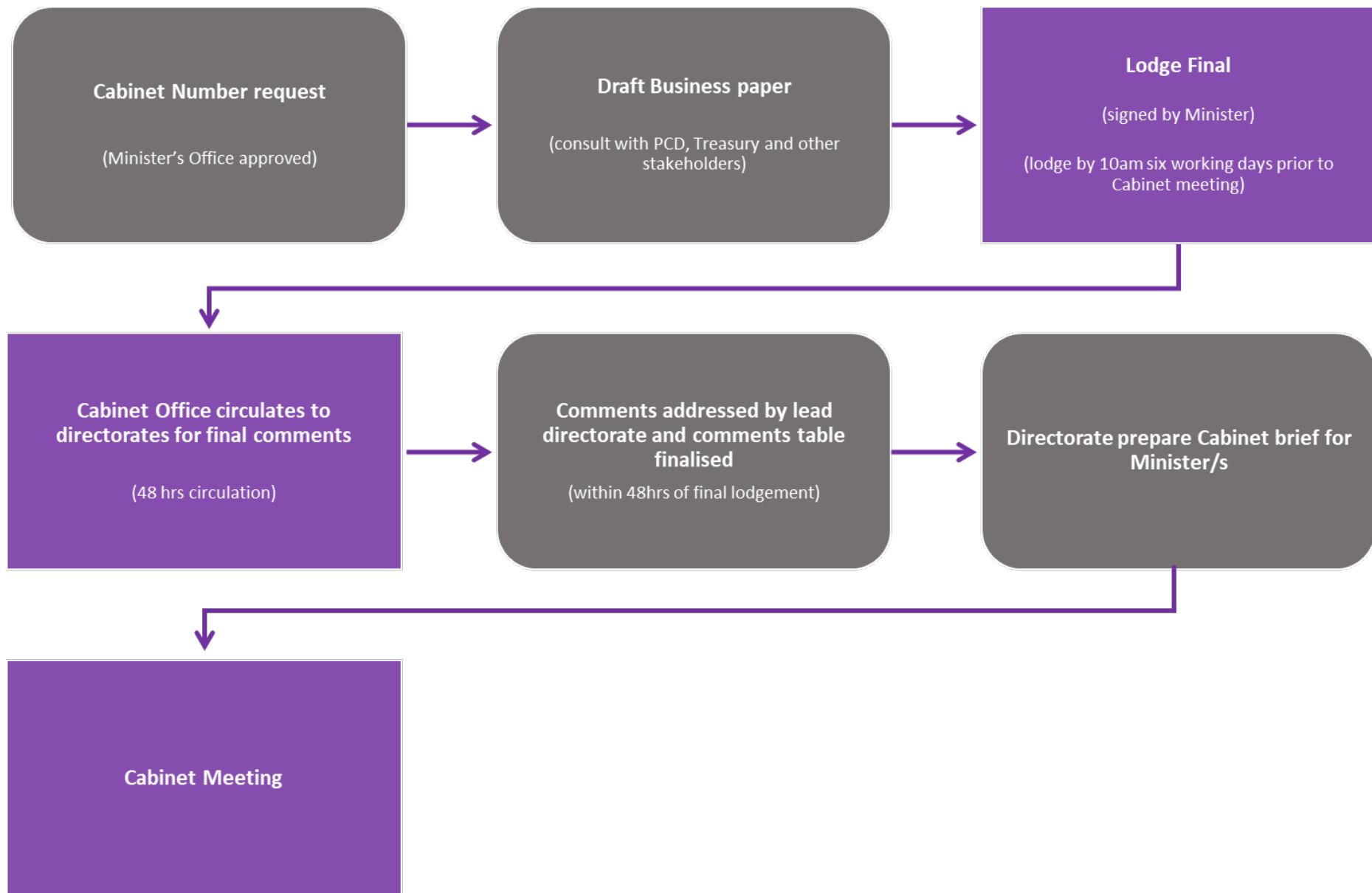


Figure 4: Cabinet Appointment paper

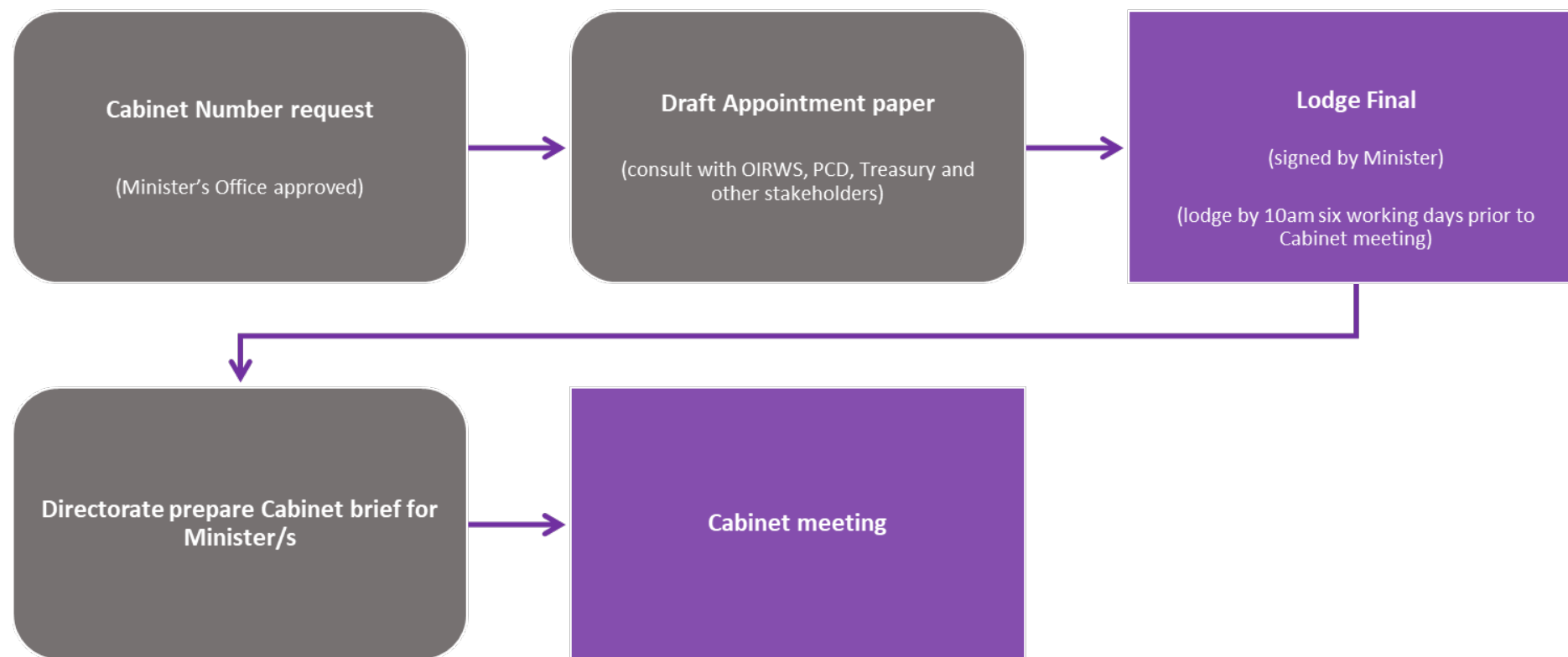


Figure 5: Cabinet Subcommittee discussion paper

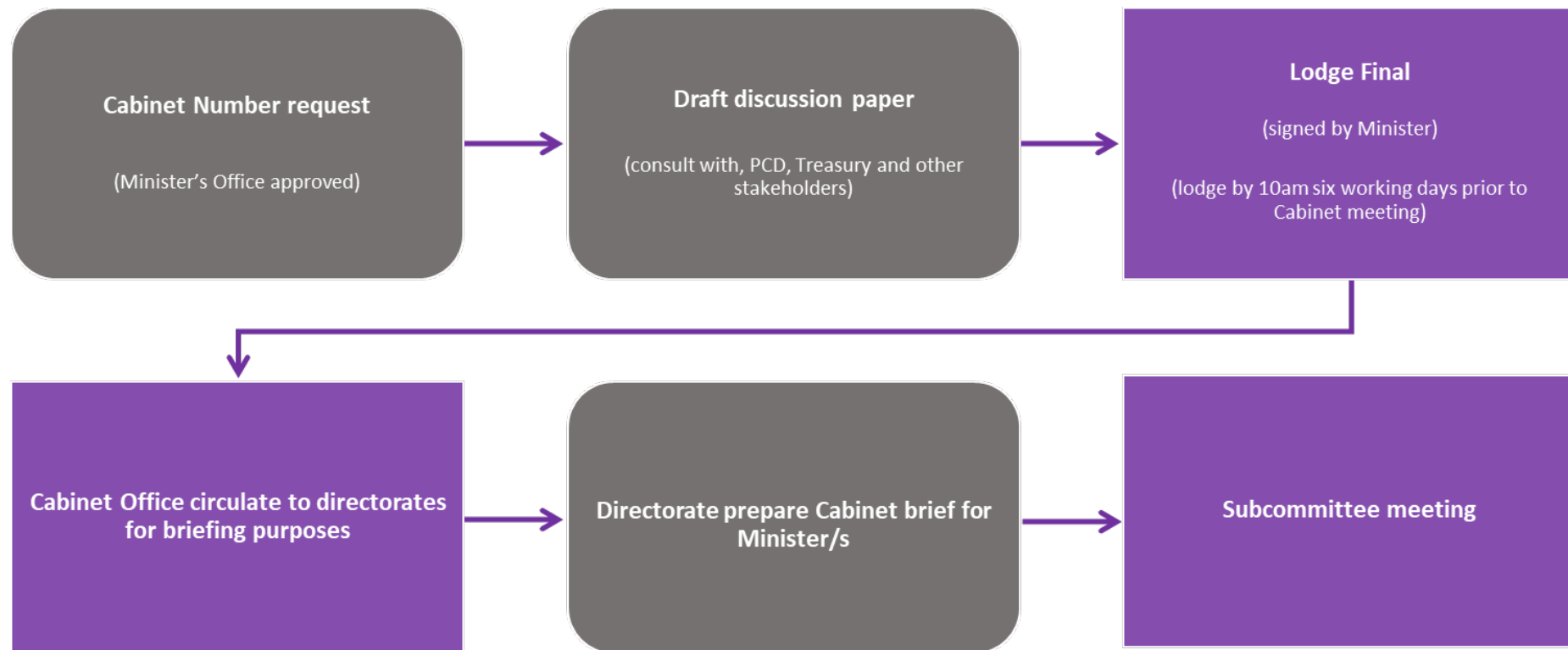


Figure 6: Cabinet Supplementary paper

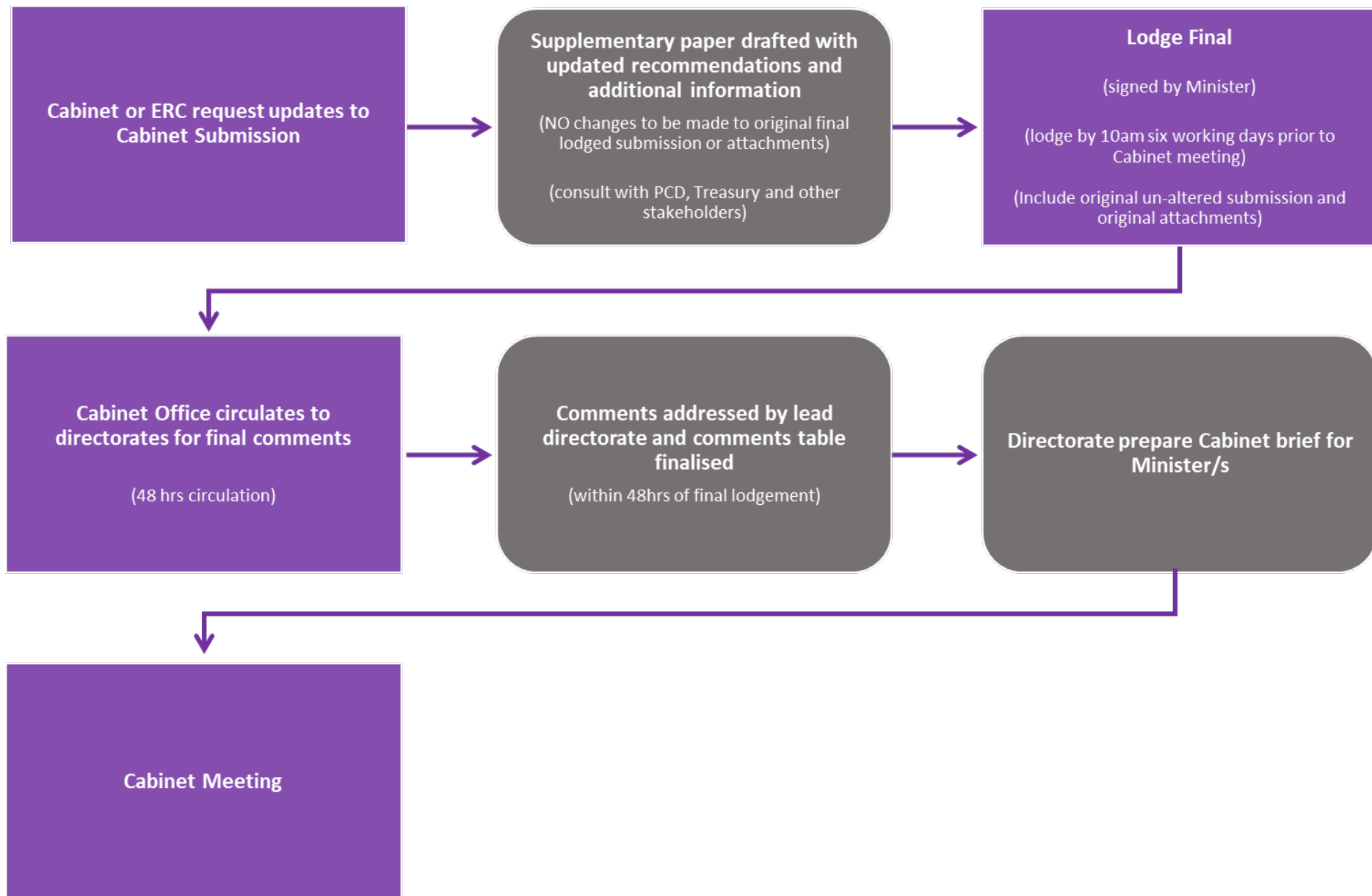


Figure 7: Consultation by paper type

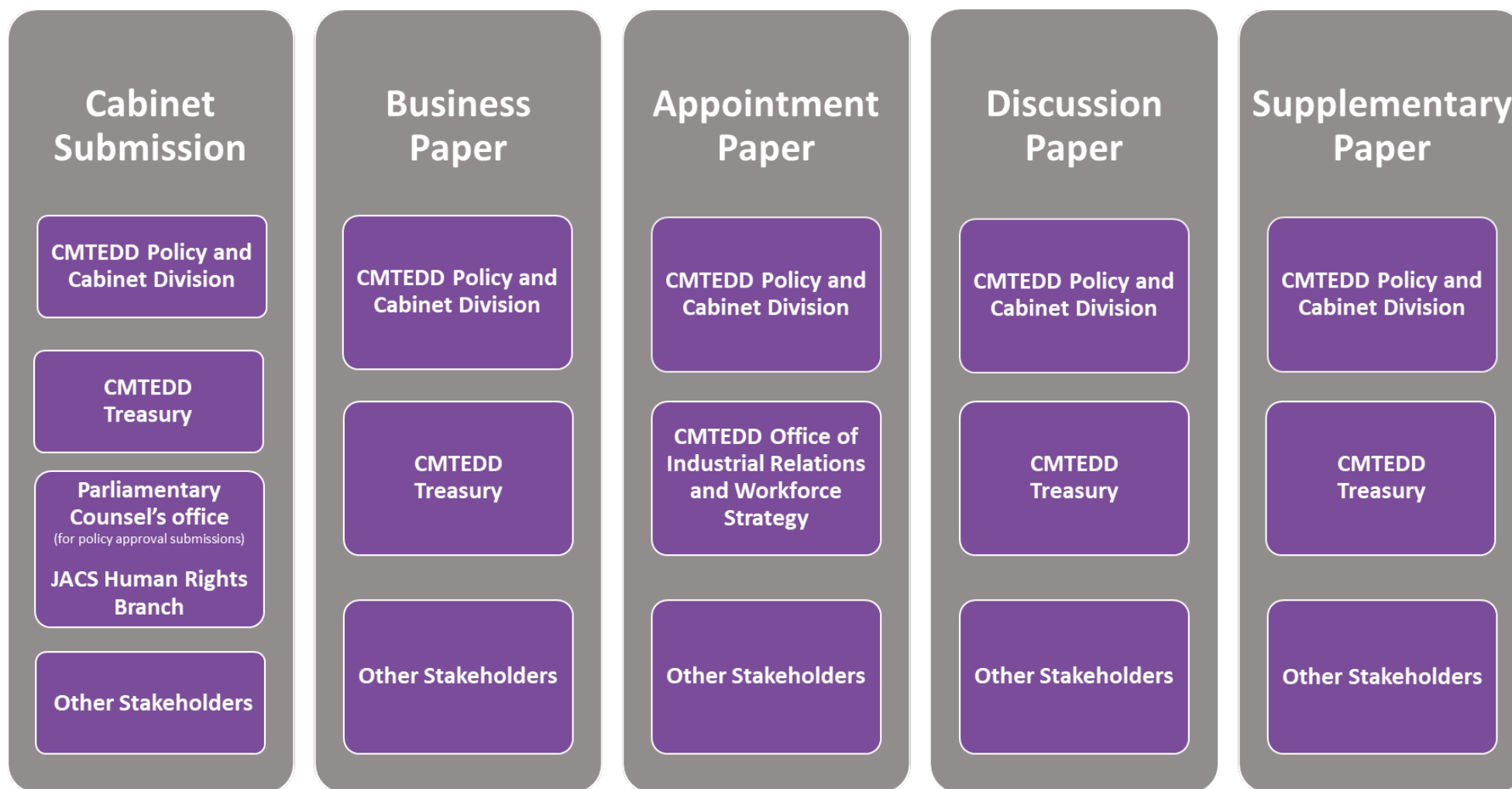
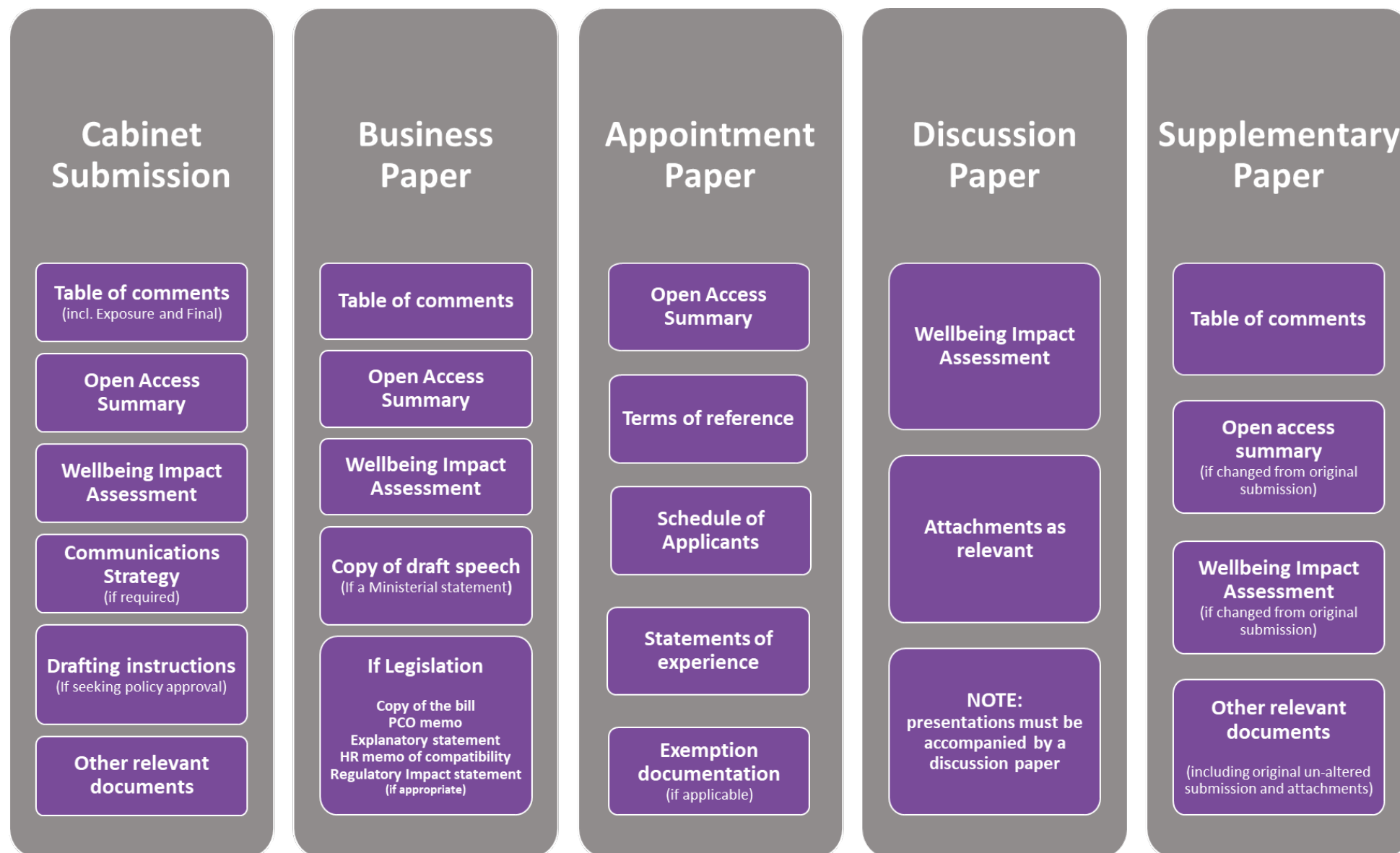


Figure 8: Documentation by paper type



## Policy proposals

Policy proposals considered by Cabinet must clearly establish the matters of relevance as well as options and recommended approaches.

The Wellbeing Impact Assessment (WIA) has been created to help the ACT Government plan for and make decisions based on a fuller understanding of the impacts of proposals (including both benefits and trade-offs) on wellbeing