

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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*(As read a first time)*

COMMUNITY SERVICES AND HEALTH LEGISLATION  
AMENDMENT BILL 1987

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FURTHER AMENDMENTS OF THE AGED OR DISABLED PERSONS HOMES ACT 1954

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FURTHER AMENDMENTS OF THE NATIONAL HEALTH ACT 1953

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time, 4 November 1987

*(Minister for Community Services and Health)*

**A BILL**

FOR

**An Act to amend various laws relating to community  
services and health, and for related purposes**

BE IT ENACTED by the Queen, and the Senate and the House of  
Representatives of the Commonwealth of Australia, as follows:

**PART I—PRELIMINARY**

**Short title**

5       1. This Act may be cited as the *Community Services and Health  
Legislation Amendment Act 1987*.

**Commencement**

10       2. (1) Sections 1, 2 and 3, paragraphs 4 (d) and (g) and sections 5, 6,  
7, 21, 22 and 31 shall come into operation on the day on which this Act  
receives the Royal Assent.

MR

(2) The remaining provisions of this Act shall come into operation on a day or days to be fixed by Proclamation.

## PART II—AMENDMENTS OF THE AGED OR DISABLED PERSONS HOMES ACT 1954

### Principal Act

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3. In this Part, “Principal Act” means the *Aged or Disabled Persons Homes Act 1954*<sup>1</sup>.

### Interpretation

4. Section 2 of the Principal Act is amended:

- (a) by inserting “, other than an approved hostel,” after “approved home” (first occurring) in the definition of “capital cost” in subsection (1); 10
- (b) by omitting “necessary fixtures” (wherever occurring) from the definition of “capital cost” in subsection (1) and substituting “equipment and fixtures”; 15
- (c) by omitting “purposes of the home;” from paragraph (b) of the definition of “capital cost” in subsection (1) and substituting the following:
  - “purposes of the home; 5
  - but in relation to an approved home part of which is an approved hostel, does not include any amount that the Minister considers is attributable to the part of the approved home that is an approved hostel;”;
- (d) by omitting from subsection (1) the definition of “eligible organization”; 25
- (e) by inserting in subsection (1) the following definitions in their respective appropriate alphabetical positions (determined on a letter-by-letter basis):
  - “‘approved hostel’ means an approved home, or part of an approved home: 30
  - (a) in which:
    - (i) hostel care services;
    - (ii) hostel care services and personal care services; or
    - (iii) respite care services; 35
  - are, or will be, made available for each person resident in the home or part of the home, as the case may be; and
  - (b) that is not a nursing home within the meaning of the *National Health Act 1953* or the *Nursing Homes Assistance Act 1974*; 40

‘capital cost’, in relation to an approved hostel, includes, but is not limited to:

- (a) the cost of acquiring land (with or without buildings);
- (b) the cost of acquiring, erecting, altering or extending buildings; and

(c) the cost of acquiring, altering or installing equipment; but, in relation to an approved hostel that is part of an approved home, does not include any amount that the Minister considers is attributable to the part of the approved home that is not an approved hostel;”;

- (f) by inserting in subsection (1) the following definitions in their respective appropriate alphabetical positions (determined on a letter-by-letter basis):

“‘hostel care services’ means accommodation services of a kind in relation to which an approval under subsection 10B (2) is in force;

‘personal care services’ means daily personal care services of a kind in relation to which an approval under subsection 10B (3) is in force;

‘respite care services’ means:

- (a) hostel care services alone; or
- (b) both hostel care services and personal care services; made available on a temporary basis to an eligible person, other than an eligible person in respect of whom a payment is being made under paragraph 10D (1) (a) or (b);”;

- (g) by adding at the end the following subsections:

“(3) Each of the following is an eligible organisation:

- (a) an organisation that is carried on otherwise than for the purpose of profit or gain to its individual members and is:

- (i) a religious organisation;
- (ii) an organisation the principal objects or purposes of which are charitable or benevolent;
- (iii) an organisation of former members of the Defence Force established in every State;
- (iv) a State branch of an organisation referred to in subparagraph (iii); or
- (v) an organisation approved by the Minister for the purposes of this Act;

- (b) a local governing body;

- (c) the trustee or trustees under a trust established by an organisation referred to in paragraph (a) or by a local governing body;

- (d) a corporation established by an organisation referred to in paragraph (a) or by a local governing body;
- (e) the trustee or trustees under a trust established for charitable purposes and approved by the Minister for the purposes of this Act.

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“(4) Subsection (3) does not apply to an organisation to which subsection (5) applies.

“(5) An organisation to which this subsection applies is an eligible organisation in relation to a particular building or particular buildings, or a part of a particular building, if the Minister has, in writing, declared the organisation to be an eligible organisation in relation to the building or buildings, or part, as the case may be.

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“(6) Subsection (5) applies to an organisation that:

- (a) is conducted or controlled by, or by persons appointed by, the Government of the Commonwealth or of a State; or
- (b) conducts, or has at any time conducted, a public hospital.”

