SENATE STANDING COMMITTEE

FOR THE

SCRUTINY OF BILLS

FIFTH REPORT

OF

2007

9 May 2007

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator R Ray (Chair)
Senator J Adams (Deputy Chair)
Senator G Barnett
Senator A McEwen
Senator A Murray
Senator S Parry

TERMS OF REFERENCE

Extract from **Standing Order 24**

(1) (a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:

(i) trespass unduly on personal rights and liberties;

(ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;

(iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;

(iv) inappropriately delegate legislative powers; or

(v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

(b) The Committee, for the purpose of reporting upon the clauses of a bill when the bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

FIFTH REPORT OF 2007

The Committee presents its Fifth Report of 2007 to the Senate.

The Committee draws the attention of the Senate to clauses of the following which contain provisions that the Committee considers may fall within principles 1(a)(i) to 1(a)(v) of Standing Order 24:

Aged Care Amendment (Residential Care) Bill 2007 *****

Education Services for Overseas Students Legislation Amendment Bill 2007 *****

Murray-Darling Basin Amendment Bill 2006 *

Private Health Insurance Act 2007

***** Although these bills have not yet been introduced in the Senate, the Committee may report on its proceedings in relation to the bills, under standing order 24(9).

Aged Care Amendment (Residential Care) Bill 2007

Introduction

The Committee dealt with this bill in *Alert Digest No. 4 of 2007*. The Minister for Ageing responded to the Committee's comments in a letter dated 7 May 2007. A copy of the letter is attached to this report.

Extract from Alert Digest No. 4 of 2007

Introduced into the House of Representatives on 21 March 2007
Portfolio: Ageing

Background

This bill amends the *Aged Care Act 1997* to support amendments to the *Aged Care Principles 1997*, which are designed to implement new arrangements for allocating subsidies in residential aged care by replacing the Resident Classification Scale with the Aged Care Funding Instrument.

The bill

- empowers the Secretary of the Department of Health and Ageing to define the type and form of records that an approved provider must keep;
- empowers the Secretary of the Department of Health and Ageing to suspend approved providers from making appraisals and reappraisals for a period of time or to attach conditions to the conduct of such appraisals and reappraisals;
- outlines the process for applying to have a suspension lifted;
- specifies the time periods within which residential aged care appraisals and reappraisals can be conducted for different categories of care recipients; and
- outlines the process for reappraising the classification level of a care recipient.

The bill also contains application and transitional provisions.

Commencement on Proclamation
Schedule 1

Item 2 in the table to subclause 2(1) of this bill provides that Schedule 1 will commence on Proclamation, but must commence within 12 months of Assent in any event. The Committee takes the view that Parliament is responsible for determining when laws are to come into force. The Committee will generally not comment where the period of delayed commencement is six months or less. Where the delay is longer the Committee expects that the explanatory memorandum to the bill will provide an explanation. This is consistent with Paragraph 19 of Drafting Direction No. 1.3, which states that '[i]f the specified period option is chosen, the period should generally not be longer than 6 months. A longer period should be explained in the Explanatory Memorandum'. Unfortunately, the explanatory memorandum provides no explanation for the extended delay in commencement.

The Committee **seeks the Minister's advice** as to the reason for this extended delay in commencement and whether it would be possible to include the reason for the delay in the explanatory memorandum.

Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference.

Relevant extract from the response from the Minister

I have considered the issues raised by the Committee and my responses to these issues are outlined below.

The first issue raised by the Committee concerns the commencement provisions in Clause 2 of the bill. These provisions allow for the bill to commence on Proclamation. However, if any of the provisions in Schedule 1 do not commence within 12 months from the day on which the Act receives Royal Assent they commence 12 months from that day.

The commencement date for the Aged Care Funding Instrument (ACFI) and associated measures has been agreed by Cabinet to be 20 March 2008. As the bill was scheduled to be introduced to Parliament almost 12 months before the expected commencement date, it was considered prudent to allow for a 12 month delayed commencement following Royal Assent. Unfortunately, this explanation was omitted from the explanatory memorandum. It is planned to amend the explanatory

memorandum following debate on this bill by both houses to avoid inconsistent versions being in circulation.

The Committee thanks the Minister for this response and for the commitment to amend the explanatory memorandum to include the reason for the delayed commencement.