in the ACT. WIAs support the implementation of the [Wellbeing Framework](#), which helps us to understand and improve Canberrans' wellbeing and quality of life.

While WIAs will be used in the Cabinet and Budget processes, directorates are encouraged to use the WIA throughout policy, program or project development to help think about how this work may impact on one or more areas of wellbeing. WIAs may be used to inform discussions within directorates (for example at executive groups), or at Strategic Board and its sub-committees before coming into the more formal processes of Budget or Cabinet.

The Wellbeing Impact Assessment Templates and Resources can be accessed on [the ACT Wellbeing Framework toolkit SharePoint](#).

*Table 3: Summary of Wellbeing Impact Assessment requirements for Cabinet*

Requires Wellbeing impact assessment	Exemptions
<ul style="list-style-type: none"><li>• Discussion Papers</li><li>• Cabinet submissions</li><li>• Business papers</li><li>• Supplementary papers</li></ul>	<ul style="list-style-type: none"><li>• Appointment papers</li><li>• Items agreed by the EBM CAGB Branch with endorsement by the Chief Minister's Office that do not require a WIA.</li><li>• This <b>may</b> include:<ul style="list-style-type: none"><li>○ Items for noting and/or administrative purposes that have been assessed as having no impact on wellbeing; or</li><li>○ Items for agreement where the proposal is minor and technical and is assessed as having no material impact on wellbeing.</li></ul></li></ul>

Separate requirements apply to the tabling of a Regulatory Impact Statement in the Legislative Assembly. See [Part D](#) for more details.

