



Senate Standing Committee on Regulations and Ordinances Delegated Legislation Monitor Tabling Statement Wednesday 13 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 8 of 2019*.

In particular, I wish to highlight the committee's comments in Chapter 1 of the Monitor regarding the Immigration (Guardianship of Children) Regulations 2018.

The regulations set out the principles which the minister must observe when deciding whether to direct that a non-citizen child is to become the minister's ward.

In *Delegated Legislation Monitor 4 of 2019*, the committee expressed concern that the regulations contain significant matters with the potential to affect the personal rights and liberties of non-citizen children. In the committee's view, such matters are more appropriate for inclusion in an Act of Parliament, rather than delegated legislation or non-statutory guidelines.

In light of the committee's concerns, the committee resolved to place a notice of motion to disallow the instrument, to give the Senate additional time to further consider these matters.

The committee has since had the opportunity to receive a private briefing from senior officials of the Department of Home Affairs about the regulations. This provided committee members with a valuable opportunity to ask further questions about the nature of the regulations and the manner in which they were made.

Following that briefing, the committee wrote to the Minister for Immigration to request a review of the regulations, and the regulation-making powers in the enabling Act, with a particular focus on the following two key issues:

1. whether the matters provided for in the regulations have the potential to affect personal rights and liberties or other significant matters such that they are more appropriate for parliamentary enactment, and
2. whether the manner in which the regulations are drafted is consistent with the intention of the enabling Act.

I am pleased to inform the chamber that the minister has now agreed to the committee's request to conduct such a review.

In light of the minister's undertaking, the committee has resolved to withdraw the notice of motion to disallow the instrument. The committee will continue to monitor the minister's undertaking to ensure that it is implemented.

I take this opportunity to thank the minister and departmental officers for their willingness to engage constructively with the committee regarding its scrutiny concerns.

The satisfactory resolution of this matter provides a model for how ministers and agencies can engage with the committee in the future, to ensure that delegated legislation is made in a manner which complies with the principles of parliamentary oversight.

With these comments, I commend the committee's *Delegated Legislation Monitor 8 of 2019* to the Senate.