'Henry VIII' clause
Schedule 1, item 22

The table at proposed new subsection 27-2(1) of the *Aged Care Act 1997*, to be inserted by item 22 of Schedule 1, specifies the circumstances when a particular classification will expire and when the expiry date occurs. Proposed new subsection 27-2(6) provides that '[t]he Classification Principles may specify that: (a) a different *expiry date applies in relation to a classification to that provided for under this section; or (b) a different reappraisal period applies in respect of an expiry date to that provided for under this section.' Proposed new subsection 27-2(6) is therefore an example of a 'Henry VIII' clause.

A 'Henry VIII' clause is an express provision which authorises the amendment of either the empowering legislation, or any other primary legislation, by means of delegated legislation. Since its establishment, the Committee has consistently drawn attention to 'Henry VIII' clauses and other provisions which (expressly or otherwise) permit subordinate legislation to amend or take precedence over primary legislation. Such provisions clearly involve a delegation of legislative power and are usually a matter of concern to the Committee.

The Committee notes that while proposed new subsection 27-2(6) creates a delegation of legislative power it is not possible to ascertain whether or not this delegation is appropriate, as neither the explanatory memorandum nor the second reading speech provide an explanation of why a 'Henry VIII' clause is considered necessary. The Committee therefore **seeks the Minister's advice** as to why it was considered necessary for the Classification Principles to be able to specify different expiry dates and reappraisal periods to those outlined in proposed new subsection 27-2(1), rather than making amendments to the primary legislation as necessary.

Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference.

Relevant extract from the response from the Minister

> The second issue raised by the Committee concerns Item 22 of the Bill. This item refers to new subsection 27-2(6) which provides that the Classification Principles may specify different expiry dates and reappraisal dates for items specified under subsection 27-2(l).
>
> Proposed new subsection 27-2(6) mirrors existing provisions in subsections 27-1(2) and 28-3(l) of the *Aged Care Act 1997* (the Act). It is considered necessary to maintain the current ability to specify different classification expiry dates or reappraisal dates as the proposed new subsection 27-2(l) introduces several new classification types. These may require some 'fine tuning' as the practical operation of the provisions are tested over time. It would be prudent to maintain the existing ability to amend these arrangements through subordinate legislation so that administrative changes are made in a timely fashion. Any amendments to the Classification Principles would be made by disallowable instruments.

The Committee thanks the Minister for this response and notes that it would have been helpful if an explanation had been included in the explanatory memorandum to the bill.

Insufficiently defined administrative powers
Schedule 1, item 16, section 25-4D

Proposed new subsection 25-4D(1), to be inserted by item 16 of Schedule 1, provides that if the Secretary of the Department of Health and Ageing requires further information to decide whether to lift an approved provider's suspension from making appraisals and reappraisals, the Secretary 'may give the applicant a written notice requiring the applicant to give the further information within 14 days after receiving the notice, or within such shorter period as is specified in the notice.'

Failure to provide the additional information within the time specified will result in the approved provider's application to have their suspension lifted being taken to have been withdrawn.

Where a bill confers powers of this nature on an official, the Committee has an expectation that these powers will be exercised in a way that is not arbitrary or unreasonable. The clause as currently written would allow the Secretary to request information within very short periods of time, should he or she choose to do so, without having regard to the circumstances of the approved provider or what would be considered reasonable in the normal course of events.

The Committee **seeks the Minister's advice** as to why it was considered necessary for the Secretary to be able to specify a period of less than 14 days for the production of additional information and whether it might be possible to limit this power in some way so as to ensure that it is not used in an arbitrary or unreasonable manner.

Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the Committee's terms of reference.

Relevant extract from the response from the Minister

The third and final issue raised by the Committee concerns Item 16 of the Bill. This Item refers to new subsection 25-4D(1) which provides that if the Secretary to the Department of Health and Ageing requires further information to decide whether to lift an approved provider's suspension from making appraisals and reappraisals, the Secretary may give the approved provider a written notice that this information is required within 14 days or a shorter period as specified in the notice.