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#### **Purpose**

5. Section 3 of the Principal Act is amended:

- (a) by inserting in paragraph (1) (b) “care services and” after “which”; and
- (b) by omitting subsection (2) and substituting the following subsection:

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“(2) The Minister and the Secretary shall, in exercising powers under this Act, have regard to the purposes of this Act.”

#### **Repeal of section 4**

6. Section 4 of the Principal Act is repealed.

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#### **Delegation**

7. Section 5 of the Principal Act is amended:

- (a) by inserting before subsection (1) the following subsection:

“(1A) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Minister, delegate to the Secretary or an officer of the Department all or any of the powers of the Minister under this Act, other than this power of delegation.”;

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- (b) by omitting from subsection (1) “him” and substituting “the Secretary”;
- (c) by omitting from subsection (1) “his powers” and substituting “the powers of the Secretary”; and
- (d) by omitting from subsections (2) and (3) “Secretary” and substituting “Minister, or the Secretary, as the case requires”.

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8. Before section 6 of the Principal Act the following heading is inserted in Part II:

***“Division 1—Approval of homes”.***

9. After section 6 of the Principal Act the following heading is inserted:

***“Division 2—Capital grants for approved homes other than approved hostels”.***

**Grants to organisations**

10. Section 7 of the Principal Act is amended by inserting before subsection (1) the following subsection:

“(1A) In this section, ‘approved home’ does not include:

- (a) an approved home that is to be used solely as an approved hostel; or
- (b) where a part of an approved home is to be used solely as an approved hostel, that part.”.

**Conditions of grants**

11. Section 8 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

“(3) The conditions upon which a grant may be made under subsection (1) include, but are not limited to, conditions with respect to:

- (a) the repayment of financial assistance;
- (b) the giving of security for the repayment of financial assistance or the payment to the Commonwealth of amounts (whether or not exceeding the amount of financial assistance) that under the conditions are to be taken as representing the Commonwealth’s interest in:

- (i) land acquired (with or without buildings);
- (ii) buildings acquired, erected, altered or extended; and
- (iii) equipment acquired, altered or extended;

as a result of the application of the financial assistance or of the financial assistance and other money; and

- (c) the use and disposal of, and the recovery of amounts (whether or not exceeding the amount of financial assistance) that under the conditions are to be taken as representing the Commonwealth’s interest in:

- (i) land acquired (with or without buildings);
- (ii) buildings acquired, erected, altered or extended; and
- (iii) equipment acquired, altered or installed;

as a result of the application of the financial assistance or of the financial assistance and other money.”.

### **Repeal of section 8A**

12. Section 8A of the Principal Act is repealed.

### **Amounts of grants**

13. Section 9 of the Principal Act is amended by omitting subsections (4) to (7) (inclusive). 5

14. After section 9 of the Principal Act the following Division is inserted:

***“Division 3—Capital grants for approved hostels***

### **Grants to organisations**

“9A. (1) Subject to subsection (2), the Minister may, by instrument in writing, approve a grant to an eligible organisation of financial assistance towards the capital cost of an approved hostel. 10

“(2) Where the Minister approves a grant to an eligible organisation under subsection (1), the Minister shall, in the instrument of approval:

- (a) specify the amount of the financial assistance as determined in accordance with guidelines formulated under section 9B; 15
- (b) specify the time or times at which, and the instalments (if any) in which, the financial assistance is to be paid; and
- (c) specify the conditions on which the financial assistance is granted.

“(3) The conditions that may be specified for the purpose of paragraph (2) (c) include, but are not limited to, conditions with respect to: 20

- (a) the amounts to be applied by the eligible organisation towards the capital cost of the approved hostel;
- (b) the furnishing of information;
- (c) the class or classes of persons to be accommodated at the hostel;
- (d) compliance by the eligible organisation with conditions to which a grant of financial assistance under Part III is subject; 25
- (e) the provision of certificates with respect to the fulfilment of conditions;
- (f) the repayment of financial assistance;
- (g) the giving of security for the repayment of financial assistance or the payment to the Commonwealth of amounts (whether or not exceeding the amount of financial assistance) that under the terms and conditions are to be taken as representing the Commonwealth’s interest in: 30

- (i) land acquired (with or without buildings); 35

- (ii) buildings acquired, erected, altered or extended; and

- (iii) equipment acquired, altered or installed;

as a result of the application of the financial assistance or of the financial assistance and other money; and



(h) the use and disposal of, and the recovery of amounts (whether or not exceeding the amount of financial assistance) that under the conditions are to be taken as representing the Commonwealth's interest in:

- (i) land acquired (with or without buildings);
- (ii) buildings acquired, erected, altered or extended; and
- (iii) equipment acquired, altered or installed;

as a result of the application of the financial assistance or of the financial assistance and other money.

“(4) In an instrument of approval, the Minister may comply with paragraph (2) (a) by specifying a method of calculating the amount of the financial assistance.

