



## STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

# Guideline on instruments that amend or repeal other instruments

### Purpose

This guideline provides a brief outline of the Senate Standing Committee on Regulations and Ordinances' expectations in relation to explanatory statements (ES) accompanying legislative instruments that amend or repeal another instrument.<sup>1</sup>

### Background

Some Acts of Parliament, as well as empowering a relevant person to make an instrument, expressly provide that the instrument-maker may amend or repeal the instrument.

However, where the enabling legislation does not expressly confer a power to amend or repeal an instrument, subsection 33(3) of the *Acts Interpretation Act 1901* will apply. Subsection 33(3) provides that the power to make a legislative instrument 'shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument'.

### The committee's expectations

When an instrument repeals or amends another instrument and there is no express power in the enabling legislation to do so, the committee considers, in the interests of promoting clarity for users, that the ES should identify that the instrument-making power includes the power set out in subsection 33(3) of the *Acts Interpretation Act 1901*.

If, on the other hand, the enabling legislation expressly confers a power to amend or repeal the instrument, this should be referenced in the ES.

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<sup>1</sup> In such cases, terminology may vary: amend may also be described as 'vary', and repeal as 'revoke' or 'rescind'. The legal effect of these terms is essentially the same and all are covered by subsection 33(3) of the *Acts Interpretation Act 1901*.

### **Example of a form of words to be included in Explanatory Statements**

The committee provides the following example of a form of words which may be included in an ES where subsection 33(3) of the *Acts Interpretation Act 1901* applies:

In addition to the power to make this instrument under [section x of the xx Act], subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

### **Further information**

For further information please see Senate Standing Committee on Regulations and Ordinances, [Delegated legislation monitors](#) and in particular *Delegated legislation monitor 8 of 2013*, p. 511 and Appendix 3.

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