The Hon Greg Hunt MP
Minister for Health and Aged Care

Senator the Hon Richard Colbeck
Minister for Senior Australians and Aged Care Services
Minister for Sport

Senator Helen Polley
Chair
Senate Standing Committee for the Scrutiny of Bills
Suite 1.111
Parliament House
CANBERRA ACT 2600

30 NOV 2021

~~Dear Senator~~ Helen,

We refer to correspondence of 26 November 2021 on behalf of the Senate Standing Committee for the Scrutiny of Bills (Committee) regarding the Aged Care and Other Legislation Amendment (Royal Commission Response No. 2) Bill 2021 (Bill).

In relation to the Committee's commentary on the Bill in Scrutiny Digest 17 of 2021, the Committee has requested advice in relation to whether the Bill can be amended to:

- include at least-high level guidance regarding the matters to be included in the Quality of Care Principles on the face of the primary legislation, such as an inclusive list of the persons who can provide informed consent; and

- provide that the amendments made by Schedule 9 to the bill will sunset on 1 July 2023.

We would like to clarify that the justification provided in the explanatory memorandum for leaving these matters to delegated legislation is not based on a desire for administrative flexibility but rather operational necessity. We enclose additional detail on this matter.

Given the Committee's interest in the matters which will be included in the Quality of Care Principles with regard to substituted decision making, my Department would be happy to provide the Committee's secretariat with an in-confidence copy of this draft instrument. This draft instrument will contain a schedule which will repeal the arrangements established within this instrument for substituted decision making from 1 July 2023. This draft instrument will be subject to consultation and change.

In relation to the Committee's commentary on my response to the scrutiny issues raised in Scrutiny Digest 16 of 2021, the Committee has requested that we include key information from my response in an addendum to the revised explanatory memorandum for the Bill.

We agree to the Committee's request. Specifically, we will table an addendum to the revised explanatory memorandum in relation to the following:

- item 51, schedule 1 regarding the broad delegation of functions and powers under Part 2.3 of the Aged Care Act;
- item 4, schedule 2 regarding determinations that a law is an 'aged care screening law' which will not be subject to disallowance;
- item 9, schedule 3 regarding the inclusion of matters relating to the making of a code of conduct and compliance in delegated legislation; and

- item 25, schedule 3 regarding the Commissioner's power to impose specified conditions on banning orders and the civil penalties for breaches of these conditions, and the inclusion of matters relating to the contents of the register of banning orders in delegated legislation.

Thank you for writing on this matter.

Yours sincerely

Greg Hunt

Richard Colbeck

Encl (1)

ADVICE TO THE SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SCHEDULE 9 - AGED CARE AND OTHER LEGISLATION AMENDMENT (ROYAL COMMISSION RESPONSE NO. 2) BILL 2021

The Senate Standing Committee for the Scrutiny of Bills (Committee) made recommendations in relation to Schedule 9 of the Aged Care and Other Legislation Amendment (Royal Commission Response No. 2) Bill 2021 (Bill) in its *Scrutiny Digest 17 of 2021*. Schedule 9 of the Bill was inserted through government amendments agreed by the House of Representatives on 25 October 2021. Schedule 9 revises the strengthened arrangements on the use of restrictive practices in residential aged care to address unexpected outcomes in relation to the interactions between the substituted consent arrangements and State and Territory laws. Schedule 9 includes proposed new section 54-11, which provides an immunity from criminal and civil liability where the approved provider, or other persons involved, use restrictive practices on a care recipient in certain circumstances.

Proposed new subsection 54-11(2) provides that these circumstances are where informed consent to the use was given by a person or body specified in the *Quality of Care Principles 2014* (Quality of Care Principles), and the restrictive practice was used in circumstances set out in the Quality of Care Principles made for the purposes of paragraph 54-1(1)(f) of the *Aged Care Act 1997* (Aged Care Act).

As noted in the revised explanatory memorandum, the Quality of Care Principles will be amended to specify a hierarchy of persons or bodies that will be authorised to provide consent to the use of restrictive practices, where a care recipient does not have capacity to consent themselves and State and Territory laws do not otherwise authorise a person or body to consent on the care recipient's behalf.

Given that the proposed interim measures will authorise new persons and bodies to consent to restrictive practices, which would not otherwise be authorised under State and Territory laws, the immunity provision will ensure that approved providers and other relevant individuals (e.g. staff members and volunteers) will be protected from civil and criminal liability should the use be inconsistent with State and Territory laws. Therefore, the Quality of Care Principles will specify that the immunity under proposed new section 54-11 applies where consent has been provided by a person or body that has been authorised to provide consent to restrictive practices through Commonwealth laws (the Aged Care Act and the Quality of Care Principles).

The reason that proposed new paragraph 54-11(2)(a) defers to the Quality of Care Principles to specify the persons or bodies from whom consent is given, is because these persons will be specified in the hierarchy in the Quality of Care Principles (for the purposes of paragraph 54-1(1)(f) of the *Aged Care Act 1997* and proposed new subsection 54-10(1A), also to be inserted by Schedule 9 of the Bill).

As I am sure the Committee appreciates, the Government is promptly responding to a live issue to ensure that a person or body is able to decide whether to consent to the use of restrictive practices where a care recipient does not have capacity to consent themselves. The Government does not consider that it is appropriate for these matters to be specified in primary legislation as the structure that has been chosen is consistent with the existing restrictive practices framework and has the added benefit of allowing additional time and flexibility for Government to consult with key stakeholders, including aged care peak bodies and State and Territory Governments, on the finer details of the hierarchy and to ensure that there are no further unintended consequences. Given the significant issues currently faced, it should also be reiterated that the legislation must be structured to facilitate prompt responses

to unforeseen circumstances that may impact on the health, safety and well-being of care recipients and to minimise the risk of unregulated use of restrictive practices by aged care providers.

It is important to also note, that proposed new paragraph 54-11(2)(b) provides that the immunity only applies where a restrictive practice was used in alignment with *all* of the other requirements under the Quality of Care Principles. The Quality of Care Principles also require that restrictive practices must only be used as a last resort, only to the extent that is necessary, for the shortest time and in the least restrictive form, and to prevent harm to the care recipient. If restrictive practices are not used in alignment with these requirements the immunity does not apply. This ensures that aged care recipients will be protected, and that approved providers and their staff will be criminally and civilly liable for inappropriate or negligent use of restrictive practices.