#### **Guidelines for capital grants**

“9B. (1) The Minister shall, by written instrument, formulate guidelines for the determination of the amounts of grants of financial assistance under section 9A.

“(2) Guidelines formulated under subsection (1) may provide for the following matters to be taken into account in the determination of the amount of a grant:

- (a) the class or classes of persons to be accommodated at a hostel;
- (b) the capacity of an organisation or proposed residents to contribute to the capital cost of a hostel;
- (c) the capacity of an organisation to borrow money to be applied towards the capital cost of a hostel;
- (d) the geographical location of a hostel;
- (e) the cost of acquiring and developing land;
- (f) specified limits on the amounts of grants;
- (g) any other matters the Minister considers relevant.

#### **Agreements with respect to conditions of grants**

“9C. (1) Where the Minister approves a grant of financial assistance to an organisation under section 9A, the financial assistance is not payable to the organisation unless the organisation has entered into an agreement with the Minister that specifies the conditions on which the financial assistance is granted and under which the organisation agrees to comply with those conditions.

“(2) Where:

- (a) an organisation has entered into an agreement specifying the conditions on which financial assistance under section 9A was granted; and
- (b) the Minister, with the consent of the organisation, varies those conditions;

the agreement shall be taken to be varied accordingly.”.

8	<i>Community Services and Health Legislation Amendment No. , 1987</i>	
	15. Before section 10 of the Principal Act the following heading and sections are inserted:	
	<b>“Division 4—Miscellaneous</b>	
	<b>Agreements may be entered into with transferees of buildings etc.</b>	
	“9D. (1) Where:	5
	(a) either of the following subparagraphs applies:	
	(i) a grant of financial assistance to an eligible organisation under this Part has been made or approved on conditions with respect to the use or disposal of any land, building or equipment;	10
	(ii) an eligible organisation has entered into an agreement under this subsection under which the organisation is required to comply with conditions with respect to the use or disposal of any land, building or equipment; and	
	(b) the organisation has transferred, or proposes to transfer, the whole or a part of the organisation’s interest in the land, building or equipment to another eligible organisation;	15
	the Minister may enter into an agreement with the last-mentioned organisation under which that organisation is required to comply, or will upon the transfer being effected, be required to comply, with conditions, whether with respect to the use or disposal of the land, building or equipment or otherwise.	20
	“(2) Where an agreement under subsection (1) between the Minister and an eligible organisation is in force, the Minister, with the agreement of the organisation, may vary the agreement.	
	<b>Certain instruments to be subject to disallowance</b>	25
	“9E. (1) In this section, ‘Ministerial instrument’ means:	
	(a) a certificate under subsection 9 (1);	
	(b) a determination under subsection 9 (3); or	
	(c) guidelines formulated under section 9B.	
	“(2) Part XII of the <i>Acts Interpretation Act 1901</i> applies to Ministerial instruments as if, in those provisions, references to regulations were references to Ministerial instruments, references to a regulation were references to a provision of a Ministerial instrument and references to repeal were references to revocation.	30
	“(3) Ministerial instruments shall not be taken to be statutory rules within the meaning of the <i>Statutory Rules Publication Act 1903</i> , but subsections 5 (3) to (3C) (inclusive) of that Act apply to Ministerial instruments as they apply to statutory rules.	35

“(4) For the purposes of the application of subsection 5 (3B) of the *Statutory Rules Publication Act 1903* in accordance with subsection (3) of this section, a reference in the first-mentioned subsection to a Minister shall be read as a reference to the Minister administering this Act.

5       “(5) Section 5 of the *Evidence Act 1905* applies to a Ministerial instrument as that section applies to an order made by the Minister.”.

16. The heading to Part III of the Principal Act is omitted and the following heading is substituted:

**“PART III—RECURRENT SUBSIDIES”.**

10       17. Section 10A of the Principal Act is repealed and the following section is substituted:

**Interpretation**

“10A. In this Part:

15       ‘approved organisation’ means an organisation in relation to which an approval under subsection 10B (1) is in force;

‘General Conditions’ means the General Conditions formulated under section 10F;

20       ‘respite care bed’ means a bed that is maintained by an approved organisation for the purpose of providing respite care services and that has been approved by the Minister for the purposes of paragraph 10D (1) (c).”.

**Approvals**

18. Section 10B of the Principal Act is amended by omitting from subsection (1) “Secretary” (wherever occurring) and substituting “Minister”.

25       19. Sections 10C and 10D of the Principal Act are repealed and the following sections are substituted:

**Financial assistance to approved organisations**

30       “10C. (1) The Minister may in his or her discretion authorise the payment to an approved organisation of financial assistance in respect of the provision by the organisation of:

(a) hostel care services;

(b) hostel care services and personal care services; or

(c) respite care services.

“(2) An authorisation under subsection (1) shall be by written instrument.

