



Standing order 23(4): Matters of interest to the Senate

Overview

Senate standing order 23(4) requires the committee to scrutinise each instrument to determine whether the Senate's attention should be drawn to it on the ground that it raises significant issues, or otherwise gives rise to issues that are likely to be of interest to the Senate. The matters raised by the committee under standing order 23(4) will necessarily vary depending on the committee's most significant concerns; however, the committee is likely to raise instruments which:

- set out significant elements of a regulatory scheme;
- have a significant, negative impact on personal rights and liberties;
- are made pursuant to a Henry VIII clause in primary legislation;
- contain significant policy matters; or
- specify Commonwealth expenditure.

Where the committee considers that an instrument engages standing order 23(4), the committee will draw the Senate's attention to the instrument by one or more of the following means:

- highlighting the instrument in the *Delegated Legislation Monitor*;
- citing the instrument in a statement in the Senate chamber;
- writing to the relevant legislation committee or joint committee to alert that committee to the instrument.

The committee may also write to the responsible minister to advise the minister of its views.

Significant elements of a regulatory scheme

Significant elements of a regulatory scheme should ordinarily be included in primary legislation, rather than delegated legislation, due to the additional level of parliamentary scrutiny attached to the legislative process for primary legislation. Significant elements may include:

- key definitions central to the operation of the regulatory scheme;
- principles underpinning the scope and exercise of discretionary powers;
- the availability of independent review of administrative decisions made under the scheme;
- safeguards to protect against undue trespass on personal rights and liberties in the administration of the scheme; and
- significant penalties for regulatory breaches.

Depending on the significance of the matters contained in the instrument, the committee may raise scrutiny concerns about the instrument under scrutiny principle (j), '[matters more appropriate for parliamentary enactment](#)', and draw it to the Senate's attention under standing order 23(4).

Significant trespass on personal rights and liberties

Matters which have a significant impact on personal rights and liberties are more appropriately enacted via primary legislation rather than delegated legislation, due to the additional level of parliamentary scrutiny attached to the legislative process for primary legislation. Such matters may include:

- coercive powers;
- disclosure of personal information; and
- abrogation of the privilege against self-incrimination.

Further information about the committee's approach to scrutinising instruments which contain such matters is included in the guidance note on principle (h), ['personal rights and liberties'](#).

Instruments made pursuant to Henry VIII clauses

Henry VIII clauses are provisions in primary legislation which authorise delegated legislation to amend primary legislation. Such clauses raise significant scrutiny concerns, because they reduce the level of parliamentary oversight over primary legislation, and may subvert the appropriate relationship between the Parliament and the executive. Accordingly, the committee will raise instruments made pursuant to Henry VIII clauses under standing order 23(4).

Commonwealth expenditure

Noting the importance of ensuring appropriate parliamentary oversight of the expenditure of public money, the committee will raise instruments which specify Commonwealth expenditure under Senate standing order 23(4), by:

- highlighting the instrument in Chapter 3 of the *Delegated Legislation Monitor*; and
- writing to the relevant legislation committee to alert that committee to the instrument.

Further information about the committee's expectations regarding such instruments is contained in its guidance note, ['Scrutiny of Commonwealth expenditure'](#).

Significant policy matters

Whether a matter in delegated legislation constitutes a 'significant policy matter' will depend on a variety of factors, including the nature and purpose of the specific instrument and the legislative framework in which it operates. The following features may indicate that an instrument contains significant policy matters:

- primary focus on non-technical matters;
- matters significantly affecting the public interest; and
- issues of national significance.

This section will be updated as required to reflect any developments in the committee's approach to this aspect of standing order 23(4), including relevant examples.