As noted in the revised explanatory memorandum, the amendments to the Quality of Care Principles will also clarify some of the requirements on the use of restrictive practices to ensure the immunity arrangements apply appropriately. This includes ensuring that a restrictive practice may only be used in accordance with the consent that has been provided (including duration, frequency and intended outcome), and that chemical restraint must be used as prescribed by the medical or nurse practitioner (e.g. the type of medication, dosage and when it may be used). These amendments will further protect the health and safety of aged care recipients.

The Committee also recommends that Schedule 9 of the Bill be amended to ensure that the interim measures cease from 1 July 2023. The Government proposes to include a schedule in the amendments to the Quality of Care Principles that will repeal the interim measures from 1 July 2023, as per the Committee's recommendation.

THE HON JASON WOOD MP
ASSISTANT MINISTER FOR CUSTOMS, COMMUNITY SAFETY AND MULTICULTURAL AFFAIRS

Ref No: MS21-002795

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
Suite 1.111
Parliament House
CANBERRA ACT 2600

Dear Senator

Response to the Senate Scrutiny of Bills Committee - Scrutiny Digest 18/21 - Customs Amendment (Controlled Trials) Bill 2021

Thank you for your email dated 3 December 2021 to my Senior Adviser, inviting me to respond to comments made in the Committee's *Scrutiny Digest No.18 of 2021*, concerning the Customs Amendment (Controlled Trials) Bill 2021 (the Bill).

I would like to provide the following advice to the Committee in response to comments in the Scrutiny Digest.

The committee requests the minister's more detailed advice regarding why it is considered necessary and appropriate to leave the qualification criteria for participation in controlled trials to delegated legislation; and more detailed advice regarding whether the bill can be amended to include at least high-level guidance regarding these matters on the face of the primary legislation:

Administering the controlled trials framework in delegated legislation enables controlled trials to be undertaken with a greater degree of certainty and administered in a timely manner. Due to the short timeframes for each of the trials, it is critical to the success of the program that there is flexibility to refine those elements in a timely manner before the next phase commences.

While qualification criteria apply generically, the Australian Border Force (ABF) will also require the flexibility to update the qualification criteria as the types of trials conducted and customs practices evolve. While initial trials may be small and the qualification criteria would be basic, as the types of trials conducted evolve and become more complex, so would the base requirements for participants to ensure as much consistency as possible across the suitability of participants. Placing qualification criteria in delegated legislation provides a degree of consistency across all participants in any trial, while allowing for the fact that appropriate qualification criteria at one point would not necessarily be sufficient in later trials.

Yours sincerely

JASON WOOD

14 /12 / 2021

THE HON BEN MORTON MP
MINISTER ASSISTING THE PRIME MINISTER AND CABINET
MINISTER FOR THE PUBLIC SERVICE
SPECIAL MINISTER OF STATE

Reference: MC21-004115

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
Suite 1.111
Parliament House
CANBERRA ACT 2600
scrutiny.sen@aph.gov.au

Dear Senator

Thank you for your correspondence dated 26 November 2021 requesting further information regarding the *Electoral Legislation Amendment (Assurance of Senate Counting) Bill 2021* (the Bill).

The Government introduced the Bill in the House of Representatives on 28 October 2021. This Bill will strengthen the integrity of Australia's electoral system by increasing the transparency and assurance of Senate counting, as recommended by the Joint Standing Committee on Electoral Matters' (JSCEM) report on the conduct of the 2016 federal election.

The Bill will require the Electoral Commissioner to arrange independent assessments of the security of the computer systems and the accuracy of counting software used to scrutinise votes in a Senate election. It will also require the Electoral Commissioner to arrange for statistically significant sampling of ballot papers throughout the scrutiny.

The Bill also requires the Electoral Commissioner to publish on the Australian Electoral Commission's (AEC) website statements attesting to the completion of the security assessment, the completion and outcome of the accuracy assessment, and the methodology and outcome of the ballot sampling process, as well as the process for reconciling preferences.

These public statements by the AEC will enable appropriate public scrutiny of the security and accuracy assessments and ballot sampling process, without exposing sensitive information relating to potential security risks and vulnerabilities which could be used by malicious actors to attempt to compromise a federal election.

I therefore respectfully submit to the Committee that it would not be appropriate to amend the Bill to require assessment reports provided to the AEC to be published or tabled in the Parliament.

While this Bill does not require the tabling of these reports, the Bill also does not preclude this occurring if necessary. As such, it remains at the discretion of the Parliament as to whether these documents should be tabled in appropriate circumstances and in accordance with usual Parliamentary procedures.

I thank the Committee for its attention to these matters. I trust that this information will assist the committee in finalising its consideration of the Bill.

Yours sincerely

BEN MORTON

1 / 12 /2021

THE HON BEN MORTON MP
MINISTER ASSISTING THE PRIME MINISTER AND CABINET
MINISTER FOR THE PUBLIC SERVICE
SPECIAL MINISTER OF STATE

Reference: MC21-004114

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
Suite 1.111
Parliament House
CANBERRA ACT 2600

Dear Senator

Thank you for your correspondence dated 26 November 2021 requesting further information in relation to the *Electoral Legislation Amendment (Contingency Measures) Bill 2021* (the Bill).

The Government introduced the Bill to allow the Electoral Commissioner to make limited modifications to the *Commonwealth Electoral Act 1918* (Electoral Act) where an emergency declaration has been issued under a Commonwealth law, and the Electoral Commissioner is satisfied on reasonable grounds that the emergency would interfere with the due conduct of the election in a geographical area.

The Bill implements recommendations from the Joint Standing Committee on Electoral Matters' (JSCEM) *Report of the inquiry on the future conduct of elections operating during times of emergency situations* to ensure that the Australian Electoral Commission can successfully deliver a federal election in emergency situations.

The Bill enables the Minister to make a legislative instrument specifying further laws of the Commonwealth as a '***Commonwealth emergency law***' for the purpose of the Bill. Importantly, notwithstanding a specification of a further law through this instrument an emergency must still be declared in accordance with that law to enliven the Electoral Commissioner's modification powers in proposed section 396(2).

The legislative instrument would be subject to disallowance in accordance with the *Legislation Act 2003*, and may be disallowed by either House within a certain time after the instrument is tabled in the Parliament. Additionally, any legislative instrument made by the Minister, unless exempt from Parliamentary oversight, would be subject to scrutiny by the Senate Standing Committee for the Scrutiny of Delegated Legislation.