35       “(3) Financial assistance shall not be paid under this Part in respect of the provision of services at premises that are a nursing home within the meaning of the *National Health Act 1953* or the *Nursing Homes Assistance Act 1974*.

### **Payments of financial assistance**

“10D. (1) The amount of financial assistance to an organisation under this Part is:

- (a) in respect of each eligible person who is assessed as requiring hostel care services only and for whom hostel care services are made available by the organisation—an amount calculated at the rate of \$2.10 per day or such higher rate as is determined by the Minister by written instrument; 5
- (b) in respect of each eligible person who is assessed as requiring hostel care services and personal care services and for whom those services are made available by the organisation—an amount calculated at the rate of \$11.85 per day or such higher rate as is determined by the Minister by written instrument; and 10
- (c) in respect of each respite care bed provided by that approved organisation that is occupied by an eligible person—an amount calculated at the rate of \$8.05 per day or such higher rate as is determined by the Minister by written instrument. 15

“(2) Without limiting the generality of subsection (1), the Minister may determine a rate for the purpose of that subsection by determining a method of calculating the rate. 20

“(3) Payments to an approved organisation under this Part shall be made in such manner and at such times as the Minister determines.

### **Conditions of financial assistance**

- “10E. The payment of financial assistance under this Part is subject to:
- (a) the General Conditions as in force from time to time; and 25
  - (b) such other conditions, not inconsistent with the General Conditions, as the Minister specifies in the instrument of authorisation under section 10C.

### **General Conditions of recurrent grants**

“10F. (1) The Minister shall, by written instrument, formulate General Conditions of grants of financial assistance under this Part. 30

“(2) Conditions formulated under subsection (1) may include, but are not limited to, conditions relating to any or all of the following matters:

- (a) any matter relating to the provision by an approved organisation of services for eligible persons; 35
- (b) the manner in which a person is to be assessed for the purposes of paragraph 10D (1) (a) or (b);
- (c) the class or classes of persons to be accommodated at an approved hostel and, where there are to be 2 or more classes, the proportion of the residents at the hostel included in each class; 40
- (d) the fees or charges payable by a person or class of persons for the provision of services;

- (e) the furnishing of information;
- (f) the rights and obligations of residents at an approved hostel;
- (g) compliance by an approved organisation with provision by or under this Act, or any other law, relating to the management of an approved hostel;
- (h) the standards to be met by the organisation in the provision of services;
- (j) the provision of certificates with respect to the fulfilment of conditions;
- (k) the repayment of financial assistance;
- (m) the giving of security for the repayment of financial assistance;
- (n) the suspension or cancellation of payments of financial assistance in the event of breach of a condition to which the grant of the financial assistance is subject.

#### Agreements

“10FA. (1) Where the Minister authorises the payment of financial assistance to an organisation under this Part, the financial assistance is not payable to the organisation unless the organisation has entered into an agreement with the Minister that specifies the conditions to which the payment of financial assistance is subject and under which the organisation agrees to comply with those conditions.

“(2) Where:

- (a) for the purposes of subsection (1), an organisation has entered into an agreement specifying conditions referred to in paragraph 10E (b); and
- (b) the Minister, with the consent of the organisation, varies those conditions;

the agreement shall be taken to be varied accordingly.

#### Certain instruments to be subject to disallowance

“10FB. (1) In this section, ‘Ministerial instrument’ means:

- (a) an instrument under subsection 10D (1); or
- (b) General Conditions formulated under section 10F.

“(2) Part XII of the *Acts Interpretation Act 1901* applies to Ministerial instruments as if, in those provisions, references to regulations were references to Ministerial instruments, references to a regulation were references to a provision of a Ministerial instrument and references to repeal were references to revocation.

“(3) Ministerial instruments shall not be taken to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*, but subsections 5 (3) to (3C) (inclusive) of that Act apply to Ministerial instruments as they apply to statutory rules.

“(4) For the purposes of the application of subsection 5 (3B) of the *Statutory Rules Publication Act 1903* in accordance with subsection (3) of this section, a reference in the first-mentioned subsection to a Minister shall be read as a reference to the Minister administering this Act.

“(5) Section 5 of the *Evidence Act 1905* applies to a Ministerial instrument as that section applies to an order made by the Minister.”. 5

#### **Further amendments**

20. (1) The Principal Act is further amended as set out in Schedule 1.

(2) The Principal Act is further amended as set out in Schedule 2.