The proposed new subsection 25-4D(1) is modelled on existing provisions in Divisions 67 and 68 of the Act. See, for example, the periods specified in paragraphs 67-2(2)(d) and 67-3(2)(d) of the Act. These divisions deal with the imposition and lifting of sanctions against approved providers who fail to meet their responsibilities in the provision of residential care to care recipients. I consider that the provision of false or inaccurate information in relation to the level of care needed by a resident as dealt with under section 25-4 of the Act to be on the same scale of negligence and therefore should be dealt with in a similar fashion.

I would like to draw the committee's attention to the provisions under section 96-7 of the Act which allow for the period for giving information to be extended at the applicant's request. I would also like to emphasise that the introduction of new sections 25-4A to 25-4E, related to the stay of suspension, give approved providers an opportunity by encouraging them to take an active approach to improvement through the provision of training and assistance provided by the appointment of an adviser.

Thank you for your thorough scrutiny of this bill and the opportunity to clarify some matters covered in this bill. I trust that this advice will satisfy your concerns. Please contact me if you have any further queries regarding these matters.

The Committee thanks the Minister for this response and notes that it would have been helpful if an explanation had been included in the explanatory memorandum to the bill.

Education Services for Overseas Students Legislation Amendment Bill 2007

Introduction

The Committee dealt with this bill in *Alert Digest No. 4 of 2007*. The Minister for Education, Science and Training responded to the Committee's comments in a letter dated 19 April 2007. A copy of the letter is attached to this report.

Extract from Alert Digest No. 4 of 2007

Introduced into the House of Representatives on 22 March 2007
Portfolio: Education, Science and Training

Background

This bill amends the *Education Services for Overseas Students Act 2000* (ESOS Act) and the *Migration Act 1958* to implement recommendations of the evaluation of the ESOS Act and to address other issues identified by the Department in administering the Act.

The bill:

- clarifies the main purposes of the ESOS Act;
- extends the scope of the ESOS Act to include education delivered on Christmas Island and Cocos (Keeling) Islands;
- allows designated authorities to approve arrangements where the course provider (other than the registered provider) is located in a different state to the registered provider;
- clarifies the roles of education providers and the Department of Immigration and Citizenship (DIAC) under the National Code 2007, where an overseas student has breached an education provider's policy on course progress or attendance and the breach is reported;
- provides for mandatory written agreements with overseas students; and

- removes the requirement for providers to pay a penalty for late payment of the annual Fund contribution.

The bill also contains application provisions.

Wide delegation of power
Schedule 1, item 1

Proposed new paragraph 4B(3)(b) of the *Education Services for Overseas Students Act 2000*, to be inserted by item 1 of Schedule 1, would permit the Minister responsible for administering the *Christmas Island Act 1958* to delegate all or any of his or her functions or powers as a designated authority under the *Education Services for Overseas Students Act 2000* either to a member of the Senior Executive Service in the Australian Public Service or to 'an officer or employee of a State.' This provision gives the relevant Minister a very wide discretion in determining to whom to delegate powers and functions in respect to State based employees, as it provides no limits regarding the qualifications or attributes of the intended delegate. The Committee has consistently drawn attention to legislation which allows delegations to a relatively large class of persons, with little or no specificity as to their qualifications or attributes.

The Committee notes that rank profiles in State Public Service structures may vary from one jurisdiction to the next and that, as a result, it may be very difficult to include any requirement about the rank of a state government employee delegate that is analogous to the Senior Executive Service in the Australian Public Service. This was the reason given for a similar drafting of a delegation provision in the Offshore Petroleum Amendment (Greater Sunrise) Bill 2007. Unlike that bill, however, the explanatory memorandum to the Education Services for Overseas Students Legislation Amendment Bill 2007 does not proffer any explanation for the wide delegation of powers to state government officials. The Committee therefore **seeks the Minister's advice** as to the reason for this wide discretion and whether it should be limited in some way.

Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the Committee's terms of reference.

Relevant extract from the response from the Minister

In response to the Committee's concern that item 1 of Schedule 1 to the Bill may be considered to make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, I provide the following comments:

- Under the proposed extension of the *Education Services for Overseas Students Act 2000* (ESOS Act) to include Christmas Island and Cocos (Keeling) Islands, the Territories Minister is the designated authority for the purposes of the ESOS Act. This means that the Territories Minister is responsible for approving education providers on Christmas Island for registration under the ESOS Act. Many of the services delivered to the external territories are delivered through agreements with state governments. In the case of education services on Christmas Island and Cocos (Keeling) Islands, the agreement is with the Western Australian Government.