I also note that such an instrument would be subject to review and consideration by JSCEM which holds an inquiry into all aspects of the conduct of the election after each federal election.

As there is often great uncertainty during times of emergency situations, and noting the expiry or dissolution of Parliament shortly before a writ is issued for an election, it is necessary and appropriate to provide the Minister with a discretionary power to add further Commonwealth legislation to the definition of Commonwealth emergency law by delegated legislation to support the successful operation of federal elections in emergency situations.

The Government's view is that further guidance is not required as to the circumstances when the power in proposed subsection 396(9) should be exercised, noting that such specification would only be effective for Commonwealth laws that enable the declaration of an emergency and that this legislative instrument will be subject to Parliamentary scrutiny.

The use of delegated legislation in this instance ensures a timely response to unforeseen emergency situations so that Australians can exercise their franchise. As such, I consider it appropriate for delegated legislation to modify the operation of this Bill.

Thank you again for writing. I trust that this information will assist you in finalising your consideration of the Bill.

Yours sincerely

BEN MORTON

1 / 12 / 2021

THE HON ALEX HAWKE MP
MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND MULTICULTURAL AFFAIRS

Ref No: MC21-053793

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
scrutiny.sen@aph.gov.au.

Dear Senator

I refer to the correspondence of 3 December 2021 to my office from Mr Glenn Ryall, Committee Secretary, on behalf of the Senate Scrutiny of Bills Committee, regarding the Migration Amendment (Protecting Migrant Workers) Bill 2021 (the Bill).

The Bill amends the *Migration Act 1958* (the Act) to strengthen the Australian Government's ability to respond to the exploitation of migrant workers in Australia and specifically implement Recommendations 19 and 20 of the Report of the Migrant Workers' Taskforce. The Bill strengthens the regulatory framework under the Act for employers of temporary migrant workers, including (but not limited to) employers of international student visa holders and working holiday maker visa holders, who were identified by the Taskforce as particularly vulnerable to exploitation.

The Bill establishes criminal offences and associated civil penalties for a person who coerces or unduly influences or pressures a non-citizen to breach work-related visa condition/s, or to consent to exploitative working conditions to avoid being reported for fear of an adverse immigration outcome.

The Bill also provides a mechanism to prevent an employer from employing additional non-citizen workers (excluding permanent residents) where they have been found to have engaged in serious breaches of their obligations under the Migration Act or the *Fair Work Act 2009.*

In Scrutiny Digest 18 of 2021, the Committee requested advice in relation to the procedural fairness provisions associated with this measure in the Bill, and the right to a fair hearing. I am pleased to provide the Committee with additional information in response to this request, enclosed at Attachment A.

Parliament House Canberra ACT 2600

I thank the Committee for the opportunity to respond, and trust the attached response will assist the Committee in its deliberations.

Yours sincerely

ALEX HAWKE

14 / 12 / 2021

Encl: Attachment A

RESPONSE TO SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SCRUTINY DIGEST 18 OF 2021

Migration Amendment (Protecting Migrant Workers) Bill 2021

Procedural fairness-right to a fair hearing

Committee comments:

1.76 In light of the above, the committee requests the minister's advice as to why it is considered necessary and appropriate to provide that proposed Subdivision E of Division 12 of Part 2 of the *Migration Act 1958* and sections 494A and 494D of that Act, in so far as they relate to proposed Subdivision E, are taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the matters they deal with, including why the level of flexibility traditionally applied by the courts in relation to natural justice is not sufficient in this instance.

Response:

The Migration Amendment (Protecting Migrant Workers) Bill 2021 has been introduced to give effect to the Government's response to recommendations made by the Migrant Workers' Taskforce. The amendments in the Bill will strengthen the legislative framework in the *Migration Act 1958* (the Migration Act) to protect non-citizen workers from unscrupulous practices in the workplace.

The amendments in Part 2 of the Schedule to the Bill will insert new Subdivision E at the end of Division 12 of Part 2 of the Migration Act. New Subdivision E establishes a power for the Minister to declare a person to be a prohibited employer. A person can only be declared a prohibited employer if they are subject to a 'migrant worker sanction' - that is, where they are:

- convicted of a work-related offence under the Migration Act;
- the subject of a court order for contravention of either a work-related provision of the Migration Act, or certain remuneration-related civil remedy provisions of the *Fair Work Act 2009;* or
- the subject of a bar, as an approved work sponsor, under the Migration Act's Sponsorship Framework.

Given the consequences of being declared a prohibited employer, it is appropriate that new Subdivision E includes provisions to ensure that procedural fairness is afforded consistently in all cases.

New Subdivision E balances the rights and interests of the person being considered for declaration as a prohibited employer (including the right to be heard before a declaration is made) and the need to ensure serious matters concerning the mistreatment of migrant workers are dealt with promptly. The statutory processes in Subdivision E do not abrogate the affected person's access to procedural fairness

and a fair hearing. Instead, Subdivision E - and particularly new sections 245AYG and 245AYK - will guarantee that when a person is being considered for declaration as a prohibited employer, standard processes will be followed, and standard timeframes will apply.

If a person is being considered for declaration as a prohibited employer, new section 245AYG will require the Minister to give that person written notice that the Minister proposes to make a declaration. This notice must include the reasons for the proposed declaration. Section 245AYG does not seek to exclude the disclosure of adverse information from this requirement, where it is necessary to assure fairness to the affected person.

Section 245AYG also requires the Minister to invite the person to make a written submission, setting out reasons why the Minister should not make the declaration. The provision sets a minimum period of 28 days for the affected person to respond, and flexibility for the Minister to specify a longer period. This ensures that the affected person has an opportunity, and a reasonable period of time, to consider and respond to the Minister. Section 245AYG clearly establishes a requirement for the Minister to consider any written submission made by the affected person under this section.

The inclusion of new section 245AYK is appropriate and necessary as part of this framework to support section 245AYG. New section 245AYK is modelled on existing provisions in the Migration Act, such as sections 51A, 97A and 118A, which support similar statutory procedural fairness processes. More broadly, the inclusion of section 245AYK in Subdivision E aligns with the approach adopted in other Commonwealth Acts.