#### **Transitional and savings**

21. (1) In this section, a reference to a thing done by, or in relation to, the Secretary to the Department includes a reference to a thing done by, or in relation to a delegate of the Secretary to the Department. 10

(2) Where:

(a) immediately before the commencement of paragraph 4 (d) of this Act, a person or persons, or a body, was an eligible organisation for the purposes of the Principal Act as then in force because of an approval given by the Minister; and 15

(b) the person or persons, or body, would, if approved by the Minister for the purposes of subparagraph 2 (3) (a) (v) or paragraph 2 (3) (e) of the Principal Act as in force after that commencement, be an eligible organisation for the purposes of the Principal Act as so in force; 20

the approval referred to in paragraph (a) of this subsection has effect after that commencement as if it were given for the purposes of the subparagraph or paragraph referred to in paragraph (b) of this subsection, as the case requires. 25

(3) Anything done at a time before the commencement of section 13 of this Act for the purpose of a provision of the *Acts Interpretation Act 1901* as applied by subsection 9 (4) of the Principal Act as then in force is effective for the purpose of the same provision as applied by subsection 9E (2) of the Principal Act as amended by this Act. 30

(4) Where:

(a) immediately before the commencement of paragraph 4 (d) of this Act, an approval under subsection 6 (1) of the Principal Act relating to the erection or purchase of a building or buildings by an organisation was in force; and 35

(b) the organisation:

(i) was an eligible organisation for the purposes of the Principal Act as in force at the time of the approval; and 40

- (ii) is not an eligible organisation for the purposes of the Principal Act as amended by this Act;

the approval continues to have effect after that commencement and the Principal Act as amended by this Act applies in relation to the erection or purchase of the building or buildings by the organisation as if the organisation were an eligible organisation for the purposes of the Principal Act as so amended.

(5) Where, immediately before the commencement of section 14 of this Act, an agreement under subsection 8 (2) of the Principal Act relating to a grant to be made to an organisation under Part II of the Principal Act was in force, the amendments made by this Act, other than the amendments made by subsection 20 (1), do not apply in relation to the grant in relation to the organisation.

(6) An approval under subsection 10B (1) of the Principal Act that was in force immediately before the commencement of paragraph 4 (d) of this Act continues to have effect after that commencement notwithstanding that the organisation to which the approval relates may not be an eligible organisation for the purposes of the Principal Act as amended by this Act.

(7) Where, immediately before the commencement of section 19 of this Act, an agreement under subsection 10D (2) of the Principal Act relating to a payment or payments to be made to an organisation under Part III of the Principal Act was in force, the amendments made by this Act, other than the amendments made by section 18 and subsection 20 (2), do not apply in relation to the payment or payments in relation to the organisation.

(8) Where a provision of this Part (in this subsection called the "amending provision") amends the Principal Act so that a function or duty of the Secretary to the Department becomes a function or duty of the Minister, any act or thing done at any time before the commencement of the amending provision by, or in relation to, the Secretary to the Department pursuant to, or in relation to, the function or duty of the Secretary shall have such consequences or effects after that commencement as it would have if it had been done by, or in relation to, the Minister pursuant to, or in relation to, the function or duty of the Minister.

(9) An agreement under subsection 8 (2) or section 8A of the Principal Act that was in force immediately before the commencement of subsection 20 (1) of this Act continues to have effect after that commencement as if:

- (a) the agreement had been entered into by the Minister;
- (b) any reference in the agreement to the Secretary to the Department were a reference to the Minister; and
- (c) in the case of an agreement under section 8A—the agreement were an agreement under section 9D of the Principal Act as amended by this Act.

(10) An agreement under subsection 10D (2) of the Principal Act that was in force immediately before the commencement of section 19 of this Act continues to have effect after that commencement as if:

- (a) the agreement had been entered into by the Minister; and
- (b) any reference in the agreement to the Secretary to the Department were a reference to the Minister.

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### **PART III—AMENDMENT OF THE HEALTH INSURANCE ACT 1973**

#### **Determinations that in-patients need acute care**

22. Section 3A of the *Health Insurance Act 1973*<sup>2</sup> is amended:

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- (a) by omitting “, subject to subsection (4),” from subsection (3); and
- (b) by omitting subsections (4) and (5).

### **PART IV—AMENDMENTS OF THE NATIONAL HEALTH ACT 1953**

#### **Principal Act**

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23. In this Part, “Principal Act” means the *National Health Act 1953*<sup>3</sup>.

24. After section 39A of the Principal Act the following section is inserted:

#### **Approval in principle of transfer of nursing home beds**

“39B. (1) In this section:

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‘application State or Territory’, in relation to an application under this section, means the State or Territory in which is located the nursing home to which the reduction request or reduction requests made in the application relates or relate;

‘number of beds to which a reduction request relates’ means:

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- (a) in relation to a request of the kind referred to in paragraph (a) of the definition of ‘reduction request’—the number of beds determined in relation to the nursing home to which the request relates for the purposes of paragraph 40AA (6) (a);

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- (b) in relation to a request of the kind referred to in paragraph (b) of the definition of ‘reduction request’—the number of beds specified in the request;

- (c) in relation to a request of the kind referred to in paragraph (c) of the definition of ‘reduction request’—the number of beds specified in the certificate to which the request relates; and

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- (d) in relation to a request of the kind referred to in paragraph (d) of the definition of 'reduction request'—the number of beds specified in the request;

'reduction request', means:

- (a) a request for the revocation, under subsection 44 (3), of the approval of a nursing home;
- (b) a request for the alteration of the conditions of approval of a nursing home by the reduction, by a specified number, of the number of beds determined in relation to the nursing home for the purpose of paragraph 40AA (6) (a);
- (c) a request for the revocation of a certificate granted under subsection 39A (2) or (3) in relation to a nursing home; or
- (d) a request for the variation of a certificate granted under subsection 39A (2) or (3) in relation to a nursing home by decreasing, by a specified number, the number of beds specified in the certificate;

'transferrable number', in relation to an application under this section, means:

- (a) if, in the application, only one reduction request is made—the number of beds to which the reduction request relates; and
- (b) if, in the application, more than one reduction request is made—the sum of the numbers of beds to which the reduction requests relate.

