The Hon Greg Hunt MP
Minister for Health and Aged Care

Ref No: MS21-000801

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
Parliament House
CANBERRA ACT 2600

22 JUN 2021

Dear Senator

Thank you for your correspondence on behalf of the Senate Standing Committee for the Scrutiny of Bills concerning the Aged Care and Other Amendments Aged Care and Other Legislation Amendment (Royal Commission Response No. 1) Bill 2021 (Royal Commission Response Bill No.1). I have responded to the issues raised in the Committee's Scrutiny Digest (Number 8), dated 16 June 2021, below.

Use of restrictive practices
The Royal Commission Response Bill No.1 provides that a restrictive practice in relation to a care recipient is any practice or intervention that has the effect of restraining the rights or freedom of movement of the care recipient. This directly responds to the recommendations made by the independent review of legislative provisions governing the use of restraint in residential aged care undertaken in 2020.

These amendments also align with the intent of recommendation 17 of the Royal Commission into Aged Care Quality and Safety (Royal Commission) final report that further legislative amendments be made in aged care line following the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability to ensure that the treatment of people receiving aged services is consistent with the treatment of other members in the community.

The Royal Commission Response Bill No.1 sets the limited circumstances in which a restrictive practice can be used and strengthens the responsibilities of approved providers of residential aged care (approved providers) in relation to the use of these restrictive practices.

The Royal Commission Response Bill No.1 identifies the use of a restrictive practice as a last resort to prevent harm to the care recipient or other persons. A restrictive practice may only be used following the approved provider's consideration of the likely impact of the use of the practice on the care recipient and only used in the least restrictive form and for the shortest time possible.

Additionally, approved providers are required to consider and use alternative strategies before the restrictive practice is used and must obtain informed consent for the use of the restrictive practice. These requirements ensure that the use of restrictive practice is a proportionate response to the circumstances of a particular care recipient and ensure the rights of the care recipient are given primary consideration and protection.

The Royal Commission Response Bill No.1 also requires that any use of a restrictive practice needs to be consistent with the *User Rights Principles 2014*, and appropriately enables the *Quality of Care Principles 2014* to provide detail on the requirements and define when a practice or intervention is a restrictive practice in relation to a care recipient. This will enable unforeseen risks, concerns, omissions and emerging trends to be addressed, aligns with community expectations in relation to restrictive practices and is the key aim of regulating restrictive practices, which is to protect older Australians from use of such practices.

The exposure draft of the principles, the Aged Care Legislation Amendment (Royal Commission Response No. 1) Principles 2021 is now publicly available on the Department of Health's website and should be read in conjunction with the Royal Commission Response Bill No.1. The proposed principles are a disallowable instrument and also subject to scrutiny through parliamentary processes.

As part of broader legislative reform in response to the Royal Commission the restrictive practice requirements will also be considered in drafting the new aged care act as recommended by the Royal Commission.

Emergency use of restrictive practices
The term 'emergency' in new subsection 54-10(2) is not expressly defined, and therefore has its ordinary meaning. In aged care the scope of emergency situations can be quite broad and adopting a prescriptive definition is likely to result in unintended consequences and may exclude situations of genuine emergency. This could foreseeably have the impact of placing the safety, health and wellbeing of care recipients and others at risk.

An emergency situation only applies while there is an immediate risk or harm to a care recipient or other person. Once this risk has ceased the emergency situation has passed. Emergencies are not intended to last for long periods of time and are not a mechanism for approved providers to justify the continuous use of a restrictive practice.

If a restrictive practice is required after the immediate risk of harm has passed, this would be considered ongoing use and is not subject to emergency exemption. Additionally, ongoing use of a restraint requires informed consent prior to its use.

The proposed amendments to the *Quality of Care Principles 2014* detail the responsibilities that must be met following the emergency use of restrictive practices. This includes:

- informing the restrictive practices substitute decision maker about the use of the restrictive practice, if the care recipient lacked capacity to consent to the use of the restrictive practice
- documenting the reasons for the restrictive practice and the alternative strategies that were considered or used prior.