New subsection 245AYK(1) makes clear that where provisions in new Subdivision E set out processes that deal with procedural fairness, those processes must be followed. The express reference in new subsection 245AYK(2) to current sections 494A to 494D makes clear that those sections are relevant in considering how the Minister may provide documents under Subdivision E to a person or their authorised recipient, and when a person is taken to have received a document from the Minister. While sections 494A to 494D would apply in relation to new Subdivision E even without new subsection 245AYK(2), this provision puts it beyond doubt.

Relevantly, Subdivision E also provides for independent merits review through the Administrative Appeals Tribunal of a decision to make a declaration. Judicial review is also available; in which case, it would be open to the court to consider matters relating to procedural fairness and the natural justice hearing rule more broadly.

The processes in Subdivision E will ensure fairness is at the centre of any decision-making before a person is declared to be a prohibited employer, while also addressing the uncertainties that may flow from continually evolving common law conceptions of natural justice. This clarity is important for both the affected person and the decision-maker.

SENATOR THE HON LINDA REYNOLDS CSC
MINISTER FOR THE NATIONAL DISABILITY INSURANCE SCHEME
MINISTER FOR GOVERNMENT SERVICES
SENATOR FOR WESTERN AUSTRALIA

Senator Helen Polley
Chair
Senate Scrutiny ofBills Committee
Suite 1.111
Parliament House
CANBERRA ACT 2600

Dear Senator Polley

I refer to the email of 26 November 2021 from Mr Glenn Ryall concerning the Senate Standing Committee on the Scrutiny of Bills (the Committee) report on its Inquiry into the National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2021 (the Bill).

The Australian Government welcomes the Committee's report and notes the request for advice in relation to detail ofthe Participant Service Guarantee being set out in delegated legislation and whether the Bill can be amended to include high level guidance regarding matters ofconcern to the Committee.

Joint governance ofthe National Disability Insurance Scheme

The funding and governance ofthe National Disability Insurance Scheme (NDIS) is shared among the Commonwealth and all state and territory governments. Delegating certain details ofthe measures contained in the Bill to NDIS Rules ensures that state and territory governments are appropriately involved in determining the operation ofthose measures, in accordance with the consultation and agreement requirements set out in the *National Disability Insurance Scheme Act 2013* (the Act).

Section 209 of the Act prescribes requirements that must be met in order for all NDIS Rules to be made. Specifically, section 209 categorises NDIS Rules as either A, B, C or D, requiring various levels ofconsultation and agreement with states and territories. For example, Category D Rules require that the Minister consult with states and territories before making the NDIS Rules, whilst Category A Rules require unanimous agreement with all states and territories.

As set out in the explanatory memorandum to the Bill that led to the NDIS Act, the intention was that Category A Rules are those that relate to significant policy matters with financial implications for the Commonwealth and states and territories, or which interact closely with relevant state and territory laws.

Implementation of the Tune Review

It is both necessary and appropriate to implement key aspects of the Participant Service Guarantee (the Guarantee), and certain other measures contained in the Bill, through NDIS Rules. The Bill, and associated Rules, implement a number of recommendations of the 2019 Review of the Act conducted by Mr David Tune AO PSM (the Tune Review). The recommendations of the Tune review specifically included that the Guarantee and the circumstances for variations be legislated through NDIS Rules.

As the Tune Review stated (at paragraph 10.45) 'the NDIS as a system will be subject to continuous evolution. As a result, the Guarantee needs to be sufficiently flexible and responsive to prevailing circumstances as they evolve.' Accordingly significant aspects of the Guarantee are appropriately implemented through Rules.

The NDIS is still evolving, and it is crucial that the operation of certain aspects of the NDIS, such as reassessments and variations, be able to evolve in response. Prescribing certain matters in the NDIS Rules will enable changes to be made more readily, for example in response to recommendations made by the Comm onwealth Ombudsman or on the basis of operational experience or feedback on the implementation of measures contained in the Bill.

High-level guidance

As noted above, the Committee has also sought my advice whether the bill can be amended to include at least high level guidance in relation to these matters. High level guidance already exists in the Act and has been modified by the Bill to address matters raised through consultation. Section 4 of the Act already provides general principles guiding actions under the Act. Further, section 31 of the Act sets out principles relating to the plans that must be complied with so far as reasonably practicable. These overarching guiding principles will be complied with in relation to the matters identified by the Committee.

As such, the Government believes that it is not desirable nor appropriate to provide other high-level guidance in the Bill.

I trust this information clarifies matters for the Committee.

Yours sincerely

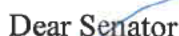
Linda Reynolds

The Hon Greg Hunt MP
Minister for Health and Aged Care

Ref No: MC21-039263

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
Suite 1.111
Parliament House
CANBERRA ACT 2600
Scrutiny.sen@aph.gov.au

29 NOV 2021

Dear Senator 

I refer to the Senate Scrutiny of Bills Committee's (Committee) request for advice in *Scrutiny Digest 17 of 2021* (Digest) in relation to Ministerial Discretion powers in the National Health Amendment (Enhancing the Pharmaceutical Benefits Scheme) Bill 2021 (Bill).

The Bill provides for the continuation of statutory price reductions to Pharmaceutical Benefits Scheme (PBS) medicines under the *National Health Act 1953* (Act) which would otherwise cease on 30 June 2022 and amends their operation to close loopholes that have enabled some medicines to avoid statutory price reductions when others in the same circumstances have taken them. The Bill also provides for new price protections and stockholding requirements for certain PBS medicines that have, in recent years, been more susceptible to global medicines shortages.

Minimum stockholding obligations

I note that the Digest states that power to amend the minimum stockholding obligation is by way of written or notifiable instrument. I respectfully submit that the proposed power to alter the minimum stockholding obligation provided at subsection 99AEKC(2) of the Bill is by way of determination by legislative instrument.

Statutory price reductions

The Bill proposes to amend existing provisions in the Act that provide the Minister with a discretion to determine that the approved ex-manufacturer price of a brand of a medicine is not to be reduced by a statutory price reduction, or is to be reduced by a lower amount than would otherwise apply, so that instead of being made by written instrument (as is the case now), they would be made by notifiable instrument. The Bill also proposes to introduce these discretions for statutory price reductions where it was previously not available (e.g. for combination flow-on statutory price reductions under section 99ACC of the Act). The Bill also proposes to continue the existing requirement that the Minister, when making such a determination, must take into account what the approved ex-manufacturer price would otherwise be if a determination were not made.