“(2) A person who is, or proposes to become, the proprietor of a nursing home may make an application in writing to the Minister for a certificate under this section.

“(3) In an application for a certificate under this section the applicant shall:

- (a) make one or more reduction requests in relation to a particular nursing home; and
- (b) make a statement that the applicant intends:
- (i) to make an application for the approval, under subsection 40AA (1), of specified different premises, being premises located in the application State or Territory, as an approved nursing home, being an approved nursing home the number of beds determined in relation to which for the purposes of paragraph 40AA (6) (a) should be at least the number specified in the statement, not being a number exceeding the transferrable number in relation to the application;
- (ii) to make an application under section 40AD for the variation of the conditions applicable to an approved nursing home in the application State or Territory having the effect of increasing the number of beds determined in relation to the

nursing home for the purposes of paragraph 40AA (6) (a) by at least the number specified in the statement, not being a number exceeding the transferrable number in relation to the application; or

- (iii) to make an application for the variation of a certificate granted under subsection 39A (2) or (3) in relation to a nursing home in the application State or Territory having the effect of increasing the number of beds specified in the certificate by at least the number specified in the statement, not being a number exceeding the transferrable number in relation to the application. 5 10

“(4) If:

- (a) in an application for a certificate under this section, the applicant makes a statement of a kind referred to in subparagraph (3) (b) (ii); and 15
- (b) the reason for the making of the statement is related to the fact that the applicant intends to make an alteration or addition to a nursing home;

the applicant shall include in the application a statement to the effect that the applicant intends to make the alteration or addition. 20

“(5) Upon application in accordance with subsections (2), (3) and (4), the Minister may, in his or her discretion, grant to the applicant a certificate in writing:

- (a) if, in the application, the applicant made a statement of a kind referred to in subparagraph (3) (b) (i): 25
  - (i) stating that if the applicant, within the period of 12 months after the grant of the certificate and in accordance with the stated intention of the applicant, makes an application under subsection 40AA (1) for the approval of premises in the application State or Territory as a nursing home and the premises comply, at the time of the last-mentioned application, with the specifications (if any) set out in the certificate, the last-mentioned application will not be refused under subsection 40AA (3) or (3A); 30
  - (ii) stating that if that approval is granted, the number of beds determined in relation to the nursing home for the purposes of paragraph 40AA (6) (a) will be at least the number of beds specified in the statement; and 35
  - (iii) if the Minister considers it appropriate to do so, stating that if that approval is granted: 40
    - (A) the approval will be as a nursing home for disabled people; or
    - (B) the admission of persons to the nursing home as qualified nursing home patients will be in accordance

with a special purpose of the nursing home specified in the certificate;

- (b) if, in the application, the applicant made a statement of a kind referred to in subparagraph (3) (b) (ii) and the reason for the making of the statement is related to the intention of the applicant to make an alteration or addition to premises occupied by a nursing home in the application State or Territory:
- (i) approving the alteration or addition;
  - (ii) stating that if, within the period of 12 months after the grant of the certificate, the alteration or addition so approved has been completed in accordance with the specifications (if any) set out in the certificate and the applicant, in accordance with the stated intention of the applicant, makes an application under section 40AD for a variation of the conditions applicable to the nursing home having the effect of increasing, by at least the number specified in the statement, the number of beds determined in relation to the nursing home for the purposes of paragraph 40AA (6) (a), the last-mentioned application will not be refused; and
  - (iii) in a case where the Minister considers it appropriate to do so, stating that if the Minister so alters the conditions applicable to the nursing home, the admission of persons to the nursing home as qualified nursing home patients (whether or not those patients occupy the beds to which the alteration or addition relates) will be in accordance with a special purpose of the nursing home specified in the certificate;
- (c) if, in the application, the applicant made a statement of a kind referred to in subparagraph (3) (b) (ii) and paragraph (b) of this subsection does not apply—stating that, if the applicant, within the period of 12 months after the grant of the certificate and in accordance with the stated intention of the applicant, makes an application under section 40AD for a variation of the conditions applicable to an approved nursing home in the application State or Territory having the effect of increasing, by at least the number specified in the statement, the number of beds determined in relation to the nursing home for the purposes of paragraph 40AA (6) (a), the last-mentioned application will not be refused; and
- (d) if, in the application, the applicant made a statement of a kind referred to in subparagraph (3) (b) (iii)—stating that, if the applicant, within the period of 12 months after the grant of the certificate and in accordance with the stated intention of the applicant makes an application for a variation of a certificate granted under subsection 39A (2) or (3) in relation to a nursing home in the application State or Territory having the effect of increasing, by at least the number specified in the statement, the

number of beds specified in the certificate, the last-mentioned application will not be refused.

