



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 attention of the Senate should be drawn to the instrument 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 instruments raised by the committee under standing order 23(4) will necessarily vary; however, the committee may raise instruments which:

- set out significant elements of a regulatory scheme;
- have a significant, negative impact on personal rights and liberties;
- amend 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 Senate 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 guideline on [principle \(h\) – personal rights and liberties](#).

Instruments which amend primary legislation

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 which amend primary legislation 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 the *Delegated Legislation Monitor*; and
- writing to relevant Senate committees to alert those committee to the instrument.

Further information about the committee's expectations regarding such instruments is contained in the guideline on [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. An instrument may contain significant policy matters where:

- it is made under a framework bill that leaves the scope and details of a regulatory scheme to be set out in delegated legislation;
- it includes matters significantly affecting the public interest; or
- it relates to issues of national significance.