These are important powers to ensure that there is the ability to intervene in particular cases where a statutory price reduction would not be appropriate in the circumstances – such as where a statutory price reduction would result in the approved ex-manufacturer price of a an important medicine being below an amount needed for a pharmaceutical company to secure supply. Under the Act currently, these decisions are not disallowable and, for the reasons outlined below, the Bill does not propose to make them disallowable.

In response to the Committees query as to why these determinations would be made by notifiable instrument, as opposed to a legislative instrument that would be subject to disallowance, the proposed instruments do not meet the test set out in subsection 8(4) of the *Legislation Act 2003* (the Legislation Act).

Subsection 8(4) provides that an instrument is a legislative instrument if:

(a) the instrument is made under a power delegated by the Parliament; and
(b) any provision of the instrument:
    i. determines the law or alters the content of the law, rather than determining particular cases or particular circumstances in which the law, as set out in an Act or another legislative instrument or provision, is to apply, or is not to apply; and
    ii. has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or right.

Decisions to make a determination will be made on a case by case basis in relation to individual brands, or potentially small numbers of related brands, of a pharmaceutical company. In practice, consideration is given to exercising a Ministerial discretion on request from the pharmaceutical company for a brand about to take a reduction.

The proposed determinations in the Bill would merely give effect to a legislative and policy outcome that is already provided for in legislation. The determinations would not seek to determine or alter rights, but ascertain how to fulfil those rights in a given circumstance and would not determine or alter the content of the law. They would instead determine, for particular brands of PBS medicines, that the approved ex-manufacturer price should not be reduced by a statutory price reduction, or should be reduced by a lesser amount than would otherwise apply.

In deciding whether to exercise discretion for a particular brand, under both current and proposed arrangements, the Minister must consider what the approved ex-manufacturer price of the brand would otherwise be if the discretion were not exercised. This requirement is to ensure that, in deciding whether to make a determination, the Minister is aware of the impact that the statutory price reduction would otherwise have on the approved ex-manufacturer price of the brand.

Under current and proposed arrangements the Minister may also consider any other matters the Minister considers relevant. This is because consideration of requests from pharmaceutical companies to exercise Ministerial discretion can involve consideration of a broad range of matters including the impact on government expenditure on the PBS, broad issues of the sustainability of supply of PBS listed medicines, cost of goods for the medicine at the time the statutory price reduction is due to apply, and potential impacts on access to medicines by the public. In particular cases, advice on the exercise of the discretion may be referred for expert advice from the Pharmaceutical Benefits Advisory Committee due to the highly technical nature of the subject matter. The matters that are relevant to a decision to make a determination are broad and can vary significantly depending on the circumstances. The drafting of this provision is to ensure that legislation does not exclude any matters that should be relevant, or place inappropriate weight on matters that are not relevant, to a decision to make a determination in a given circumstance.

The information considered can be highly technical and includes commercially sensitive information supplied by pharmaceutical companies on the basis that it is treated confidentially.

For this and the above reasons, the determinations under the Act are not currently open to disallowance. If they were, it would risk statutory price reductions applying where important commercial and technical information that the Parliament would not be privy to would indicate that the reduction would not be appropriate – resulting in the approved ex-manufacturer prices of important medicines being reduced below an amount needed to secure supply. This could negatively impact patient access to necessary and life-saving treatments.

For these reasons, it is my view that current arrangements should be preserved and allow determinations to be made that the approved ex-manufacturer price of certain brands should not be reduced by a statutory price reduction, or should be reduced by a lesser amount than would otherwise apply, without risk that they may be disallowed.

Yours sincerely

Greg Hunt

Senator the Hon Michaelia Cash

Attorney-General
Minister for Industrial Relations
Deputy Leader of the Government in the Senate

Reference: MC21-048028

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

By email: Scrutiny.Sen@aph.gov.au

Dear Chair

I write in response to the observations of the Senate Standing Committee for the Scrutiny of Bills (the Committee) on the Religious Discrimination Bill 2021 and the Religious Discrimination (Consequential Amendments) Bill 2021 in *Scrutiny Digest 18 of 2021*.

I have considered the issues raised by the Committee and provide the attached advice in response to the Committee's observations and queries. As outlined in this attachment, I will give consideration to the best manner of updating the Explanatory Memoranda of the Bills to include further guidance on certain provisions, if it is the Committee's view that this would be useful.

I thank the Committee for its attention to these matters. I trust this information is of assistance.

Yours sincerely

Senator the Hon Michaelia Cash
20 /12/ 2021

Encl. Substantive Response to Scrutiny of Bills Committee

Perth
44 Outram Street, West Perth WA 6005
Ph 08 9226 2000

Canberra
Parliament House, Canberra ACT 2600
Ph 02 6277 7300

ATTACHMENT A

Response to observations by the Senate Standing Committee for the Scrutiny of Bills in *Scrutiny Digest 18 of 2021*

Religious Discrimination Bill 2021
Religious Discrimination (Consequential Amendments) Bill 2021

Significant matters in delegated legislation—publicly available policies

Paragraph 1.96 - The Committee requests the Attorney-General's advice as to:

- **why the requirements for certain policies relevant to the application of discrimination law, including how the policies are to be made publicly available, have been left to delegated legislation; and**
- **whether the bill could be amended to include at least high-level guidance in relation to this matter on the face of the primary legislation.**

Under clauses 7, 9 and 40, entities that wish to use certain exceptions must have a publicly available policy. The Bill provides that regulations can be made to set out requirements with which a policy must comply. The purpose of the regulation making power is to ensure that guidance can be provided if necessary to address specific concerns or issues identified by stakeholders or the community when either developing policies or accessing or using policies prepared by a religious body.

The requirements for a publicly available policy are based on the recommendations of the Religious Freedom Review. Relevantly, recommendation 5 provided that the Government should consider legislative amendments to ensure that religious schools can discriminate in relation to the employment of staff, and the engagement of contractors, in certain circumstances, provided that:

- the discrimination is founded in the precepts of the religion;
- the school has a publicly available policy outlining its position in relation to the matter and explaining how the policy will be enforced; and
- the school provides a copy of the policy in writing to employees and contractors and prospective employees and contractors.

The Government considers that these are the kinds of matters that should be addressed in a publicly available policy required under clauses 7, 9 and 40.

