



CORPORATE POLICY STATEMENT NO. 23

DELEGATIONS AND AUTHORISATIONS

February 2023

1. OBJECTIVE

To provide staff with direction regarding the administration, preparation and use of statutory delegations and authorisations. This is to ensure the delegation of functions are:

- (a) properly governed, recorded and accessible; and
- (b) exercised in accordance with relevant legislation and department policy.

2. SCOPE

This policy applies to all staff of the Department of Biodiversity, Conservation and Attractions, including the statutory authorities of the Botanic Gardens and Parks Authority, Rottneſt Iſland Authority and Zoological Parks Authority (known collectively as the department). It establishes the framework for delegating functions in a manner that facilitates efficiency and effectiveness of the department's statutory and administrative processes. It outlines how delegations must be exercised and addresses when staff can sign departmental correspondence as a delegate or an authorised person.

This policy does not apply to the appointment or designation of authorised officers such as rangers, park management officers or inspectors. These are different from delegations in that the officer is empowered to exercise specific functions to ensure compliance of relevant legislation and is not acting as a delegate or on behalf of another person.

3. CONTEXT

The person nominated in legislation to make decisions or to exercise functions cannot always personally fulfil this role. The functions of the Minister for Environment, Minister for Tourism, Conservation and Parks Commission, Swan River Trust, statutory authority boards, or the Chief Executive Officer (CEO)/Director General (each referred to herein as the "Principal") may instead be delegated by an instrument in writing to be performed by another person employed in the department (the "delegate").

Authorisations are generally provided for in legislation, however, in the absence of a statutory provision, staff may be authorised to perform administrative functions or roles on behalf of the Principal. For example, where it is impractical for a Principal to personally fulfil an administrative function, another staff member may be authorised to complete that task. Refer to section 5.9 of [Corporate Guideline No. 5: Signing of Departmental Correspondence](#).

Delegates exercise a function in their own right and in their own name, **independent** of the Principal. Conversely, an authorisation enables the nominated person to exercise a particular function **for, and on behalf** of the Principal (such as an authorisation to sign documents). The Principal always remains responsible and accountable for the acts of an authorised person.

Delegations and authorisations are practical and necessary mechanisms to ensure decisions can be made in a timely manner by staff with the appropriate expertise and experience to complete those functions. It is important that delegations and authorisations are managed effectively by the department to ensure decisions are validly made.

4. LEGISLATION

Delegations and authorisations are made under the following statutes administered by the department:

- *Biodiversity Conservation Act 2016;*
- *Botanical Gardens and Parks Authority Act 1998;*
- *Conservation and Land Management Act 1984;*
- *Rottneest Island Authority Act 1987;*
- *Swan and Canning Rivers Management Act 2006;*
- *Zoological Parks Authority Act 2001;* and
- regulations made under the above Acts.

Delegations can also be made under other statutes to staff within the department. These include (but are not limited to) delegations made under the:

- *Criminal and Found Property Disposal Act 2006;*
- *Land Administration Act 1997;*
- *Public Sector Management Act 1994.*

5. DEFINITIONS / GLOSSARY / ACRONYMS

Authorised person	a person or office holder authorised to exercise a statutory function for and on behalf of the Principal - does not act independently and the Principal remains responsible for their actions.
CEO	means the Chief Executive Officer of the department. The CEO of DBCA is the Director General.
DBCA/department	Department of Biodiversity, Conservation and Attractions
Delegate	a person or office holder to whom a function is delegated by the Principal - acts independently and in their own name.
Delegation	the assignment of a statutory function from the Principal, to a nominated person, committee or body.
Function	includes powers, duties, responsibilities, authorities and jurisdictions as defined in section 5 of the <i>Interpretation Act 1984</i> .

Power	includes any privilege, authority, or discretion as defined in section 5 of the <i>Interpretation Act 1984</i> .
Principal	person or office holder authorised by legislation to make the decision and exercise a function.

6. POLICY

General Principles

- 6.1 Functions must be exercised by the Principal unless there is a provision in the legislation (or other limited mechanisms such as the [Treasurer's Instructions](#)) allowing the Principal to delegate those functions, and that power has been exercised.
- 6.2 Delegations must be made in accordance with the relevant provisions of the legislation, and to a person (see 6.3), committee or body, as specified in the legislation.
- 6.3 Delegations are to be assigned to a position/title, rather than a specific person. This allows for continuity of the delegated function, even when the person occupying the position changes over time.
- 6.4 All delegations and statutory authorisations must be made in writing through an Instrument of Delegation or Authorisation (delegation instrument) and can only relate to functions which are delegable.
- 6.5 Any person seconded to, undertaking higher duties, or acting in a position, can exercise any delegation attached to that position, unless the appointment specifies otherwise.
- 6.6 Sub-delegation is only allowed where provided for in legislation. For example, section 38(5) of the *Swan and Canning Rivers Management Act 2006*.
- 6.7 The delegation of a function is deemed to include any duties incidental to, or connected with the function, whether arising in legislation, policy or procedures.
- 6.8 A function that has been delegated may still be exercised by the Principal, particularly where the delegate is unavailable or the matter is contentious or controversial or involves major business obligations, services and matters of corporate significance.

Limitations on delegations and authorisations

- 6.9 Delegations may be made subject to conditions, qualifications, limitations and exceptions. Any applicable restrictions or limitations must be specified on the delegation instrument.
- 6.10 A delegated function that contains the words 'in consultation with' or 'must confer with' on the delegation instrument must not be exercised until the required consultation or conferral has been undertaken by the delegate.

