

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

CHAIR'S TABLING STATEMENT

WEDNESDAY 13 NOVEMBER 2019

I rise to present the report of the Parliamentary Joint Committee on Human Rights into the Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019.

I was honoured last month to be elected Chair of the Parliamentary Joint Committee on Human Rights.

As senators no doubt know, the mandate of this important committee is to examine all bills and legislative instruments that come before either House of the Parliament for compatibility with Australia's human rights obligations under the seven international human rights treaties ratified by Australia, and to report to both Houses of the Parliament on that issue.

The committee's work is focused on prevention and education with regard to human rights compatibility. As such, the committee seeks to determine the risk that legislation may be applied in ways that could breach human rights and to suggest avenues and safeguards for addressing areas of concern.

As part of this mandate, on 29 July 2019, the committee resolved to conduct an inquiry into the Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019. This legislative instrument

seeks to minimise the use of physical and chemical restraints in residential aged care facilities.

The use of physical and chemical restraints, without consent, raises significant human rights concerns, including in relation to the absolute prohibition on cruel, inhuman or degrading treatment or punishment; the rights to health, privacy and liberty; the right to equality and non-discrimination; and the rights of persons with disabilities.

The committee has examined this instrument in detail, including holding a public hearing and receiving a number of submissions from experts, advocates, the aged care sector and the Department of Health. The committee strongly supports the instrument's intention to seek to minimise the use of physical and chemical restraint by approved providers in the aged care setting, noting that under international human rights law Australia is under an obligation to take steps to reduce and eliminate such practices.

After reviewing all the evidence, the majority committee report has concluded that while, on the face of it, the instrument appears to engage and limit a number of human rights, existing state and territory laws continue to apply to regulate the use of restraints. As these other laws continue to apply, the committee report has concluded that this instrument, by further regulating approved providers, does not directly limit human rights.

Nonetheless, the instrument appears to have created widespread confusion around the legal obligations of approved providers. In particular, there appears to be confusion around the issue of consent, which is particularly concerning given the evidence recently noted in the interim report of the Royal Commission into Aged Care Quality and Safety regarding the over-prescription of psychotropic medication and poor practice regarding consent.

Considering the evidence presented to our inquiry, the committee is concerned that this confusion may have also led to confusion about the permissibility of the administration of both physical and chemical restraints being used in residential aged care facilities without informed consent, and without first exhausting all alternatives. As such, in practice this may limit a number of human rights.

The majority of the committee has therefore recommended that the instrument and explanatory materials be amended to clarify that other laws continue to prohibit the use of restraint without informed consent and that the Minister should undertake extensive consultation with relevant stakeholders to work towards further strengthening the regulation of restraints.

The majority report has taken this approach, rather than seeking to recommend that the instrument be disallowed, as to disallow the instrument would result in an absence of federal regulation of the

use of physical and chemical restraints. An absence of any express federal regulation would be a major backward step and also not send an appropriate message to the aged care sector. For this reason, the majority of the committee strongly takes issue with any attempt to disallow this instrument which we believe is irresponsible and may lead to unintended consequences. In this regard, I welcome the Minister for Health's quick response to the interim report of the Royal Commission into Aged Care Quality and Safety, and particularly his recognition of the need to take further steps in relation to the regulation of the use of chemical restraints.

I encourage my fellow senators, the Government and others to examine the committee's report, and with these comments, I commend the committee's report into the Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019 to the Senate.