## Regulatory Impact Assessment

A regulatory impact assessment allows the Cabinet to be informed of the benefits and costs of potential and feasible options to address a policy problem.

A regulatory impact assessment should be provided with a submission seeking policy approval for a policy option that imposes new obligations that are likely to result in appreciable costs on the community, or part of the community. This assessment is ultimately tabled in the Legislative Assembly as the Regulatory Impact Statement (RIS). See [Part D](#) for more details.

Guidance on the requirement for a regulatory impact assessment and the associated templates is available from the [Cabinet Resources SharePoint page](#).

## Financial considerations

Cabinet papers must clearly state the Budget impact of matters considered by Cabinet for the current financial year and each of the subsequent four financial years.

Treasury's (FABG) agreement to the costings (both expenditure and, if applicable, forecast revenues) or nil financial impact of proposals must be obtained before a Cabinet paper (with the exception of appointment paper) can be lodged with Cabinet Office for exposure draft circulation and final lodgement. This agreement assures Cabinet the stated Budget impact of a proposal has been verified. It does not include agreement to the policy itself.

Submissions that seek agreement to release draft policies or strategies for public consultation will be accepted without detailed costings so long as the material for public release does not bind the government to future expenditure or create unrealistic community expectations. Any publicly released consultation material should contain sufficient caveats to this effect. Directorates should seek agreement from Treasury prior to lodgement with regards to the wording of such caveats and general presentation of material for public consultation.

The Chief Minister's Office may agree to bypass ERC consideration for submissions that seek agreement to longer term policies (e.g., strategies) that have been assessed by Treasury as having nil financial impact. Agreement to bypass ERC consideration is not to be sought prior to a Treasury assessment.

Proposals in the below categories should not be brought forward outside the budget context unless there is an urgent and compelling case for earlier consideration. In such circumstances, the responsible minister must seek the prior agreement of the Chief Minister, in writing, to the matter coming forward. These include proposals that:

- > involve a commitment of additional funding outside the budget process; or
- > do not identify a source of funding, but state that funding will be sought through a future budget proposal.

## Appointments, Boards and Committees

Cabinet considers all appointments requiring ministerial approval or endorsement. Cabinet is also informed of appointments of Chief Executive Officers to Territory Authorities.

The [Governance Principles for appointments, boards and committees](#) (the Governance Principles) outline procedures for ministerial and executive appointments including for boards, committees and independent statutory officers. CMTEDD Office of Industrial Relations and Workforce Strategy (OIRWS) oversees application of the Governance Principles.

The directorate responsible for an appointments process must engage with OIRWS and provide the draft appointment paper for review prior to final lodgement. A statement indicating whether OIRWS has endorsed an appointment paper as consistent with the Governance Principle must be included within the paper. Any approved exemptions for appointments must be submitted with final lodgement.

## Communications and engagement

The successful implementation of Cabinet decisions in many cases is reliant on effective communication of that decision to the community. Submissions that seek Cabinet endorsement to commence community engagement or release a significant publication must be scheduled for Cabinet consideration at least two weeks prior to any proposed announcement or publication unless approval from the Chief Minister's office has been provided to vary this timeframe.

For all Cabinet, Committee and Subcommittee matters relating to Strategic or Tier One communication priorities identified in the annual Communications and Engagement Snapshot (the Snapshot) a communications and engagement strategy (refer to *Communications and Engagement Overview* template) is a requirement. The Snapshot is available on the [YourSay website](#).

A Communications Strategy or Communications Plan may also be provided to support Cabinet's consideration of other matters.



In the early stages of preparing Cabinet submissions and business papers, it is highly recommended the relevant communications and engagement team is consulted to ensure best practice and relevant communications advice is provided.

When preparing a communications strategy for a Strategic or Tier One communication priority, it is essential to consult with the relevant communications and engagement team in your directorate.

Best practice communications advice will not always lead to a communication strategy being required. A standing exemption for the provision of a communication strategy is provided for the following:

- > cabinet submissions that are for noting only;
- > government responses or submissions; and
- > appointments.

## Implementation

Ministers are responsible for ensuring that action is taken on Cabinet decisions affecting their portfolios. If a Cabinet decision requires action in several portfolios and Cabinet does not direct otherwise, the minister who raised the matter in Cabinet is responsible for initiating follow-up procedures (usually by letter to other ministers involved).

CMTEDD monitors progress on the implementation of key Cabinet decisions. Reports may be provided to Strategic Board or Cabinet, as necessary, for information and action. All Cabinet submissions must complete the key implementation milestones section of the Cabinet submission template to provide Cabinet with details on the intended implementation steps and timeframes.

## Evaluation

Significant policy proposals that would impose a cost on the community should be regularly reviewed to ensure that they achieve their intended objectives appropriately, efficiently and effectively.

## Whole of government consultation

Cabinet relies on the ACT Public Service to:

- > provide facts that assist in decision making; and
- > clearly outline the options and the rationale for the recommended approach.

Policy submissions to Cabinet must be factually accurate and directorates must ensure that all facts put to Cabinet to support decision making are agreed. Ministers should not be placed in a position where they are provided with contradicting or inaccurate factual information.

Thorough and genuine consultation is crucial to the successful development of high-quality Cabinet papers. Consultation also ensures differences are resolved in advance of Cabinet consideration or are clearly identified and set out in a way that assists sound decision-making.

Cabinet Office facilitates circulation of Cabinet submissions to directorates subject to any special considerations or confidentiality. At any point in the development of an item the EBM CAGB may request a directorate undertake additional consultation or provide a clarification of facts to ensure that Cabinet is provided with sufficient advice with which to make effective decisions.

Initial consultation between directorates should be proportionate to the significance of a proposal. Notwithstanding, it is recommended that officers drafting Cabinet papers should make early contact with PCD to provide details of all forthcoming submissions.

Figure 6 provides an overview of consultation requirements by paper type.

## Exposure drafts

All directorates with an interest in a proposal being prepared for Cabinet, must be given ample opportunity to contribute to its development. Exposure drafts of submissions must be circulated to all directorates for a minimum of five days. Directorates responsible for legislation that establishes statutory authorities will consider the potential impact of a proposal on the statutory authorities and support their access to the submission as required. Cabinet Office and CLOs manage the circulation of documents.

Ministers will set their individual expectations with their directorates if they have a preference to endorse documents before exposure draft circulation. At a minimum, an exposure draft submission is to be provided to the minister's office and endorsed by a deputy director-general before circulation.

## Exposure draft circulation and comments

Approximately four weeks prior (or 20 business days) to the scheduled Cabinet or ERC meeting, Cabinet submissions are lodged for exposure draft circulation. Directorates provide comments on exposure drafts through their CLO. If relevant, statutory authorities may also provide comments via the directorate CLO.

Each CLO puts their directorate's comments into the exposure draft comments table, which is part of the 'Table of comments' attachment to submissions. Statutory authority comments will be included in the table of comments and attributed to the individual authority. This table lists all comments and provides a column for response.

The drafting directorate should update the final submission to incorporate the comments if valid or provide a reason as to why a comment has not been incorporated. The purpose of the exposure draft comments table is to provide a reference for directorates on how the comments have been incorporated and a direction on where the changes have been made.

All comments must be addressed through the comments table in one of three ways:

- > agreed, with paragraph reference to changes;
- > agreed but not incorporated, noting a rationale for not making a change; or
- > not agreed, with rationale for why the comment is not valid.

Cabinet Office will not accept submissions for lodgement that do not have a correctly completed exposure draft comments table.