These responsibilities must be met as soon as practicable after the restrictive practice starts to be used.

Approved providers should be actively engaged in care recipients' behaviour support planning, which should significantly reduce the occurrence of emergencies. Approved providers must consider and manage triggers for care recipients' behaviour to prevent an emergency in the care planning for care recipients.

In practice, the Aged Care Quality and Safety Commission will be able to question the circumstances in which emergency use of a restrictive practice was activated and, its oversight of restrictive practices is being strengthened through the appointment of a Senior Practitioner. Additionally, the Royal Commission Response Bill No.1 expands the Commission's powers with the ability to impose civil penalties where an approved provider is not meeting its restrictive practice obligations.

Thank you for writing on this matter.

Yours sincerely

Greg Hunt

cc: Minister for Senior Australians and Aged Care Services, Senator the Hon Richard Colbeck

THE HON ANGUS TAYLOR MP
MINISTER FOR ENERGY AND EMISSIONS REDUCTION

MS21-000894

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Dear Senator Polley

Thank you for your correspondence of 16 June 2021 on behalf of the Senate Committee for the Scrutiny of Bills regarding the Fuel Security Bill 2021. Please find below comments in response to the Committee's request for advice.

The Committee has sought advice on the following two questions:

- *why it is considered necessary and appropriate to leave significant matters related to the requirements of the minimum stockholding obligation to delegated legislation*

- *whether the bill can be amended to include at least high-level guidance regarding these matters on the face of the primary legislation*

The Fuel Security Bill 2021 establishes two important measures that aim to improve Australia's national fuel security into the future: the Fuel Security Services Payment (FSSP) and the minimum stockholding obligation (MSO).

Australia's fuel market is susceptible to global events, international oil conditions, as well as natural disasters and market disruptions that can directly impact Australia's fuel security. As the global reliance on liquid fuels is dynamic, fluctuating as result of major events such as the COVID-19 pandemic, the liquid fuel market in Australia and the policy settings in this legislation must also be able to withstand an evolving security environment.

The Bill strikes a balance between setting policy parameters in the primary legislation and giving sufficient flexibility in subordinate legislation. This balance will allow the Government to quickly respond to emerging shifts in the global and domestic fuel markets to protect our national security.

Notwithstanding the requirement to maintain this administrative flexibility, I am of the view this Bill provides an appropriate level of clarity to industry and the public about its measures.

Holding stocks of diesel, gasoline and jet fuel is crucial to addressing future fuel security challenges. At times of a threat or disruption, the release of MSO fuel to the market may be needed depending on the specific situation at the time and this flexibility has been built into the policy.

The Bill sets out a clear framework for regulated entities (importers or refiners) to become subject to the MSO and be set an MSO quantity for different fuel types. Clause 14 clearly sets out the process for the Minister to set the target cover of days for each fuel type, including with reference to Australia's international obligations.

The powers of suspension and exemption need to be flexible to deal with security issues as they emerge. The powers must also be able to address any unintended competition impacts. This flexibility will ensure that the exemption process can work effectively, for example, by ensuring an entity can be quickly exempt without needing to amend the primary legislation.

The detail around these provisions are being developed in consultation with industry. Any necessary legislative rules on these matters are disallowable by Parliament in accordance with the ordinary processes. Importantly, merits review is also available for key decisions.

While I note the matters raised by the Committee, I consider the Bill adequately defines the key components of the MSO framework and provides certainty of how the scheme would operate.

The Committee has also sought advice on the below question:

- *whether the bill can be amended to provide at least high-level guidance regarding how the application fee in paragraph 74(2)(c) will be calculated, including, at a minimum, a provision stating that the fee must not be such as to amount to taxation*

The application for reconsideration provision is a standard template provision that is used in a number of Commonwealth schemes. The Government does not have any plans to prescribe any fees for reconsideration of decisions and no money has been budgeted in relation to such fees. Should a future government decide to impose fees, the power in the Bill to set the fees would only allow for such fees to be a fee for service.