- Australian Government policy is to, wherever possible, be consistent in both the provision of services and legislative powers between the mainland and the external territories. This proposed amendment is consistent with the schema for the role of the designated authority under the ESOS Act. If the delegation power in the ESOS Act for the Territories Minister was limited it would result in an inconsistency between the way that approval of education providers is carried out on the external territories of Christmas Island and Cocos (Keeling) Islands and the way that it can be done in other states and territories.

- It is the responsibility of the Territories Minister, as it is for state and territory governments, to determine the best way to exercise a function in respect of a territory. The most appropriate way for the function to be carried out may change over time and the proposed provision must allow for flexibility to accommodate any such changes. I therefore do not consider it necessary to limit the delegation power.

I trust this information addresses your concerns over the delegation of power in the proposed legislative amendment to the ESOS Act.

The Committee thanks the Minister for this response and notes that it would have been helpful if an explanation had been included in the explanatory memorandum to the bill. The Committee reiterates its concern about the increasing tendency to delegate powers to too large a section of the public service, with no reference to the qualifications or attributes of the intended delegate.

Murray-Darling Basin Amendment Bill 2006

Introduction

The Committee dealt with this bill in *Alert Digest No. 1 of 2007*. The Minister for the Environment and Water Resources responded to the Committee's comments in a letter dated 8 May 2007. A copy of the letter is attached to this report.

Extract from Alert Digest No. 1 of 2007

Introduced into the House of Representatives on 7 December 2006
Portfolio: Agriculture, Fisheries and Forestry

Background

This bill amends the *Murray-Darling Basin Act 1993* to approve and give effect to the Murray-Darling Basin Agreement Amending Agreement 2006 between the Commonwealth, New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory.

The Amending Agreement:

- provides for appropriate contracting governments to make annual annuity contributions towards the future capital replacements and major cyclic maintenance costs and for contributions to be accumulated and invested;
- allows the Murray-Darling Basin Commission to borrow funds where contributions are insufficient to meet costs in any year;
- enables the Murray-Darling Basin Ministerial Council to recover water business costs from State governments in shares comparable to those which would apply if fee-for-service pricing were introduced;
- allows for the allocation of responsibility for River Murray Water structures from one constructing authority to another;
- allows for the altering of financial thresholds above which specific Council approval must be sought by the Commission; and

- clarifies that Queensland cannot be held liable for works and measures in which it is not directly involved.

Commencement on Proclamation
Item 2

Item 2 in the table to subclause 2(1) provides that the amendments to be made by this bill would commence on Proclamation, with no provision for their commencement at a fixed time in any event. It is the Committee's practice to note delayed commencement provisions, in particular those with open-ended commencement dates. Paragraph 6.17 of the Legislation Handbook states that 'proclamation provisions in bills are generally drafted with a deadline placed on the time within which an Act should be proclaimed, eg. that the Act should commence on a specific date or within six months of Royal Assent, or with an automatic repeal provision if the Act remains unproclaimed.'

In this case, the explanatory memorandum seeks to justify the grant of this unfettered discretion on the Executive on the basis that 'complementary legislation in each jurisdiction [which is a party to the Murray-Darling Basin Agreement Amending Agreement 2006] is required to carry the Amending Agreement into effect'. However, the Committee notes that in the case of the Classification (Publications, Films and Computer Games) Amendment Bill 2006, the Attorney-General has provided for commencement within 12 months in any event, despite the need for complementary legislation from the States and Territories to render the Commonwealth amendments affective. The Committee **seeks the Minister's advice** as to whether it would be possible to limit the discretion of the Executive in relation to the commencement of this bill by requiring that it commence within 12 months of Assent in any event or that it be taken to be repealed, if a Proclamation has not been made by that time.

Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference.

Relevant extract from the response from the Minister

I refer to correspondence of 8 February 2007 to the Senior Advisor to the Hon Peter McGauran MP, Minister for Agriculture, Fisheries and Forestry, concerning the

Murray-Darling Basin Amendment Bill 2006 (MDBA Bill). The letter has been forwarded to me, as I have portfolio responsibility for the matter raised.