Informal comments or minor corrections may be provided directly to the Cabinet submission drafting officer via the directorate CLO.

## Final lodged submissions

Cabinet Office provides ministers with Cabinet submissions four working days before each meeting to allow ministers to consider the papers and receive a briefing from their offices and directorates before making decisions.

Final Cabinet papers must be lodged with Cabinet Office no later than 10am six working days prior to a Cabinet meeting (for example, if a Cabinet meeting is on Tuesday, 24 November, then all papers must be lodged by 10am on Monday, 16 November).

Papers must be signed by the sponsoring minister (or each minister if there is more than one sponsor) and include all relevant documentation. Papers not received 24 hours past the cut-off date or not in compliance with documentation requirements will be rescheduled to the next available meeting.

## Final agency comments and briefings

Once papers are lodged, they are circulated to directorates for final review and briefing purposes. If a directorate or relevant statutory authority does not believe that a final submission has adequately addressed their comments at exposure draft, or more generally does not support a submission, they:

- > may submit final agency comments for inclusion in the table of comments within 48 hours of final lodgement; and
- > should brief their minister to this effect, usually via the provision of a Cabinet brief.

Final agency comments will be provided back to the directorate responsible for the paper for consideration and response. The table of comments with completed responses will be provided to ministers by Cabinet Office. Final comments should be restricted to only material issues affecting the recommendations.

## Variations to Cabinet process

Circulation, lodgement timelines and Cabinet paper templates are set to ensure ministers and directorates have sufficient information and time to review papers prior to their consideration.

Any variation to the Cabinet process has the potential to circumvent assurances that advice is considered, complete and robust. If a variation is sought by a minister or directorate, steps should be taken so that the quality of the advice is not compromised.

### Bypass or shorten exposure draft circulation

The approval of the EBM CAGB can be sought by the CLO of the drafting directorate to bypass exposure draft circulation where the paper responds to a rapidly emerging issue or emergency situation. The presumption is that approval will not be granted unless exceptional circumstances can be demonstrated.

The EBM CAGB can also agree to shorten exposure draft circulation to three days where an item:

- > has previously been considered by Cabinet or a Cabinet subcommittee;
- > has undertaken extensive early or informal consultation; and
- > there are other extenuating circumstances that have an impact on timing.

In making this determination the EBM CAGB will also consult with PCD and Treasury to identify any issues that might arise from bypassing or shortening exposure draft circulation.

Items lodged late for exposure draft circulation without extenuating circumstances will be rescheduled to a later Cabinet meeting date to ensure final lodgement and review timeframes are met.

### Late lodgement

Late lodgement of Cabinet papers reduces the time ministers have to consider issues before the Cabinet meeting and creates a risk of poor decision-making. Late lodgement of final papers can occur only in exceptional circumstances or emergency situations on advice from the Chief Minister's Office. Papers not received 24 hours past the cut-off date or not in compliance with documentation requirements will be rescheduled to the next available meeting.

### Variations that are not permissible

The provision of papers to Cabinet without an accompanying Cabinet paper, 'under the line' or as a 'walk-in' item in the Cabinet Room by ministers is not acceptable. There is an acknowledgement that from time to time there are exceptional circumstances which requires the circulation of Cabinet documents to Ministers urgently, these circumstances should be discussed with the Chief Minister.

## Out of session Cabinet process

Out of session Cabinet papers will be provided to ministers in the same way as regular Cabinet meetings, with the inclusion of a personalised agenda. This agenda includes provision for the minister to indicate that each item is agreed, not agreed, or will be discussed with the Chief Minister's Office and are only considered an acceptable response when signed.

Out of session Cabinet timeframes are set by the Chief Minister and are typically be held over three days. Ministers are required to provide their signed responses (via their secure iPad drive) by no later than 10am on the day following the nominated closing day. If there are non-responses by ministers by the due time, but responses have been received by a majority of ministers who have indicated their agreement, the item will be considered as agreed by Cabinet. This will be confirmed by the Chief Minister's Office and a decision will be finalised and signed by the Cabinet Secretary.

## Release of Cabinet decisions and Wellbeing Impact summaries (Open Access)

Section 23 of the *Freedom of Information Act 2016* (FOI Act) requires the Chief Minister to make information publicly available about each Cabinet decision made after commencement of the Act, including:

- > a summary of the decision;
- > the decision reference number;
- > the date the decision was made; and
- > the wellbeing impact assessment summary for the decision included in the Open Access Assessment: Cabinet Decision and Wellbeing Impact Assessment summary template.

The FOI Act also allows information to be exempted from release if the Chief Minister (as decision maker) is of the view that it is not in the public interest to release the information. The Chief Minister's view can be informed by the views of the directorate and Cabinet, but he is not ultimately bound by those views if he is not personally satisfied of the reasoning in respect to the application of the public interest test.

The decision to not publicly release Cabinet information is a reviewable decision which any person can apply to review. Where an application for review is made, it would be the Chief Minister as the decision maker who would have to account for the reasons for the decision.

For the purposes of Open Access information requirements, agreement to the appropriation bill is taken as the Cabinet decision relating to the consideration with appropriation. This approach recognises that during the budget process, ERC will consider proposals and make recommendations to Cabinet, which may be subsequently reconsidered or varied. These ERC recommendations do not meet the definition of a decision by its ordinary meaning. As such, the relevant 'final' decision on all matters with appropriation and budget implications is taken to be agreement to an appropriation bill.

## Timing of release

The FOI Act does not stipulate a timeframe for the publication of information under the Open Access Information Scheme. Summaries of the final decisions made are published as soon as practicable after Cabinet has concluded its considerations.

## PART D: CABINET APPROVAL OF LEGISLATION

Cabinet considers all proposals for government legislation. The processes supporting Cabinet consideration are set out in this section.

### Engagement prior to Cabinet

The directorate responsible for the development of new legislation is to consult appropriately any other directorate that will have their operations affected or will administer the legislation.

The Parliamentary Counsel's Office (PCO) must be consulted as early as possible when new legislation is proposed. PCO can provide directorates with an indicative assessment of the complexity of proposed legislation and expected timeframes for drafting. Before lodging a submission for policy approval, the directorate responsible for developing legislation must:

- > provide PCO with a copy of the proposed drafting instructions:
  - should drafting instructions not be finalised, engagement is still required with PCO on the proposed legislation and policy approval Cabinet submission; and
- > seek PCO's agreement that the policy is sufficiently developed to begin drafting and that the allocated time for drafting is appropriate.

Early engagement must also be undertaken with the JACS Human Rights Scrutiny branch for consideration of human rights implications and compatibility of proposed policy changes, as well as the JACS Criminal Law branch if there is any intention to introduce or amend any offences or penalties.

### Legislation Program

The legislation program (the program) lists the bills the government proposes for introduction in the Legislative Assembly (the Assembly) in a calendar year. All new policy proposals requiring legislation are to be reflected on the program.

Cabinet considers the program based on the contributions of all ministers. When Cabinet considers the program, it also endorses the forecasted Cabinet dates for first and second pass Cabinet approval; and the Assembly presentation date of bills.

The responsible minister for proposed legislation may seek the agreement of the Chief Minister to vary the legislation program. The Chief Minister may consider varying the legislation program to provide for:

- > new legislation;
- > removal of legislation; or
- > amendments to forecast Cabinet or Assembly introduction dates.

The directorate responsible for the development of legislation is to monitor its progress to ensure that forecast timelines are met to maintain an even flow of government business in the Assembly.

### Two pass process

Proposals for government legislation are considered in two stages:

- > First Pass: a submission seeking a policy position and agreement to draft legislation.
- > Second Pass: a business paper seeking agreement to the presentation of a bill in the Assembly.

Figure 9 steps out the two-pass process.

## First pass – policy approval and agreement to draft

All new policy proposals are presented to Cabinet through a submission. The submission should clearly outline all aspects of the proposal and be accompanied by the necessary supporting documentation outlined in [Part C](#) (for example, Wellbeing Impact Assessment, communications plan, etc.).

