



Senate Standing Committee on Regulations and Ordinances Delegated Legislation Monitor Tabling Statement Wednesday 31 July 2019

I rise to speak to the tabling of the Regulations and Ordinances Committee's *Delegated Legislation Monitor 4 of 2019*.

Having reviewed its past practices, the committee has resolved to take a stronger, more targeted approach to its work, to ensure effective parliamentary oversight and control of delegated legislation. This includes using the disallowance process to highlight and prosecute the committee's more significant scrutiny concerns.

In the current Monitor, the committee seeks to draw the Senate's particular attention to two instruments. The committee has sought advice from the relevant minister in relation to each of these instruments on two occasions. Despite the advice of the ministers, the committee continues to hold significant scrutiny concerns. The committee's views on these matters are supported by independent, expert legal advice.

The first instrument is the Immigration (Guardianship of Children) Regulations 2018. This instrument sets out principles which the minister must observe when deciding whether to direct that a non-citizen child is to become the minister's ward. It specifies, for example, that a direction must not be given unless it is necessary to protect the child from 'moral danger', to give the child the benefit of adequate direction and guidance, or for any other reasons that the minister, or their delegate, considers to be in the interests of the child.

The committee considers that these are significant matters with the potential to affect the personal rights and liberties of non-citizen children. Consequently, it is the committee's view that these matters should be included in an Act of Parliament, rather than left to delegated legislation or non-statutory policy guidelines.

The second instrument is the Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018. The instrument appears to incorporate external documents as in force from time to time, without the legal authority to incorporate documents in that manner. Consequently, the committee has serious scrutiny concerns that the instrument does not accord with the legal requirements for making delegated legislation. Once again, the committee's views are supported by independent, expert legal advice.

The committee has resolved to place notices of motions to disallow these instruments, to emphasise the committee's concerns and to give the Senate additional time to consider these matters.

With these comments, I commend the committee's *Delegated Legislation Monitor 4 of 2019* to the Senate.