The existing Murray-Darling Basin Agreement (clause 5) provides that an amendment of the Agreement comes into effect only when it has been approved by each of the Parliaments of the Commonwealth, New South Wales, Victoria and South Australia. Therefore, regardless of commencement date of legislation passed by each Party's Parliament, the amendment is effected upon approval by the last Party's Parliament.

Both the original *Murray-Darling Basin Act 1993* and the *Murray-Darling Amendment Act* 2003 provided for commencement on 'A single day to be fixed by proclamation' and did not specify a deadline for commencement. The commencement provisions of the MDBA Bill are consistent with that approach.

Given the current governance of the Murray-Darling Basin (MDB), reflecting the distribution of powers under the Constitution on the matters to which this Bill relates, it is necessary to await the passing of legislation in all relevant states. Accordingly, I propose that the MDBA Bill remain unchanged.

On 25 January 2007, the Prime Minister, the Hon John Howard MP, announced A National Plan for Water Security. This Plan will significantly improve water management across the nation with a special focus on the MDB. As part of the Plan, on 23 February 2007 all Murray-Darling Basin states other than Victoria (with whom discussions continue) agreed to a clear referral of constitutional powers to the Commonwealth to manage water in the Basin in the national interest. The new arrangements will streamline the management of water in the MDB.

The Committee thanks the Minister for this response.

Private Health Insurance Act 2007

Introduction

The Committee dealt with the bill for this Act in the amendments section of *Alert Digest No. 4 of 2007*. The Minister for Health and Ageing responded to the Committee's comments in a letter dated 7 May 2007. A copy of the letter is attached to this report.

Extract from the Amendments Section of Alert Digest No. 4 of 2007

On 23 March 2007 the Senate agreed to 107 amendments to the bill, a number of which fall within the Committee's terms of reference.

Retrospective application
Amendment item (50), sub-clause 121-7(2)

Amendment item (50) inserts a proposed new clause 121-7 regarding conditions on declarations of hospitals. Proposed new sub-clause 121-7(2) provides that the Private Health Insurance (Health Insurance Business) Rules may specify conditions to which the declarations are subject and that these conditions 'apply to all such declarations, whether or not the declarations were made before the conditions were so specified'. As such, conditions specified under the Health Insurance (Health Insurance Business) Rules will apply retrospectively.

As a matter of practice the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. The Committee has long taken the view that the explanatory memorandum to a bill should set out in detail the reasons that retrospectivity is sought and whether it adversely affects any person other than the Commonwealth. Unfortunately the supplementary explanatory memorandum does not provide a rationale for why these conditions need to apply retrospectively, nor whether this retrospectivity will adversely affect any person. The Committee **seeks the Minister's advice** as to the reason for this retrospective application and whether it will adversely affect any person.

Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Relevant extract from the response from the Minister

The Committee has drawn attention to the Commonwealth Government Amendment item (50), which relates to new conditions that the Minister must have regard to in deciding whether to declare that a facility is a hospital, or to revoke such a declaration.

Under the amendment, clause 121(7) provides for declarations of hospitals to be subject to the conditions specified in the Private Health Insurance (Health Insurance Business) Rules, and for the Minister to specify additional conditions to which a particular declaration is subject. Consistent with anything specified in the Private Health Insurance (Health Insurance Business) Rules, the conditions will be disallowable.

The Committee has raised concerns about the retrospective application of such conditions and questioned whether they will adversely affect any person.

In practical terms, the new provision is about ensuing that, in being declared a hospital, all hospitals are subject to the same criteria. Additionally, this is about ensuring that all hospitals meet, and continue to meet, all the requisite safety, quality and administrative standards.

I assure you that the intention is not to disadvantage or adversely affect any person or entity.

I trust that this information is of assistance.

The Committee thanks the Minister for this response and notes that it would have been helpful if an explanation had been included in the explanatory memorandum to the bill.

Robert Ray
Chair

THE HON CHRISTOPHER PYNE MP

Minister for Ageing

Senator Robert Ray
Chair
Senate Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

Dear Senator Ray Robert,

I refer to the Senate Standing Committee for the Scrutiny of Bills' Alert Digest No.4 of 2007 which comments on the Aged Care Amendment (Residential Care) Bill 2007, introduced into the House of Representatives on 21 March 2007. I have considered the issues raised by the Committee and my responses to these issues are outlined below.