Noting the diversity of religious bodies that exist (including bodies that may be very small and not have a significant internet presence), the manner in which the policy is required to be made public has not been specified in the Bill. A policy may be made public through any appropriate means, such as being provided online at the point of application, or as part of a package of

relevant material associated with a job advertisement, or by a printed copy being provided to a person who requests the policy.

The requirement to have a written, publicly available policy increases certainty and transparency and ensures that prospective or existing employees as well as the general public would be able to ascertain and understand the position of a religious body in relation to the particular matter dealt with in the relevant provision of the Bill (ie employment, partnerships, or accommodation facilities).

Any guidance issued by regulations would be intended to assist religious bodies to achieve this goal.

I do not consider that amendments to the Bill are necessary to provide further guidance. However, I will give consideration to updating the Explanatory Memorandum of the Bill to include further guidance consistent with the advice I have provided above.

Significant matters in delegated legislation—overriding state or territory laws in relation to employment by religious educational institutions

Paragraph 1.99 - The Committee requests the Attorney-General's advice as to:

- **why the power to prescribe certain state and territory laws under clause 11 is left to delegated legislation; and**
- **which state or territory laws, if any, are currently intended to be prescribed within regulations made under subclause 11(3).**

Article 13(3) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the liberty of parents to choose schools for their children in conformity with their own religious and moral convictions. Article 18(4) of the International Covenant on Civil and Political Rights (ICCPR) provides that States Parties undertake to respect the liberty of parents and legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Consistent with paragraphs 73 and 74 of the Statement of Compatibility of Human Rights for this Bill, the Government has given consideration to these Articles in drafting clause 11.

The Government considers that ensuring religious schools can continue to make employment choices that maintain the religious ethos of the school enables parents of faith to confidently make choices for the education of their children. Accordingly, clause 11 would allow religious educational institutions to make employment decisions that preference people of faith, but only in the circumstance where a State or Territory law was prescribed that was inconsistent with this provision. Specifically, subclause 11(2) gives the Minister the ability to make a legislative instrument to prescribe a state or territory law that:

- prohibits discrimination on the ground of religious belief or activity (see paragraph 11(3)(a)); and

- prevents religious bodies that are educational institutions from giving preference, in good faith, to persons who hold or engage in a particular religious belief or activity when engaging in conduct described in section 19 (about employment)(see paragraph 11(3)(b)).

At the time the Religious Discrimination Bill was introduced, all jurisdictions permitted religious educational institutions to preference in employment. The purpose of clause 11 is to preserve these exemptions, as provided in state and territory laws. The Government considered that it would only be necessary to prescribe a state or territory law if a jurisdiction enacted a law that removed or limited an existing religious exception that permits religious educational institutions to preference in employment. The Government does not consider that future amendment of the Religious Discrimination Bill to insert additional laws, if any, would be an effective mechanism to provide a timely response to any future laws enacted by jurisdictions. The criteria by which the power to prescribe a state or territory law would be exercised is clearly laid out in clause 11(3) of the Bill.

With the exception of the law noted below (which had not commenced at the time of the Bill's introduction to Parliament), the Government is not aware of any state or territory law that would satisfy the criteria set out in clause 11(3) of the Bill and does not propose to prescribe any state or territory laws by delegated legislation at this time.

Schedule 2 of the Religious Discrimination (Consequential Amendments) Bill 2021 contains contingent amendments to insert a Victorian law, the *Equal Opportunity Act 2010*, into clause 11. As outlined in the commencement provisions in clause 2, the contingent amendments will only take effect when both the Religious Discrimination Bill commences and the Victorian Equal Opportunity (Religious Exceptions) Amendment Bill 2021 (which amends the Victorian *Equal Opportunity Act 2010*) is enacted by the Victorian Parliament and commences.

Significant matters in delegated legislation—general exception for acts done in compliance with certain Commonwealth, state and territory laws

Paragraph 1.104 - The Committee requests the Attorney-General's advice as to:

- **why the power to exclude certain Commonwealth, state and territory laws from being exempt from the provisions of the bill is left to delegated legislation; and**
- **whether the bill could be amended to include at least high-level guidance in relation to these matters on the face of the primary legislation.**

As noted by the Committee, clause 37 provides a general exception from the prohibition on discrimination for acts done in compliance with certain Commonwealth, state and territory legislation, provided those laws are not prescribed by the regulations.

The Bill does not generally intend to override or interfere with state or territory legislation. Clause 68 explicitly provides that this Bill is not intended to exclude or limit the operation of a state or territory law, to the extent that the law is capable of operating concurrently with this Bill.

The Government is not currently aware of any further areas in Commonwealth, state and territory laws under which a particular issue would arise that should be addressed in this legislative package, beyond those laws already expressly dealt with by Religious Discrimination (Consequential Amendments) Bill 2021.

Nonetheless, it is important to ensure that a person acting in compliance with a Commonwealth, state or territory law does not inadvertently, and through no fault of their own, engage in conduct that may be unlawful discrimination under this Bill. Accordingly, clause 37 provides a general exception from the prohibition on discrimination for acts done in direct compliance with certain Commonwealth, state and territory legislation.

However, should such a law become apparent, it is important for the Bill to include an avenue to continue to ensure individuals are adequately protected from discrimination on the basis of religious belief or activity (for example, in the event that a law was passed which authorised or required such discriminatory conduct). Accordingly, the Bill provides a regulation-making power to prescribe a Commonwealth law under paragraph 37(1)(b), or a state or territory law under paragraph 37(3)(b), to resolve any conflicts that may arise by excluding those laws from the general exemption under clause 37.

Although it would technically be possible to address such conflicts through amendments to the primary legislation as they arise, it is my view that these matters are more appropriately dealt with through regulations. This will ensure a timely response to resolving issues that are consistent with the established purposes of the Bill, noting any regulations will still be open to Parliamentary scrutiny and disallowance, as appropriate.

This is consistent with the approach in existing Commonwealth anti-discrimination law, being:

- *Disability Discrimination Act 1992*, section 47
- *Age Discrimination Act 2004*, section 39
- *Sex Discrimination Act 1984*, section 40.

I will give consideration to the best manner of clarifying these issues by amending the Explanatory Memorandum of the Bill to include further guidance, consistent with this advice.