There are a number of legal constraints on the imposition of fees for service that would need to be met should the government wish to consider this, as well as taking into account the *Australian Government Cost Recovery Guidelines*. Because of these safeguards, I do not consider it necessary to amend the Bill to state that the fees must not be such as to amount to taxation.

The passage of this Bill before 1 July 2021 is critical. The Morrison Government has secured in-principle agreement from the Ampol refinery in Brisbane and the Viva Energy refinery in Geelong to operate until at least mid-2027. This agreement is conditional on the Bill's passage, as the temporary refinery production payment will cease on 30 June 2021. Without this Bill, it is very likely that Australia's remaining refineries will close within the next five years, leaving our country 100 per cent dependent on international oil supply chains, risking our national security.

I trust the information provided will be of assistance to the Committee.

Yours sincerely

ANGUS TAYLOR

The Hon Alan Tudge MP

Minister for Education and Youth

Ref: MS21-000724

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Dear Senator Polley Helen

Thank you for your email of 17 June 2021 regarding the Tertiary Education Quality and Standards Agency (Charges) and (Cost Recovery) Bills 2021. Below are responses to the questions posed by the Committee regarding these Bills.

TEQSA (Charges) Bill

1.153 In light of the above, the committee requests the minister's advice as to:

- *why it is considered necessary and appropriate to give the minister a broad discretionary power to provide for exemptions from the proposed registered higher education provider charge in delegated legislation.*

Response:

It is appropriate to include the capacity for exemptions, should they be necessary, in the instrument that defines the parameters of the charge. Having an exemption power in delegated legislation provides the flexibility necessary for the Government to be responsive to the needs of higher education providers, either as a whole or for particular classes of providers, and to act quickly if needed. The COVID-19 pandemic has provided numerous examples where the Government needed to respond quickly to provide targeted financial relief to particular groups. This included, for example, the waiver or refund of all of TEQSA's regulatory fees for existing higher education providers from 1 January 2020 to 31 December 2021.

Any such waiver, should it be instituted, would necessarily be consistent with the legislative intent outlined in the Bill and the Government's overarching policy framework, including the Australian Government Charging Framework. The latter requires that entities that create the demand for a regulatory function should contribute to the cost of regulation through cost recovery unless the Government has decided to fund that activity. A decision to waive collection of the annual charge for a period of time or for a particular class of higher education providers, could not be taken lightly or without careful consideration.

- *whether the bill can be amended to include at least high-level guidance on the face of the primary legislation regarding when it will be appropriate provide for such exemptions.*

Response:
The Government does not consider it is necessary to amend the bill to provide guidance on the application of a waiver provision. As outlined above, any exercise of such a power could only be done after careful consideration and consistent with the legislative intent and the Australian Government's overall cost recovery policy.

TEQSA (Cost Recovery) Bill

1.158 The committee therefore requests the minister's advice as to:

- *why it is considered necessary and appropriate to leave key aspects of the operation of the proposed Registered Higher Education Provider Charge to delegated legislation.*

Response:
The matters to be included in delegated legislation are purely administrative in nature. It is appropriate for these matters to be detailed in subordinate legislation as they will likely need to adapt over time to changing circumstances.

- *whether the bill could be amended to include at least high-level guidance on the face of the primary legislation regarding matters to be contained in the Registered Higher Education Provider Charge Guidelines.*

Response:
High-level guidance on the content of the Registered Higher Education Provider Charge Guidelines is already specifically included in the bill at Item 2, Section 26C(2). This outlines the matters that can be included in the guidelines, including the issuing of notices about charges payable, due dates for payment, extension of payment timeframes, penalties for late payment and review of decisions related to payment of the annual charge.

Thank you for the opportunity to respond to these matters. I trust the information provided is helpful.

Yours sincerely

Alan Tudge

22 / 6 / 2021