Drafting instructions are to be attached to the submission and contain a statement that PCO has been consulted and agreed that the proposal is sufficiently developed for drafting to begin. In some circumstances, a policy approval submission without drafting instructions may be accepted if PCO has been consulted and agreed that the proposal is sufficiently developed for drafting to begin.

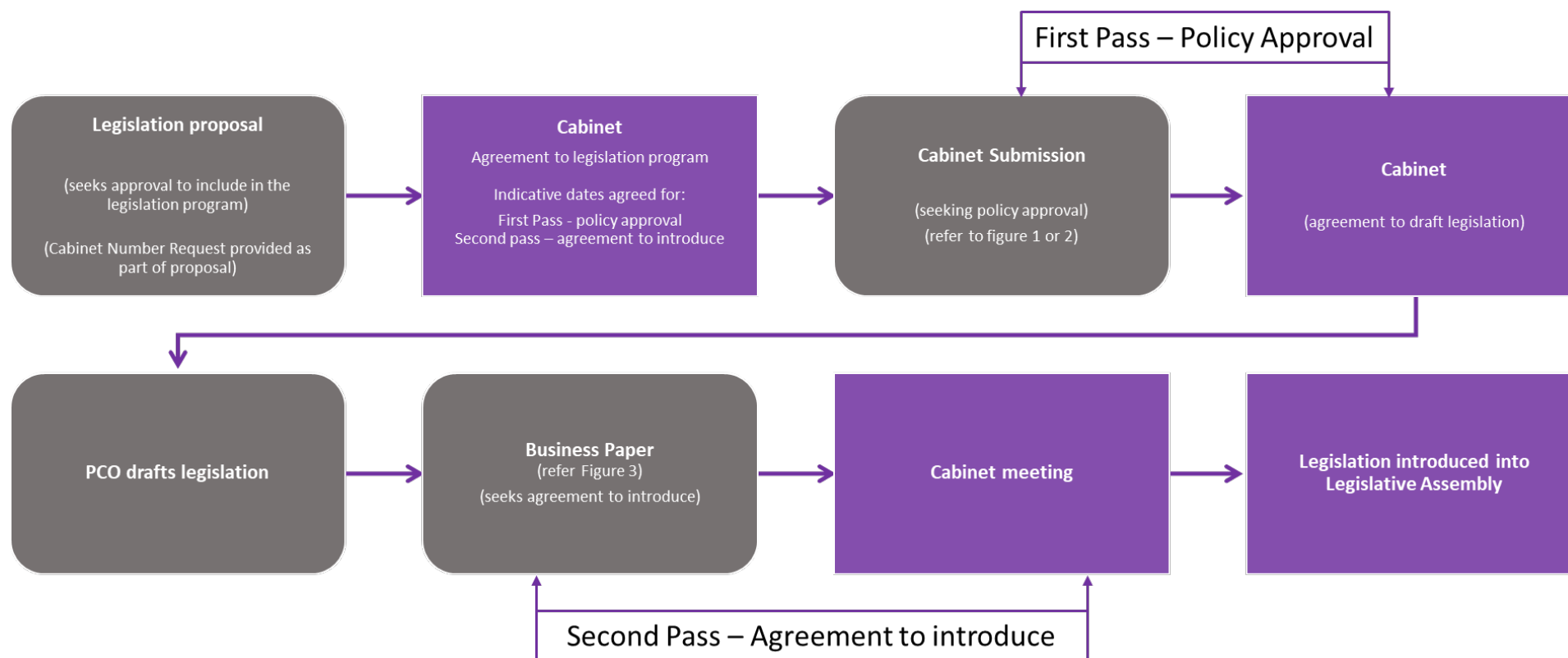
## Second pass – Bill for presentation (Agreement to introduce)

Once a bill has been drafted, its presentation in the Assembly is considered by Cabinet in a business paper. In most cases, the recommendation will simply be that the bill be presented. Bills for presentation should be brought to a Cabinet meeting at least two weeks prior to the forecast introduction date. If for any reason a bill cannot be prepared or finalised for Cabinet consideration two weeks prior to a sitting period, directorates should contact the EBM CAGB for assistance. Legislation is not to be considered at the meeting immediately prior to a sitting period unless agreed by the Chief Minister's Office due to exceptional circumstances.

The business paper presents the bill to Cabinet. Supporting documentation that must also be attached to a business paper proposing presentation of a bill includes:

- > the bill;
- > the Explanatory Statement;
- > a memorandum from PCO setting out whether the bill gives effect to the policy approval; and
- > a memorandum from JACS (Human Rights Scrutiny Team) setting out whether the bill is compatible with the Human Rights Act.

Figure 9: Legislation process



## Seeking subsequent policy approval

A PCO memorandum is to be provided stating whether the bill gives effect to the previous Cabinet approval.

Where there are significant matters not covered by the earlier approval, the memorandum will point this out. When further policy approval is required, the business paper should outline these in explicit recommendations.

If there is a policy change (rather than one which is technical in nature), a submission at the second pass stage will be warranted. This could include where there has been a change in particular circumstances that may have been influential in Cabinet's initial agreement to the policy, or where the minister feels that a particular handling strategy is required in the Assembly.

## Exceptions to the normal Bills process

### Combined pass

In exceptional circumstances (usually involving matters of urgency) and following a written request from the relevant minister, drafting of legislation may be authorised by the Chief Minister in a combined pass process. In this case, the 'policy approval' and 'agreement to introduce' stages are undertaken concurrently through a single Cabinet submission outlining the proposal and including the draft bill as part of the submission. Exposure and final circulation requirements for Cabinet submissions (as outlined in Figure 1) continue to apply. Note that the draft bill must be provided at exposure draft lodgement for combined pass submissions.

### Technical amendments program

The technical amendments program allows for legislative changes of a minor or technical nature to be dealt with on a regular basis, either through inclusion in a Statute Law Amendment Bill (SLAB) or, where appropriate, in schedules of technical amendments in other bills.

Amendments that meet the criteria for inclusion in the technical amendments program do not require first pass approval from Cabinet. Advice in this regard should be sought from either the PCO or the Cabinet Office.

Amendments proposed under Schedule 1 and/or 4 of a SLAB require the Chief Minister's approval, but agencies should seek approval in writing through their minister to the Chief Minister. Schedule 1 deals with minor policy changes proposed by government agencies. Schedule 4 deals with repeals of obsolete or unnecessary legislation proposed by government agencies or PCO. Schedules 2 and 3 are technical amendments proposed by the PCO and have standing Cabinet in principle-approval. SLABs are approved by Cabinet in a one pass process in a submission from the Attorney-General.

### Legislation amendment Bills

Legislation amendment bills that relate to minor and uncontroversial amendments may be approved by Cabinet in a combined pass process. A normal two pass process (Figure 4) must be undertaken where the Legislation Amendment bill seeks to make a change in government policy.

## Consultation Draft Bills

In normal circumstances, a bill is first made public when it is presented in the Assembly. In some cases, it may be desirable for the community or interest groups to be given an opportunity to comment on a formal consultation draft of the bill. In such cases, the responsible minister should seek Cabinet's agreement to release a consultation draft of the bill and an associated engagement strategy.

Where broad or general community consultation is proposed, a complete consultation draft bill must be considered by Cabinet prior to release. Consideration by Cabinet occurs between the policy approval



Cabinet submission and the business paper for agreement to introduce. The Cabinet submission for consultation becomes a third pass for agreement to consult widely on a consultation draft of a bill.

For targeted consultation with select interest groups, agreement to provide a consultation draft bill can be sought as part of the first pass approval. If this is proposed, ministers and directorates must take appropriate steps to maintain the confidentiality of the Cabinet process.

## Private Members' Bills and Executive Members' Bills

Cabinet agreement is required for government positions on Private Members' bills or Executive Members' bills. A submission should be prepared as soon as possible and, in any event, within three months of a Private Member's bill/Executive Members bill being presented in the Legislative Assembly.

