Senate Standing Committee on Legal and Constitutional Affairs (Legislation Committee)

Federal Circuit and Family Court of Australia Bill 2019 [Provisions] and Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2019 [Provisions]

Attorney-General's Department

Hearing date: 06 November 2020

Hansard page: 21

Question type: **Spoken**

Kim Carr **asked the following question:**

Senator KIM CARR: I just want to clarify something. Those regulations—93 of the merged bill—would all be disallowable, wouldn't they?

Mr Gifford: I believe that is the case.

CHAIR: That's true of all regulations, Senator Carr.

Senator KIM CARR: Do you want to take it on notice to confirm it? Can we just double-check that?

Mr Gifford: We'll take it on notice and confirm that.

The response to the senator's question is as follows:

The *Legislation Act 2003* (Legislation Act) provides that all new legislative instruments (including regulations) are subject to disallowance by either House of Parliament for a set period, unless they are exempted from disallowance. Legislative instruments may be exempted from the disallowance process by the Legislation Act, a regulation made under section 44 of that Act, or by the relevant enabling legislation.

Subclause 9(3) of the Federal Circuit and Family Court of Australia Bill 2019 provides that the regulations may prescribe a minimum number of Judges for the FCFC (Division 1). The regulations made under subclause 9(3) are not exempted from the disallowance process. As such, they may be disallowed in accordance with the procedure outlined in section 42 of the Legislation Act.

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Lidia Thorpe **asked the following question:**

Senator THORPE: More specifically, has there been any consultation with Aboriginal and Torres Strait Islander communities about the changes in these bills?

Mr Gifford: I would have to take that on notice, just to check that, but I believe our consultation to date has largely been through the peaks—through the ATSILSs.

The response to the senator's question is as follows:

As referred to during the department's appearance before the Committee on 6 November 2020, Aboriginal and Torres Strait Islander communities were consulted about the Government's proposed structural reforms to the federal family law courts through discussions with the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) as the national peak body for Aboriginal and Torres Strait Islander Legal Services.

The Attorney-General, the Hon Christian Porter MP, wrote to Ms Cheryl Axleby and Mr Wayne Muir in their capacity as co-chairs of NATSILS on 30 May 2018 to outline the proposed changes as they were in the initial iteration of the court reform proposal.

The department hosted a teleconference with stakeholders, including representatives from NATSILS, to discuss the reforms on 30 May 2018.

Further consultations occurred prior to and during meetings between the department and NATSILS on 16 October 2018, 15 August 2019, 3 December 2019, and 23 March 2020.

The Attorney-General conducted a roundtable consultation with stakeholders, including a representative from NATSILS, about the proposed structural reforms on 10 October 2019.

The Aboriginal & Torres Strait Islander Legal Service (QLD) Ltd and the Top End Women's Legal Service Inc. made submissions to the Committee's inquiry into the Federal Circuit and Family Court of Australia Bill 2018, Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018. NATSILS and the

National Aboriginal Community Controlled Health Organisation made submissions to the Committee's current inquiry into the Federal Circuit and Family Court of Australia Bill 2019 and Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2019. All submissions were considered by the department.