



## **Senate Standing Committee on Regulations and Ordinances Delegated Legislation Monitor Tabling Statement Wednesday 27 November 2019**

As Chair of the Standing Committee on Regulations and Ordinances I rise to speak to the tabling of the committee's *Delegated Legislation Monitor 9 of 2019*.

In particular, I wish to highlight the committee's comments in Chapter 1 of the Monitor regarding the Quality of Care (Minimising the Use of Restraints) Principles 2019.

The instrument amends the Quality of Care Principles 2014 to regulate the use of physical and chemical restraint by approved aged care providers.

Between July and September 2019, the committee engaged in written correspondence with the minister about the appropriateness of including matters with a potentially significant impact on the rights and interests of people in residential aged care in delegated legislation, rather than primary legislation.

The committee placed a 'protective' notice of motion to disallow the instrument on 16 September 2019, to provide it with sufficient time to consider the minister's advice before the disallowance period expired.

Whilst noting the minister's advice, the committee remained concerned that there was an insufficient justification for regulating the use of physical and chemical restraints in aged care via delegated legislation, rather than primary legislation.

Consequently, the committee drew the instrument to the attention of the Senate in Chapter 1 of *Delegated Legislation Monitor 7 of 2019*, and resolved to keep the notice of motion to disallow the instrument in place to provide the Senate with additional time to consider the matter.

Since that time, I am pleased to advise senators that the minister has met with the committee to discuss the committee's scrutiny concerns regarding the instrument. After giving further consideration to these matters, the minister undertook to amend the Quality of Care Principles 2014 to provide for a review of the operation of the provisions inserted by the instrument after 12 months, and to repeal the provisions after two years. On 25 November, an instrument to implement the minister's undertaking was registered on the Federal Register of Legislation.

In light of the implementation of the minister's undertaking, the committee has resolved to withdraw the notice of motion to disallow the instrument.

On behalf of the committee, I thank the minister for his constructive engagement with the committee regarding its scrutiny concerns, and note that this approach sets a positive precedent for the future.

I would also like to take this opportunity to explain that the amendments to the standing orders agreed to earlier today implemented the unanimous recommendations of the committee's report of its 2019 inquiry into parliamentary scrutiny of delegated legislation.

The committee is one of the Senate's oldest and most respected committees. It was established in 1932 and has always operated as a technical, non-partisan scrutiny committee.

The committee is responsible for ensuring, on behalf of the Senate, that executive-made law complies with the fundamental principles of parliamentary supremacy and

the rule of law. These same principles underpin the changes to the committee's standing orders which:

- modernise the previous standing orders;
- clarify the standing orders to reflect existing committee practice; and
- promote consistency with the approaches of other Senate standing committees, and the work of scrutiny committees in other Westminster jurisdictions.

Before today, the committee's scrutiny principles had not been substantively amended since the committee's establishment. On 31 July the committee agreed to lodge the notice of motion to amend the standing orders, while providing for it to be considered this month to allow the Senate time to consider the proposed changes in detail before it was considered on the floor of the chamber.

In relation to the recommendations of the committee's 2019 inquiry report more generally, I note that on 8 November the Government responded to the committee's report, addressing only the recommendations it considered to be relevant to the Government and not the recommendations that are reflected in the proposed amendments to the standing orders. I note that the Government response was presented out of sitting and the committee was not notified of its presentation.

As Chair I consider it my duty to act on the committee's unanimous recommendations to ensure that it can continue to uphold and promote the principles of parliamentary supremacy and the rule of law for the next 90 years.

With these comments, I commend the committee's *Delegated Legislation Monitor 9 of 2019* to the Senate.