



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: PuLC/EEvk: 1645873

27 February 2019

Senate Standing Committee on Regulations and Ordinances
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: regords.sen@aph.gov.au

Dear Committee Secretary,

Inquiry into Parliamentary Scrutiny of Delegated Legislation

Thank you for the opportunity to provide a submission. The views of the Law Society of NSW are informed by its Public Law Committee.

We write to endorse the submission dated 24 January 2019, made by Professor Gabrielle Appleby, Emeritus Professor Mark Aronson and Dr Janine Boughey, Faculty of Law, University of New South Wales ("the UNSW submission").

We support all of the recommendations made in the UNSW submission.

In particular, we reiterate the views set out in the UNSW submission in respect of the prevalence of the modern practice of skeleton Acts, resulting in delegated legislation that contain significant matters of policy and substance.

Given that delegated legislation now commonly deals with matters of policy and substance, the Law Society particularly agrees with the recommendation that the role of relevant Parliamentary scrutiny committees should be adjusted to accommodate current practice. In addition to the recommendations made in the UNSW submission in respect of legislative instruments that have a significant and immediate impact on the legal rights, interests or obligations of individuals, companies or industries, the Law Society recommends that such instruments should be reviewed against:

1. the seven core human rights treaties, as defined by the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), and
2. common law rights including the presumption of innocence, legal professional privilege and the privilege against self-incrimination.

Thank you once again for your attention.

Yours sincerely

Elizabeth Espinosa
President

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