



Senate Standing Committee on Regulations and Ordinances Delegated Legislation Monitor Tabling Statement Wednesday 16 October 2019

I rise to speak to the tabling of the Regulations and Ordinances Committee's *Delegated Legislation Monitor 7 of 2019*.

As Senators will be aware, the committee has resolved to draw the Senate's attention to its most significant scrutiny concerns, and to comment substantively on these concerns in Chapter 1 of its *Delegated Legislation Monitor*.

In the current Monitor, the committee seeks to draw the Senate's attention to the Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019.

The instrument sets out criteria that must be satisfied before an approved aged care provider may use physical or chemical restraints in relation to a person in their care, and imposes limits on how such restraints may be used.

Under scrutiny committee principle (d), the committee must scrutinise each legislative instrument to ensure that it does not contain matters more appropriate for parliamentary enactment.

In the committee's view, the regulation of physical and chemical restraints has the capacity to significantly affect the personal rights and liberties of people in aged care.

The committee has therefore twice sought the minister's advice about the necessity and appropriateness of including these matters in delegated legislation, rather than primary legislation.

A copy of the minister's correspondence is available on the committee's website. In summary, the minister has advised that "the need to act in a swift and agile manner to protect vulnerable, older Australians is best achieved by setting out these matters in delegated legislation".

While the use of delegated legislation may enable the government to act promptly to protect vulnerable people, the committee is concerned that this approach may also allow such protections to be watered down or removed without full parliamentary oversight, and associated consultation processes.

Consequently, the committee considers that these principles, or at least the core principles governing the use of restraints, should be set out in primary legislation, rather than delegated legislation.

The committee initially placed a 'protective' notice of motion to disallow the instrument on 16 September, to provide it with adequate time to consider the minister's advice.

The committee has since resolved to keep this notice in place, to highlight its significant scrutiny concerns and to give the Senate additional time to consider this matter.

More broadly, I take this opportunity to reiterate the committee's general view that matters with a potentially significant impact on personal rights and liberties, whether positive or negative, should be included in primary legislation, rather than delegated legislation.

With these comments, I commend the committee's *Delegated Legislation Monitor 7 of 2019* to the Senate.