The first issue raised by the Committee concerns the commencement provisions in Clause 2 of the bill. These provisions allow for the bill to commence on Proclamation. However, if any of the provisions in Schedule 1 do not commence within 12 months from the day on which the Act receives Royal Assent they commence 12 months from that day.

The commencement date for the Aged Care Funding Instrument (ACFI) and associated measures has been agreed by Cabinet to be 20 March 2008. As the bill was scheduled to be introduced to Parliament almost 12 months before the expected commencement date, it was considered prudent to allow for a 12 month delayed commencement following Royal Assent. Unfortunately, this explanation was omitted from the explanatory memorandum. It is planned to amend the explanatory memorandum following debate on this bill by both houses to avoid inconsistent versions being in circulation.

The second issue raised by the Committee concerns Item 22 of the Bill. This item refers to new subsection 27-2(6) which provides that the Classification Principles may specify different expiry dates and reappraisal dates for items specified under subsection 27-2(1).

Proposed new subsection 27-2(6) mirrors existing provisions in subsections 27-1(2) and 28-3(1) of the *Aged Care Act 1997* (the Act). It is considered necessary to maintain the current ability to specify different classification expiry dates or reappraisal dates as the proposed new subsection 27-2(1) introduces several new classification types. These may require some 'fine tuning' as the practical operation of the provisions are tested over time. It would be prudent to maintain the existing ability to amend these arrangements through subordinate legislation so that administrative changes are made in a timely fashion. Any amendments to the Classification Principles would be made by disallowable instruments.

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The third and final issue raised by the Committee concerns Item 16 of the Bill. This Item refers to new subsection 25-4D(1) which provides that if the Secretary to the Department of Health and Ageing requires further information to decide whether to lift an approved provider's suspension from making appraisals and reappraisals, the Secretary may give the approved provider a written notice that this information is required within 14 days or a shorter period as specified in the notice.

The proposed new subsection 25-4D(1) is modelled on existing provisions in Divisions 67 and 68 of the Act. See, for example, the periods specified in paragraphs 67-2(2)(d) and 67-3(2)(d) of the Act. These divisions deal with the imposition and lifting of sanctions against approved providers who fail to meet their responsibilities in the provision of residential care to care recipients. I consider that the provision of false or inaccurate information in relation to the level of care needed by a resident as dealt with under section 25-4 of the Act to be on the same scale of negligence and therefore should be dealt with in a similar fashion.

I would like to draw the committee's attention to the provisions under section 96-7 of the Act which allow for the period for giving information to be extended at the applicant's request. I would also like to emphasise that the introduction of new sections 25-4A to 25-4E, related to the stay of suspension, give approved providers an opportunity by encouraging them to take an active approach to improvement through the provision of training and assistance provided by the appointment of an adviser.

Thank you for your thorough scrutiny of this bill and the opportunity to clarify some matters covered in this bill. I trust that this advice will satisfy your concerns. Please contact me if you have any further queries regarding these matters.

Yours sincerely

Christopher Pyne MP

- 7 MAY 2007

The Hon Julie Bishop MP
Minister for Education, Science and Training
Minister Assisting the Prime Minister for Women's Issues

Senator Robert Ray
Chair
Standing Committee for the Scrutiny of Bills
Senator for Victoria
Parliament House
CANBERRA ACT 2600

19 APR 2007

Dear Senator Ray Robert

Education Services for Overseas Students Legislation Amendment Bill 2007

I refer to a letter from the Secretary to your Committee to my office dated 29 March 2007 concerning certain provisions of the Education Services for Overseas Students Legislation Amendment Bill 2007.

In response to the Committee's concern that item 1 of Schedule 1 to the Bill may be considered to make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, I provide the following comments:

- Under the proposed extension of the *Education Services for Overseas Students Act 2000* (ESOS Act) to include Christmas Island and Cocos (Keeling) Islands, the Territories Minister is the designated authority for the purposes of the ESOS Act. This means that the Territories Minister is responsible for approving education providers on Christmas Island for registration under the ESOS Act. Many of the services delivered to the external territories are delivered through agreements with state governments. In the case of education services on Christmas Island and Cocos (Keeling) Islands, the agreement is with the Western Australian Government.
- Australian Government policy is to, wherever possible, be consistent in both the provision of services and legislative powers between the mainland and the external territories. This proposed amendment is consistent with the schema for the role of the designated authority under the ESOS Act. If the delegation power in the ESOS Act for the Territories Minister was limited it would result in an inconsistency between the way that approval of education providers is carried out on the external territories of Christmas Island and Cocos (Keeling) Islands and the way that it can be done in other states and territories.

