



Principle (f): Access and use

Overview

Senate standing order 23(3)(f) requires the committee to scrutinise each instrument as to whether it, and any document it incorporates, may be freely accessed and used. Under this principle, the committee will typically be concerned with instruments which incorporate documents into their text which:

- are not freely accessible; or
- are subject to copyright.

Incorporation by reference

In some cases, legislative instruments may incorporate other documents by reference. Examples of documents which are frequently incorporated include guidelines, standards and codes of practice. A document is likely to be incorporated by a legislative instrument where that document is necessary to interpret, apply or otherwise use that instrument. Where an instrument incorporates a document by reference, the explanatory statement to the instrument should:

- describe the document;
- indicate the manner in which the document has been incorporated (that is, as in force at a particular date, or as in force from time to time);
- identify the legislative authority to incorporate documents as in force from time to time (if applicable);
- indicate how the document may be obtained; and
- indicate where the document may be freely accessed and used by members of the public.

Free access

All documents incorporated by reference should be available free of charge to all persons affected by or interested in the law. Where an instrument incorporates a document, the explanatory statement should identify where the document is freely available. This may be by:

- identifying a website where the document may be viewed or downloaded free of charge;
- noting that the document may be accessed free of charge at specified public libraries; or
- noting that the instrument may be made available for viewing at specified offices (e.g. departmental or agency offices).

Free use

Legislative instruments or any incorporated documents should not be subject to copyright because it may inhibit the capacity of people to access and use the law. However, if it is considered necessary for copyright to apply to an instrument or incorporated document, the committee expects that every person interested in or affected by the law should be able to readily and freely access and use its full terms, without the risk of breaching copyright. Accordingly, the explanatory statement to the instrument should address the following matters:

- why it is considered necessary to use copyrighted material in a legislative instrument or incorporated document;
- how the use of copyrighted material may impact individuals' ability to access the terms of the law; and
- whether any alternative approaches were considered that do not require copyrighted material to be reproduced in the instrument or incorporated documents.

Explanatory statement checklist

The following checklist summarises the types of information which should be included in an explanatory statement.

- Incorporation of documents** Where an instrument incorporates a document, the explanatory statement should:
 - describe the document;
 - identify the manner of incorporation (at a fixed date, or as in force from time to time);
 - identify the legislative authority for incorporating documents from time to time (if applicable);
 - indicate how the document may be obtained; and
 - indicate where the document may be freely accessed and used by members of the public.
- Free access** The explanatory statement should explain whether the document can accessed free of charge at certain public libraries or be made available for viewing at specified offices.
- Free use** If the instrument or any incorporated document is subject to copyright, the explanatory statement should explain the necessity of using copyrighted material in an instrument, how this could impact individuals, and any alternative approaches that were considered.