Broad discretionary power

Paragraph 1.108 - The Committee requests the Attorney-General's advice as to:

- **why it is considered necessary and appropriate to provide the Commission with a broad power to grant, vary or revoke exemptions to Divisions 2 or 3 of the bill under clauses 44 and 47;**
- **why it is considered necessary and appropriate to provide the Minister with a broad power to vary or revoke exemptions to Divisions 2 or 3 of the bill under clause 47; and**

- **whether the bill can be amended to include guidance on the exercise of the power on the face of the primary legislation, noting the potential for a broad, unconstrained exemption power to undermine the religious discrimination framework**

Part 7 of the Religious Discrimination Bill 2021 confers functions on the Australian Human Rights Commission in relation to discrimination on the ground of religious belief or activity. I note the Committee's observations regarding the granting of temporary exemptions by the Commission (clause 44) and the power for the Commission or Minister to vary or revoke such an exemption (clause 47). As the Committee is aware, these functions are consistent with the functions conferred on the Commission by existing Commonwealth anti-discrimination law - see:

- *Disability Discrimination Act 1992*, section 55.
- *Age Discrimination Act 2004*, section 44.
- *Sex Discrimination Act 1984*, section 44.

These Acts have not set out in detail the criteria or procedures that the Commission should use in considering applications for temporary exemption. These provisions are instead drafted to provide flexibility and recognise that, in particular circumstances, conduct which would otherwise be unlawful discrimination should be permitted on a temporary basis. This may occur in the course of making temporary, reasonable adjustments. For example, an exemption might be given in circumstances where there is uncertainty about whether a beneficial measure falls within the positive discrimination exemption.

Any such exemptions under the Religious Discrimination Bill 2021 must be made publicly available on the Federal Register of Legislation, and are intentionally time-limited – accordingly, it would not be fitting for such measures to be addressed through the primary legislation.

Subclause 47(1) specifies that the variation or revocation of a temporary exemption by the Commission or the Minister must be done by notifiable instrument. This ensures that the public is aware of any amendments to, or revocations of, existing temporary exemptions. As outlined in the Explanatory Memorandum, it is intended that such an instrument detail the reasons for revoking or varying the exemption. The ability of the Commission or the Minister to revoke or vary an exemption is an additional safeguard to ensure exemptions are not used inappropriately, beyond a necessary time limit, or in circumstances where other measures should be used (for example, a subsequent amendment to the primary legislation the renders the temporary exemption obsolete).

Additionally, clause 48 provides that a person affected by a decision under subdivision C (relating to exemptions granted by the Commission) may seek a review of that decision by the Administrative Appeals Tribunal – this includes the granting of an exemption under clause 44 and the variation or revocation of an exemption under clause 47.

These conditions ensure that the Commission's discretion is appropriately limited, transparent, subject to review and governed by legality and due process.

The Australian Human Rights Commission currently maintains public guidance on temporary exemptions provisions under the *Sex Discrimination Act 1984*, *Disability Discrimination Act 1992* and *Age Discrimination Act 2004.* This guidance material notes that, in granting relevant exemptions in response to an application, the Commission will consider matters including:

- whether the circumstances are covered by the relevant Act
- whether any of the permanent exemptions in the relevant Act apply;
- whether the circumstances can be brought within any 'positive discrimination' or 'special measures' provision of the relevant Act; and
- (currently in relation to the Disability Discrimination Act only) whether any defences to the Act apply.

Upon enactment of the Religious Discrimination Bill, my Department will support the Australian Human Rights Commission in the development of similar guidance material as appropriate.

I will also give consideration to the best manner of updating the Explanatory Memorandum of the Bill to include further guidance, consistent with the above advice.

Broad delegation of administrative power

Paragraph 1.113 - The committee draws its scrutiny concerns to the attention of senators and leaves to the Senate as a whole the appropriateness of allowing the powers and functions of the Commission or the Commissioner to be delegated to any staff member of the Commission or to any other person or body of persons.

As noted above, the Religious Discrimination Bill 2021 confers functions on the Australian Human Rights Commission in relation to discrimination on the ground of religious belief or activity.

These functions are conferred on the Commission, rather than the Religious Discrimination Commissioner. This reflects the approach in existing anti-discrimination legislation. The purpose of the delegation power is to ensure that the Commission may delegate such functions to the as necessary to best enable the Commission to carry out the wide range of functions conferred on it.

It is anticipated that powers would be delegated to appropriate senior officers in the Commission. However, there are circumstances where the Commission may consider it necessary to delegate certain functions to a person or body external to the Commission, such as a barrister, where there may be a conflict of interest within the Commission.

This power is consistent with delegation powers in existing federal anti-discrimination legislation - see:

- *Disability Discrimination Act 1992*, section 121.
- *Racial Discrimination Act 1975*, section 40.
- *Age Discrimination Act 2004*, section 55.
- *Sex Discrimination Act 1984*, section 104.

- *Australian Human Rights Act 1986,* section 19.

I will give consideration to the best manner of updating the Explanatory Memorandum of the Bill to include further guidance on this provision – in particular, in relation to the kinds of persons to whom authority may be delegated.

Immunity from civil liability

Paragraph 1.118 - The committee requests the Attorney-General's advice as to why it is considered necessary and appropriate to provide the Commission, the Commissioner, or another member of the Commission with civil immunity under clause 72 of the Religious Discrimination Bill 2021 and the Commissioner, or a person acting on their behalf, with civil immunity under section 48 of the *Australian Human Rights Commission Act 1986* so that affected persons have their right to bring an action to enforce their legal rights limited to situations where a lack of good faith is shown.

As noted by the Committee, section 48 of the *Australian Human Rights Act 1986* currently provides protection to the Commission, members of the Commission, and persons acting on its behalf, from civil actions in relation to conduct engaged in in good faith in the performance or exercise of their duties, functions or powers. This type of protection is common for independent statutory authorities. Many of these provisions in other Commonwealth legislation also contain an explicit ‘good faith’ limitation – however, others do not (for example, section 34(1) of the *Australian Postal Corporation Act 1989* (Cth)). Furthermore, some statutes expressly provide an immunity from certain criminal proceedings, in addition to civil proceedings.

Clause 72 of the Religious Discrimination Bill will ensure that the Religious Discrimination Commissioner – like other Commissioners – is not liable for damages for the performance of their functions, or exercise of their powers, in good faith - see:

- *Disability Discrimination Act 1992*, section 126.
- *Racial Discrimination Act 1975*, section 45.
- *Age Discrimination Act 2004*, section 58.
- *Sex Discrimination Act 1984*, section 111.