## Human Rights implications

Significant bills must be presented to Cabinet and the Assembly with full human rights compatibility statements.

In preparing a submission for policy approval, drafting officers should assess whether the bill constitutes a 'significant bill'. Legislation will be classed as a significant bill where the bill:

- > is a new Act that regulates an area previously unregulated or repeals previous legislation.
- > establishes a new criminal law scheme, including where the bill:
  - creates new offences applying to the general community or vulnerable groups;
  - restricts movement or association or authorises detention;
  - allows personal searches, or entry to residential premises; or
  - changes criminal processes to affect existing procedural rights.
- > establishes a new civil law scheme, including where the bill:
  - imposes positive obligations, duties, prohibitions and sanctions on private individuals or all members of particular professions; or
  - affects existing fair trial, due process, or review rights.
- > imposes a new regulatory scheme, including where the bill:
  - implements a ban or prohibition;
  - vests public officials with coercive powers to enter, search, seize, etc.; or
  - requires a regulator to impose sanctions or determine rights or liabilities of private individuals with limited review rights.
- > makes a change to long established legal position or common law rule, including where the bill:
  - departs from established legal position or common law principles;
  - affects Territory-Commonwealth relations; or
  - raises constitutional law issues.
- > makes major changes that support or enhance rights protections.

In addition to the above, the Attorney-General and Cabinet also have the discretion to determine whether a bill is significant at policy approval stage or thereafter. Due to this, it is recommended that if a bill raises substantial human rights issues (even if the bill otherwise falls outside the scope of the significant bill criteria) [JACS Human Rights Scrutiny Branch](#) is consulted to assist in determining whether the bill should be classed as significant.

Where a bill is identified as significant, this will be recorded in the Cabinet decision and a detailed human rights proportionality analysis will be required within the Explanatory Statement. For a bill that is not identified as significant, the Explanatory Statement will still need to include a human rights analysis for

any provisions limiting human rights to ensure that limits are reasonable and demonstrably justified in accordance with section 28 of the Human Rights Act. For further information, see pages 6 and 7 of the [Guide to writing an explanatory statement](#) published by the Standing Committee on Justice and Community Safety (Scrutiny Role).

For assistance, contact the JACS Human Rights Unit [JACSScrutinyTeam@act.gov.au](mailto:JACSScrutinyTeam@act.gov.au).

## Human Rights Act 2004

The *Human Rights Act 2004* (the Human Rights Act) affects the operation of all legislation in the ACT by:

- > imposing on officials a statutory obligation to take account of human rights principles when interpreting all ACT primary and subordinate legislation;
- > institutionalising consideration of fundamental civil and political rights during the development of law and policy; and
- > requiring all officials to make decisions that are compatible with all human rights stated in the Human Rights Act.

Under the Human Rights Act, the Attorney-General has a statutory obligation to provide a compatibility statement in writing to the Legislative Assembly for each government bill, stating that the bill is consistent with the Human Rights Act, or how it is not consistent with rights protected under that Act.

All submissions seeking first pass approval should indicate any possible impact on human rights and whether a bill is categorised as a significant bill or not should be reflected in the recommendations of the submission. Advice should be sought from the [Legislation, Policy and Programs](#) unit in JACS as part of the policy development process to ensure early identification of potential compatibility issues.

All business papers proposing presentation of a bill, must address compatibility with the Human Rights Act.

## Assembly RIS requirements

Chapter 5 of the *Legislation Act 2001* outlines the requirements for the submission of a RIS for subordinate laws and disallowable instruments.

A RIS must be presented to the Assembly if a proposed subordinate law or disallowable instrument is likely to impose appreciable costs on the community, or a part of the community. The Act outlines a process and criteria for exempting a subordinate law or disallowable instrument from a RIS. The Wellbeing Impact Assessment may be used to inform elements of the Assembly RIS requirements.

The full listing of requirements is set out in section 35 of the *Legislation Act 2001*.

## PART E: DOCUMENT MANAGEMENT

### eCabinet

Cabinet papers are circulated through an electronic records management system maintained by the Cabinet Office. The whole of government records manager (WhoGCM) database has been enabled to securely manage Cabinet documents for circulation and access by directorates. CLOs are the primary users of the electronic system managed by the Cabinet Office. All documents to be circulated for comment, or provided to Cabinet ministers, must be provided through the secure WhoGCM system.

The Cabinet Office and CLO network are responsible for the circulation, exchange, and access to documents on the WhoGCM system. CLOs are responsible for internal requests for access to Cabinet information and management of documents within their directorates using internal systems.

Ministers and selected senior executives can access Cabinet papers through a remote access drive using their iPads. The remote access drive is maintained by Cabinet Office. All use of iPads to remotely view Cabinet papers must comply with Cabinet Office guidelines.

### Security and handling of Cabinet papers

The security and handling procedures are intended to protect the confidentiality of the Cabinet process. Access to Cabinet papers is granted on a strict need-to-know basis. The security and handling procedures for Cabinet papers equally apply to papers for Cabinet committees and subcommittees.

Directors-General or their nominated representatives (usually the CLO) should identify officers within their directorates to whom access to particular Cabinet papers will be limited.

Cabinet papers will primarily be maintained on the WhoGCM secure database and accessed by CLOs. Access will be provided by CLOs on a need-to-know basis within each directorate. Where possible, printing of Cabinet papers or placing them in electronic systems that cannot be audited for access must be avoided. Likewise, Cabinet papers must not be emailed – instead, CLOs should share a link to papers saved in a secure, managed and auditable system on behalf of their executives.

Directorates must only maintain Cabinet records as needed to facilitate their core business, for limited time periods. Comprehensive records of Cabinet papers are maintained by Cabinet Office, and these can be made available at a later point in time if required by a directorate.

Each directorate must maintain a register of Cabinet documents it possesses at any point in time. All Cabinet documents (including drafts and associated briefing materials) that are within directorate internal circulation systems or held by staff must be deleted or securely destroyed once they are no longer required.

CLOs within each directorate are responsible for ensuring that access to Cabinet information is provided on a need-to-know basis. A record must be kept of all access to each Cabinet paper and provided to Cabinet Office on request. Copies of Cabinet decisions made by CLOs for internal distribution must be appropriately watermarked and registered.

CLOs have standing permission to copy or print Cabinet papers from the secure WhoGCM system maintained by Cabinet Office for the purposes of facilitating consultation, preparing exposure draft comments and drafting ministerial briefings.

If a breach of Cabinet confidentiality has occurred, the Cabinet Secretary, EBM CAGB and the directorate Senior Executive Responsible for Business Integrity Risk must be notified immediately. This notification should provide details including when the breach occurred and what the nature of the breach is as it is known at the time of reporting. It is the responsibility of the Cabinet Secretary, in consultation with the Chief Minister, to decide whether the incident is of sufficient seriousness to warrant further investigation by the Australian Federal Police.

Where Cabinet material is printed or there is other physical material; this must be stored within a:

- Class C container within a general office environment
- A commercial grade lockable cabinet within a certificated Zone Four space

Cabinet material must not be held outside of an ACT Government facility.

## Statutory authorities

Statutory authorities established under legislation administered by ACT Government directorates have variable functions. Statutory Authorities are not provided access to all Cabinet submissions on circulation. Cabinet documents and decisions are distributed on a need-to-know basis as described in [Part C](#).

Where relevant, directorates should engage with statutory authorities during the drafting process of Cabinet submissions to ensure information prepared for Cabinet is informed by their interests. Provision of draft Cabinet submissions prior to formal circulation is supported by directorate CLOs and managed via secure means.

When reviewing Cabinet submissions on exposure and final circulation, directorates will consider the potential impact on the statutory authorities relevant to their portfolio and the relevant CLO will support statutory authorities to access Cabinet material as required. Provision of Cabinet material to statutory authorities will be managed by directorate CLOs using appropriate secure methods to ensure appropriate handling and destruction of Cabinet material.