“(6) In relation to a certificate under this section or an application for such a certificate, subsections 39A (4) to (12) (inclusive), (14) and (15) apply as if it were a certificate under subsection 39A (2). 5

“(7) Where:

- (a) a person has made an application for a certificate under this section;
- (b) a certificate under subsection (5) is granted on the application, being a certificate in which the Minister has made a statement to the effect that if, within 12 months after the grant of the certificate, a particular application (in this subsection called the ‘contemplated application’) is made, being an application for a variation of a certificate granted under subsection 39A (2) or (3), the application will not be refused; and 10

(c) the contemplated application is made within that period; 15  
the Minister shall, notwithstanding anything in section 39A, grant the contemplated application.

“(8) Where:

- (a) a person has made an application for a certificate under this section;
- (b) a certificate under subsection (5) is granted on the application, being a certificate in which the Minister has made a statement to the effect that if a particular application (in this subsection called the ‘contemplated application’) is made within 12 months after the grant of the certificate the application will not be refused, or will not be refused under a particular provision; and 20 25
- (c) the contemplated application is made within that period and is granted;

any alteration, revocation or variation requested in the reduction request or requests made in the application referred to in paragraph (a) shall be deemed to have been made upon the granting of the contemplated application. 30

“(9) Subsection 39AA (5) does not apply to restrict the Minister’s power to do anything for the purpose of giving effect to any statement made in a certificate granted under subsection (5) of this section.”.

### **Approval of nursing home** 35

**25.** Section 40AA of the Principal Act is amended:

- (a) by omitting from paragraph (6) (cd) “or” (last occurring); and
- (b) by inserting after paragraph (6) (cd) the following paragraph:

“(ce) a condition that the proprietor of the nursing home will:

- (i) at such times, and in respect of such periods, as are determined by the Secretary; and 40
- (ii) in a form approved by the Secretary;

submit to the Secretary, in a manner approved by the Secretary, such information relating to the employment of nursing staff and personal care staff in connection with the nursing home as is required by the Secretary by written instrument; and”.

**Alteration of conditions applicable to a nursing home**

**26.** Section 40AD of the Principal Act is amended by omitting subsection (1CB) and substituting the following subsection:

“(1CB) The Minister shall not exercise a power under subsection (1AB) in relation to a nursing home in a manner inconsistent with:

- (a) a certificate in force in respect of the home under subsection 39A (2), (2A) or (3) and containing a statement for the purpose of paragraph 39A (2) (c), (2A) (c) or (3) (c);
- (b) a certificate in force in respect of the home under subsection 39B (5) and containing a statement for the purpose of subparagraph 39B (5) (a) (iii) or (b) (iii); or
- (c) a determination in force in relation to the home under subsection (1AC) or subsection 40AA (6AAB).”.

**Ministerial review of decisions**

**27.** Section 40AE of the Principal Act is amended:

- (a) by omitting subsection (2) and substituting the following subsection:

“(2) Where the Secretary, under subsection 40AD (1B):

- (a) alters the conditions applicable to an approved nursing home without an application under that subsection; or
- (b) on an application under that subsection:
  - (i) alters the conditions otherwise than in accordance with the application; or
  - (ii) refuses the application;

the proprietor of the nursing home may request the Minister to review the decision of the Secretary.”;

- (b) by inserting in subsection (2A) “in writing and shall be” after “shall be”; and
- (c) by omitting from subsection (3A) all the words after “made”.

**Consequences of non-compliance with standards**

**28.** Section 45E of the Principal Act is amended by adding at the end the following subsections:

“(10) The Minister shall not make a declaration under subsection (1) in respect of a nursing home unless:

- (a) a Standards Review Panel has been established in the State or Territory in which the nursing home is situated; and

- (b) the requirements of any regulations made for the purposes of this subsection have been satisfied.

“(11) Without limiting the generality of subsection (10), regulations made for the purposes of that subsection may provide for:

- (a) the giving, to the proprietor of a nursing home, of notice of the Minister’s intention to make a declaration under subsection (1) in respect of the nursing home; 5
- (b) the reference to the Standards Review Panel in the relevant State or Territory, at the request of the proprietor, of the notice given by the Minister; 10
- (c) the making by the Standards Review Panel of recommendations to the Minister, including:
  - (i) recommendations that a declaration should be made or should not be made; and
  - (ii) where the Panel recommends that a declaration be made, recommendations regarding the action that should be taken under subsection (2) or (3) following the making of the declaration.” 15

**Records to be kept by proprietors of approved nursing homes**

**29.** Section 61 of the Principal Act is amended by inserting after subsection (1A) the following subsection: 20

“(1B) The proprietor of an approved nursing home shall comply with any provision of the regulations relating to the manner in which records for the purpose of subsection (1A) are to be kept.