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- It is the responsibility of the Territories Minister, as it is for state and territory governments, to determine the best way to exercise a function in respect of a territory. The most appropriate way for the function to be carried out may change over time and the proposed provision must allow for flexibility to accommodate any such changes. I therefore do not consider it necessary to limit the delegation power.

I trust this information addresses your concerns over the delegation of power in the proposed legislative amendment to the ESOS Act.

Yours sincerely

JULIE BISHOP

cc: scrutiny@sen.aph.gov.au

RECEIVED
9 MAY 2007
Senate Standing C'ttee for the Scrutiny of Bills

Minister for the Environment and Water Resources

Senator the Hon Robert Ray
Senator for Victoria
Chair
Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

08 MAY 2007

Dear Senator Ray

I refer to correspondence of 8 February 2007 to the Senior Advisor to the Hon Peter McGauran MP, Minister for Agriculture, Fisheries and Forestry, concerning the Murray-Darling Basin Amendment Bill 2006 (MDBA Bill). The letter has been forwarded to me, as I have portfolio responsibility for the matter raised.

The existing Murray-Darling Basin Agreement (clause 5) provides that an amendment of the Agreement comes into effect only when it has been approved by each of the Parliaments of the Commonwealth, New South Wales, Victoria and South Australia. Therefore, regardless of commencement date of legislation passed by each Party's Parliament, the amendment is effected upon approval by the last Party's Parliament.

Both the original *Murray-Darling Basin Act 1993* and the *Murray-Darling Amendment Act 2003* provided for commencement on 'A single day to be fixed by proclamation' and did not specify a deadline for commencement. The commencement provisions of the MDBA Bill are consistent with that approach.

Given the current governance of the Murray-Darling Basin (MDB), reflecting the distribution of powers under the Constitution on the matters to which this Bill relates, it is necessary to await the passing of legislation in all relevant states. Accordingly, I propose that the MDBA Bill remain unchanged.

On 25 January 2007, the Prime Minister, the Hon John Howard MP, announced A National Plan for Water Security. This Plan will significantly improve water management across the nation with a special focus on the MDB. As part of the Plan, on 23 February 2007 all Murray-Darling Basin states other than Victoria (with whom discussions continue) agreed to a clear referral of constitutional powers to the Commonwealth to manage water in the Basin in the national interest. The new arrangements will streamline the management of water in the MDB.

Yours sincerely

Malcolm Turnbull

Parliament House, Canberra ACT 2600 Tel 02 6277 7640 Fax 02 6273 6101

THE HON TONY ABBOTT MP
MINISTER FOR HEALTH AND AGEING
Leader of the House of Representatives

Senator Robert Ray
Chairman
Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

Dear Senator Ray

I refer to a letter of 29 March from the Standing Committee for the Scrutiny of Bills regarding comments on the new Private Health Insurance Bill 2007 in its Scrutiny of Bills *Alert Digest No. 4 of 2007* (28 March 2007).

The Committee has drawn attention to the Commonwealth Government Amendment item (50), which relates to new conditions that the Minister must have regard to in deciding whether to declare that a facility is a hospital, or to revoke such a declaration.

Under the amendment, clause 121(7) provides for declarations of hospitals to be subject to the conditions specified in the Private Health Insurance (Health Insurance Business) Rules, and for the Minister to specify additional conditions to which a particular declaration is subject. Consistent with anything specified in the Private Health Insurance (Health Insurance Business) Rules, the conditions will be disallowable.

The Committee has raised concerns about the retrospective application of such conditions and questioned whether they will adversely affect any person.

In practical terms, the new provision is about ensuring that, in being declared a hospital, all hospitals are subject to the same criteria. Additionally, this is about ensuring that all hospitals meet, and continue to meet, all the requisite safety, quality and administrative standards.

I assure you that the intention is not to disadvantage or adversely affect any person or entity.

I trust that this information is of assistance.

Yours sincerely

TONY ABBOTT