The Government considers it appropriate for the provision to be limited to civil liability, and only applicable when the duties, functions or powers of the Commission or the Commissioner are exercised in good faith. This is a necessary and appropriate protection to ensure that the Australian Human Rights Commission is able to confidently and effectively discharge its duties.

Reversal of the evidential burden of proof

Paragraph 1.123 - As the explanatory materials do not address this issue, the committee requests the Attorney-General's advice as to why it is proposed to use offence-specific defences (which reverse the evidential burden of proof) in this instance. The committee's consideration of the appropriateness of a provision which reverses the burden of proof is assisted if it explicitly addresses relevant principles as set out in the Guide to Framing Commonwealth Offences.

Clause 74 makes it an offence for persons to disclose protected information obtained through the performance or exercise of functions or powers of the Commission.

This is to ensure the confidentiality of personal information provided to the Commission by prohibiting the disclosure of such information by Commission officials. This protects the privacy of individuals who make, or who are the subject of, complaints to the Commission and ensures that the complaints handling process is safe for individuals making complaints regarding sensitive personal matters.

The note under subclause 74(2) clarifies that a defendant bears an evidential burden in relation to a matter in this subclause. This is consistent with 4.3.2 of the Commonwealth Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers (the Guide), which provides that a defendant will usually only bear an evidential burden (rather than a legal burden) in relation to proof of a defence for particular offences. In particular, the Guide provides that offence-specific defences are appropriate in circumstances where an element of the offence is: is peculiarly within the knowledge of the defendant; and it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter (4.3.1 of the Guide).

In my view, this appropriately applies to issues established in subclause 74(2)(b), which establishes the particular evidential burden of proof involved in this defence – specifically, this provides that protected information may be disclosed in the performance of functions or exercise of powers under or in connection with this Bill or in accordance with an intergovernmental arrangement between the Commonwealth and a state body under section 16 of the AHRC Act. In my view, these are evidentiary matters that are uniquely suited to be addressed by the defendant.

The Hon Andrew Gee MP

Minister for Veterans' Affairs
Minister for Defence Personnel

Parliament House
CANBERRA ACT 2600

Telephone: 02 6277 7820

Our Ref: MS21-000573

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
Suite 1.111
Parliament House
CANBERRA ACT 2600

Dear Chair

I refer to *Scrutiny Digest 17 of 2021* from the Senate Standing Committee for the Scrutiny of Bills (the Committee) regarding the *Veterans' Affairs Legislation Amendment (Exempting Disability Payments from Income Testing and Other Measures) Bill 2021*.

I welcome the opportunity to respond to the Committee's concerns, and my responses to each of the Committee's questions are set out below.

Why it is considered necessary and appropriate to leave the key details of the non-liability rehabilitation Pilot program to delegated legislation?

The Pilot will assist veterans by providing early access to a specified range of rehabilitation support and services. Currently, access to rehabilitation services funded by the Department of Veterans' Affairs is only available once the Australian Government has accepted liability for an injury or disease as being related to the person's military service, or while a claim for certain medical conditions is being determined.

The Pilot will extend access to rehabilitation support without the requirement to have lodged a compensation claim. This would allow a new access pathway to be trialled, to help determine the effects of 'un-coupling' a compensation claim and undertaking rehabilitation on crucial matters such as veteran participation, their rehabilitation outcomes, and compensation claiming behaviours. The outcomes of the Pilot will inform future program design and service options not just on rehabilitation support, but in relation to other relevant veteran support and assistance.

The Pilot is a voluntary program that will provide short-term psychosocial and vocational rehabilitation assistance to a veteran cohort who do not currently have access to this support. It has been funded for up to 100 participants per year.

The intention is to test and evaluate this delivery approach, and build an evidence base on which program features would be beneficial and sustainable. As a previous Pilot resulted in less uptake than anticipated, I am conscious there may be a need to vary the administrative parameters of this Pilot to enable services to be refined and provided in a timely manner, and to ensure that they are directed at those most in need, and most likely to benefit from the Pilot.

Flexibility in fine tuning the details of the Pilot as more information becomes available about the uptake of the program, accessibility, and suitability of rehabilitation support would allow the Military Rehabilitation and Compensation Commission to provide relevant, timely and much needed rehabilitation support to specified veterans.

The proposed amendments specify the key features of the new rehabilitation support program such as a compensation claim not being required, and the categories of services that will be available under the Pilot. It is necessary the legislation provides appropriate flexibility to enable the Military Rehabilitation and Compensation Commission to respond to the evidence and feedback that is gathered during the Pilot, and allow administrative matters to be amended if necessary.

Delegated legislation would provide the necessary flexibility. The instrument is expected to provide for administrative matters, such as the duration of a program of support, the packaging of pre-approved services for streamlined delivery, and the financial limits. If these details were to be included in the primary legislation, the time necessary to amend the legislation would severely limit the ability of the Pilot to respond in a timely manner to such evidence and feedback.

Whether the Bill could be amended to include at least high-level guidance regarding these matters on the face of the primary legislation

In light of the comments above, I am of the view the Bill contains sufficient details of the persons who are entitled to the provision of rehabilitation under the Pilot, and the types of rehabilitation assistance that can be provided. I do not consider it appropriate for the Bill to be amended to include further guidance that could constrain the operation of the Pilot.

The provisions included in the Bill contain limitations that are relevant to the authority and approved expenditure for the Pilot, and any further additions would restrict the flexibility required to ensure that the Pilot provides the best information to guide any future programs.

Whether the Bill could provide that proposed Part 2A of Chapter 3 is repealed after two years

I do not consider it necessary to amend the Bill to provide the part be repealed after two years. If the results of the Pilot indicate further evidence is required, or indicate ongoing provision of early rehabilitation is effective, the Department has the flexibility to continue to provide relevant and robust rehabilitation support to specified veterans beyond the two years. Thus, the primary legislation need not be amended to extend, if appropriate, the operation of the rehabilitation program support to the specified veterans beyond the two years.

Thank you for bringing the Committee's concerns to my attention. I trust this information is of assistance.

Yours sincerely

ANDREW GEE

2/12/2021

The Hon Andrew Gee MP
Parliament House CANBERRA ACT 2600 | 02 6277 7820 | OFFICE.MINISTERGEE@dva.gov.au
PO Box 673 ORANGE NSW 2800 | PO BOX 54 BATHURST NSW 2795