How delegations must be exercised

- 6.11 A delegate must only exercise the functions that have been delegated, subject to any conditions (see section 6.9 and 6.10).
- 6.12 In addition to checking the written delegation, the delegate must read the legislation to ensure all duties incidental to or connected with the delegated function are also fulfilled.
- 6.13 Delegates must complete any pre-conditions in the legislation that must be satisfied before the function is exercised and a decision made. For example, a decision may require:
- conferral with another entity (e.g. an Aboriginal Body Corporate);
 - approval from another entity (e.g. Minister approval);
 - an applicable stakeholder notification period;
 - satisfaction of any pre-requisites (e.g. consideration of a management plan);
 - providing a person affected by the decision (such as a licensee) with a reasonable opportunity to be heard before the decision is made (this is advisable even if not required by the legislation).
- 6.14 The delegate must exercise a delegated function according to their own discretion and without any undue influence by any other person or body. A Principal may provide direction or guidance to the delegate regarding the exercise of power, however the delegate is responsible for their own decision. They cannot be compelled not to exercise discretion, or to exercise discretion in a manner directed by their supervisor or Principal.
- 6.15 A person is not obliged to exercise a delegation, where in their reasonable opinion, it would more be appropriate, transparent or ethical for the matter to be dealt with by the Principal or another delegate.

Effective date of delegations

- 6.16 A person can only exercise a delegation from the date the delegation instrument is approved by the Principal. A delegation cannot operate retrospectively.

Signing of documents

- 6.17 As a delegate:
- 6.17.1 Delegates act in their own name and should therefore sign in their own name unless otherwise specified in the delegation instrument.
- 6.17.2 In signing, it is good practice for a delegate to acknowledge that their decision was made pursuant to delegated authority. Refer to the applicable signature block in [Corporate Guideline No. 5: Signing of Departmental Correspondence](#).
- 6.18 As an authorised person:
- 6.18.1 A person acting under authorisation acts in the name of the Principal and must sign documents for and on behalf of that person.

6.18.2 Refer to the [Corporate Guideline No. 5: Signing of Departmental Correspondence](#) for the applicable signature block.

Conflicts of interest

- 6.19 Delegates must act in the interests of the department and must not exercise a function for any improper purpose. A delegate must not make decisions that are intentionally unreasonable, uncertain or made without any supporting evidence (i.e. irrational).
- 6.20 A person must not exercise a delegation that would provide them with a personal benefit or result in an actual or perceived [conflict of interest](#). In such circumstances, the delegate must refer the decision to exercise that function to another suitable delegate or the Principal.

Breach of delegations

- 6.21 An intentional breach of a delegation or authorisation may be regarded as misconduct and constitute a breach of the department's Code of Conduct.

Revocation

- 6.22 The Principal may wholly or partly revoke a delegation or authorisation where necessary or appropriate.

Instruments of delegation

- 6.23 Delegation instruments applicable to the Parks and Wildlife Service, Biodiversity and Conservation Science, Corporate and Business Services and Office of the Director General, are to be prepared and managed by the Director Policy and Legislation.
- 6.24 Delegation instruments applicable to each of the statutory authorities (Botanic Gardens and Parks Authority, Rottneest Island Authority and Zoological Parks Authority) are to be prepared and managed by each authority. Delegation instruments prepared by the statutory authorities must be approved by the relevant Board.

Delegations repository

- 6.25 A repository for all delegation instruments is to be maintained and held by the Director Policy and Legislation.
- 6.26 The repository is accessible to all staff on the Office of the Director General's [SharePoint page](#).
- 6.27 Signed delegations and authorisations, past instruments, and any consultation and feedback undertaken are corporate records and must be stored in the department's Electronic Document and Records Management System in accordance with the Records Management Operation Procedures and the *State Records Act 2000*.

Request for amendments

- 6.28 Staff are to advise the Director Policy and Legislation, or relevant Executive Director in the case of the statutory authorities, of any errors or updates required to be made to existing delegation instruments.
- 6.29 Requests to the Director Policy and Legislation, must be submitted in writing to legal@dbca.wa.gov.au.

Review of delegations

- 6.30 Delegations will be reviewed by the Director Policy and Legislation in consultation with relevant Executive Directors, or the Executive Directors of each of the statutory authorities as follows:
- 6.30.1 At least every three years or as necessary;
 - 6.30.2 Where there are changes to departmental structure including machinery-of-government changes;
 - 6.30.3 Where there are changes to legislation or government/departmental policy that impact delegations or authorisations; or
 - 6.30.4 At the request of the relevant Minister, Director General, Deputy Director General, an Executive Director, or the department's General Legal Counsel.

7. POLICY IMPLEMENTATION STRATEGIES

The department will:

- 7.1 Ensure this policy is implemented in accordance with legislative, policy and procedural requirements.
- 7.2 Ensure delegates have the necessary qualifications, experience or standing to perform the functions that have been delegated to them.
- 7.3 Undertake best practice management of instruments of delegation and authorisation to standardise processes and systems across the department.
- 7.4 Maintain records relating to delegations and authorisations including current and revised delegation instruments, and ensure these records are accessible to all staff.
- 7.5 Identify when new or amended delegations are required to ensure efficient and effective decision making.
- 7.6 Ensure changes to delegations are communicated to staff appropriately.

8. CUSTODIAN

Director Policy and Legislation.

9. PUBLICATION

This policy will be made available on the department's intranet.

10. KEY WORDS

Delegation, delegate, Principal, authorisation, decision, instrument of delegation, instrument of authorisation, function, power, legislation.

11. REVIEW

This policy will be reviewed no later than five years from the approval date.

12. APPROVAL

Approved by

A handwritten signature in blue ink, appearing to be 'Peter Dans', written in a cursive style.

Peter Dans
ACTING DIRECTOR GENERAL
ACTING CHIEF EXECUTIVE OFFICER

Date: 15 February 2023