Access to Cabinet material may also be provided when statutory authorities have relevant knowledge. Provision of a Cabinet submission to statutory authorities should be made at the Senior Executive level and in consultation with the EBM CAGB.

There may be exceptions to this process where consultation with statutory authorities is routine as part of the Cabinet process (i.e., Human Rights Commission). Any exception should be arrived at in consultation with the EBM CAGB.

PCD, in their review of Cabinet material will also provide views on the need for consultation with statutory authorities. This will be done in consultation with the relevant directorate and the EBM CAGB.

## Mandatory security markings

Dissemination Limiting Markers (DLMs) are used to identify information that may have protections under legislative secrecy provisions. The purpose of this is to facilitate information sharing between agencies.

Documents used by Cabinet (including Cabinet committees and subcommittees) to formulate policy and make decisions require special protective measures. This is because Cabinet documents, unlike other official information, belong to the particular governments that create them. They are integral to the process by which governments make decisions and they constitute the record of those decisions.

Any unauthorised disclosure damages the openness and frankness of discussions in the Cabinet Room and potentially impedes the process of good government.

The DLM **CABINET** must, at a minimum, be applied to the top and bottom of any document including (but not limited to) business lists, minutes, submissions, memoranda and matters without submission that is or has been:

- > submitted or proposed to be submitted to Cabinet;
- > official records of Cabinet; and
- > any other information that would reveal the deliberations or decisions of Cabinet.

Some Cabinet documents may require a higher level of protection depending on their subject matter. An additional national security classification protective marker may also accompany Cabinet documents where necessary on agreement by the EBM CAGB.

## Access during the Caretaker Period

Before the date of an election, directors-general and heads of agencies must ensure that all Cabinet documents are accounted for and securely stored. Access to Cabinet papers outside the statutory schemes outlined below will not normally be granted during the caretaker period except in exceptional circumstances with the approval of the Cabinet Secretary.

## Managing documents after a change of government

In the event of a change of government, all copies of cabinet documents (physical and electronic) held by directorates must be either:

- > returned promptly to Cabinet Office for destruction; or
- > destroyed securely by the CLO.

After a change of government, Cabinet Office retains the single official record of all Cabinet documents. These may be accessed by directorates on request to ensure continuity of administration, which may require reference to Cabinet papers of former governments.

After a change of government, directorates may only provide new ministers with summaries of facts and operative decisions necessary for an understanding of current issues.

## Destruction of copies of Cabinet documents

Documents that form the official Cabinet record are held by Cabinet Office and may not be destroyed; however, copies of Cabinet documents (such as those provided to directorates) must be destroyed due to a change of government or if they are no longer required to inform immediate work. Only officers working in the Cabinet Office and CLOs are authorised to destroy copies of Cabinet documents.

To destroy physical copies of Cabinet documents, the documents must be confirmed to be a copy and be destroyed using a B Class shredder as determined by the Australian Government's Security Construction and Equipment Committee. It is up to directorates to satisfy themselves that the Handbook's requirements in relation to destruction are met. Cabinet Office does not endorse any particular use of bin or third-party contractual arrangements that directorates may enter into.

Documents with national security ratings carry special storage and destruction requirements. Please contact the [Security and Emergency Management Division](#) for further advice on dealing with these files.

To destroy electronic copies of Cabinet documents, the documents must be confirmed to be a copy and be permanently deleted from the electronic system so that it is no longer accessible or retrievable.

## Public access

There are two ACT laws that create rights of access to Cabinet papers: the *Freedom of Information Act 2016* and the *Territory Records Act 2002*. Information Access units in each directorate can provide further information on access procedures and requirements under the Freedom of Information (FOI) Act.

The EBM CAGB should be consulted on all FOI requests involving Cabinet papers or other documents that would disclose the deliberations of Cabinet.

The Territory Records Act (TRA) provides for the public release of Cabinet papers ten years after they have been considered by Cabinet. The list of accessible Executive Documents required by the TRA is produced by Cabinet Office and updated on Canberra Day each year at the following website: <https://www.cmtedd.act.gov.au/functions/publications>.

Requests for access to Cabinet papers under the Territory Records Act are coordinated by CAGB.

## Access by Auditor-General

Under the *Auditor-General Act 1996*, the Auditor-General is entitled to access Cabinet papers for the purposes of investigating a particular term of reference. All requests for such access should be directed to the EBM CAGB in the first instance with formal requests to be made to the Cabinet Secretary.

Any copies of Cabinet papers provided to the Auditor-General will be prepared by CAGB and must not be copied further. Such copies must be returned to Cabinet Office for destruction on completion of the investigation.

## Access by courts, investigatory bodies, and police

Requests for access to Cabinet papers by a court or a Board of Inquiry (under the *Inquiries Act 1991*), the Australian Federal Police, the ACT Civil and Administrative Tribunal, the Ombudsman, the ACT Integrity Commission or any other investigatory body must be referred to the EBM CAGB in the first instance with formal requests to be made to the Cabinet Secretary.

## Access by third parties

The Cabinet Secretary may, in consultation with the Chief Minister, consider requests from directorates to provide contemporary Cabinet material to external third parties for the purposes of briefing or other relevant reasons. Prior to making a request, the directorate must consider the most appropriate means of briefing that party for the intended purpose of their engagement. If provision of Cabinet material is considered, appropriate steps to maintain the confidentiality of Cabinet deliberations are to be taken which may include specific agreements addressing the use, handling and destruction of information provided.

The EBM CAGB should be consulted on all requests from directorates to provide contemporary Cabinet material to external third parties.

## Claims of immunity for Cabinet papers

Where it is decided that a request for access should be granted, this will be facilitated by Cabinet Office. Access by the Australian Federal Police to Cabinet papers of relevance to ACT Policing is at the discretion of the Cabinet Secretary.

The Cabinet Secretary must be consulted if consideration is being given to claiming public interest immunity in respect of Cabinet papers before a court, tribunal, or the Assembly. Claims of immunity in respect of Cabinet papers should be made only by a minister (normally the sponsoring minister) in consultation with the Chief Minister, or by the Cabinet Secretary in cases involving Cabinet papers of former governments.

## Access to Cabinet papers of previous governments

Cabinet papers are, by convention, confidential to the government that creates them. This convention is, however, overridden by statutory rights of access outlined above. Requests for access to the Cabinet papers of a previous government outside those statutory schemes must be referred to the EBM CAGB.

## Access by former ministers

By convention, former ministers are entitled to special access to refresh their memories of Cabinet and related documents with which they personally dealt with while in office. Former ministers should approach the Cabinet Secretary if they wish to seek special access to documents under this convention. Records to which access may be granted are:

- > all Cabinet material which the former minister had personally dealt with or seen or could reasonably be presumed to have personally dealt with or seen in the course of their official duties;

- > correspondence sent to or received from the former minister which was personally dealt with or seen by the former minister, or which could reasonably be presumed to have been personally dealt with or seen by the former minister in the course of his or her official duties; and
- > briefs and other deliberative documents which the former minister had personally dealt with or had seen, or which could reasonably be presumed to have been personally dealt with or seen by the former minister in the course of his or her official duties.

## Appendix 1 - Cabinet Exemptions

In some instances, documents that are required to be tabled in the Assembly pursuant to statutory requirements do not require Cabinet agreement. Whilst this is not an exhaustive list, it is a good indication of the types of items that would be considered as exempt. Directorates should seek the advice of the EBM CAGB if they are unsure if something requires Cabinet approval.

- Annual Reports (both ACT Government and external agencies)
- Corrigenda to Annual Reports
- Directorate Half Yearly Performance Reports
- Notices provided to the Ombudsman under section 39 of the *Freedom of Information Act 2016*
- Variations to the Territory Plan
- Statement of Leases for direct sales
- Disallowable Instruments required to be tabled by the Minister (i.e., Administrative Arrangements, Ministerial Appointments, Determinations)
- Quarterly Consolidated Financial Reports (Quarterly)
- Regulations agreed through National, State or Territory Ministerial processes





**ACT**  
Government