AUSTRALIAN SENATE

Senate Standing Committee for the Scrutiny of Delegated Legislation
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Principle (e): Drafting

Overview

Principle (e) requires the committee to scrutinise each instrument as to whether its drafting is defective or unclear. Under this principle, the committee will typically be concerned with instruments which:

- contain drafting errors which affect the meaning or interpretation of the instrument; or
- do not clearly define key terms.

Defective drafting

Where an instrument contains a drafting error which may affect the meaning or interpretation of the instrument, the committee will raise the matter with the relevant agency and would generally expect such errors to be corrected as soon as practicable.

Clarity of drafting

Instruments and their explanatory statements should be clear and intelligible to all persons interested in or affected by them, not only those with particular knowledge or expertise. Key terms should be clearly defined to remove any potential confusion or misunderstanding. Where the definition of a key term is sourced from the instrument's enabling legislation or another source of legislation, the relevant source provision should be cited in the instrument and its explanatory statement. This is particularly important where a term has a specific meaning within the context of a statutory scheme.

Explanatory statement checklist

The following checklist summarises the type of information which should be included in explanatory statements where an instrument includes key terms that affect the interpretation of the instrument.

☐	**Clearly define key terms**	Key terms should be clearly defined in the instrument and its explanatory statement. Where the definition of a key term is sourced from other legislation, the relevant source provision should be cited in the explanatory statement.