Penalty: \$1,000.”. 25

**30.** After section 61 of the Principal Act the following sections are inserted:

**Books and records to be kept at nominated place**

“61A. (1) The proprietor of an approved nursing home shall keep all accounts, books, documents and other records relating to the operation of the nursing home at the nursing home or some other place approved by the Secretary. 30

Penalty:

- (a) in the case of a natural person—\$2,000 or imprisonment for 12 months, or both; or 35
- (b) in the case of a body corporate—\$10,000.

“(2) An approval under subsection (1):

- (a) shall be by instrument in writing; and
- (b) may be in respect of nursing homes generally or in respect of a particular nursing home. 40

**Power to require persons to answer questions and produce documents**

“61B. (1) An authorised officer may, by notice signed by him or her, require a person whom he or she believes on reasonable grounds to be capable of giving information relevant to the operation of this Act in relation to the conduct of an approved nursing home to attend at a reasonable time and place specified in the notice and there to answer questions and to produce such accounts, books, documents and other records in relation to the conduct of the home as are referred to in the notice.

“(2) A notice under subsection (1) requiring a person to produce an account, book, document or record shall set out the effect of subsection (3).

“(3) A person who, pursuant to a notice under subsection (1), produces an account, book, document or record kept, made or prepared by another person that, to the knowledge of the first-mentioned person, is false or misleading in a material particular shall, upon so producing the account, book, document or record, give to the person to whom the first-mentioned person is required to produce the account, book, document or record, a statement in writing signed by the first-mentioned person or, in the case of a body corporate, by a competent officer of the body corporate:

(a) stating that the account, book, document or record is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and

(b) setting out, or referring to, the material particular in respect of which the account, book, document or record is, to the knowledge of the first-mentioned person, false or misleading.

Penalty:

(c) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both; or

(d) in the case of a body corporate—\$5,000.

“(4) An authorised officer may make and retain copies of, or take and retain extracts from, any accounts, books, documents or other records produced pursuant to this section.

“(5) A person is not excused from answering a question or producing any accounts, books, documents or other records when required so to do under this section on the ground that the answer to the question, or the production of the accounts, books, documents or other records, might tend to incriminate the person or make the person liable to a penalty, but the answer of the person to any such question, the production by the person of any such account, book, document or other record, or any information or thing (including any account, book, document or other record) obtained as a direct or indirect consequence of the answer or the production, is not admissible in evidence against the person in criminal proceedings, other than proceedings under, or arising out of or by virtue of, subsection (3) or paragraph 61E (2) (a).

“(6) Where the proprietor of an approved nursing home, or a person employed by such a proprietor, has failed to attend or to answer a question, or to produce any account, book, document or other record, when required so to do under this section, Commonwealth benefit is not payable to the proprietor, unless the Secretary otherwise directs in writing, until the proprietor or that person, as the case may be, has attended, answered the question or produced the account, book, document or other record, as the case may be.

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**Power to examine on oath etc.**

“61C. (1) An authorised officer may examine, on oath or affirmation, a person attending in pursuance of section 61B and, for that purpose, may administer an oath or affirmation to the person.

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“(2) The oath or affirmation to be made by a person for the purposes of subsection (1) is an oath or affirmation that the answers he or she will give to questions asked of him or her will be true.

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**Entry on premises and inspection of books etc.**

“61D. (1) An authorised officer may, with the consent of the occupier of any premises, enter the premises and exercise the functions of an authorised officer under this section in relation to the premises.

“(2) If an authorised officer has reasonable grounds for believing that there are on any premises accounts, books, documents or other records relating to the operation of an approved nursing home, the authorised officer may apply to a Justice of the Peace for a warrant authorising the authorised officer to enter the premises and inspect any such accounts, books, documents or records.

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“(3) If the Justice of the Peace is satisfied, by information on oath or affirmation, that:

- (a) there are on the premises accounts, books, documents or other records relating to the operation of an approved nursing home;
- (b) the premises are not premises that may be entered under section 42; and
- (c) the occupier of the premises has not consented to the authorised officer entering the premises for the purpose of inspecting such accounts, books, documents or records;

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the Justice of the Peace shall grant a warrant authorising the authorised officer, with such assistance as the authorised officer thinks necessary, to enter the premises during such hours of the day or night as the warrant specifies or, if the warrant so provides, at any time, and if necessary by force, and:

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- (d) to inspect any such accounts, books, documents or records that are on the premises; and

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- (e) to make and retain copies of, or extracts from, any such accounts, books, documents or records.

5 “(4) An authorised officer who enters premises under this section is authorised to search the premises for any accounts, books, documents or records that may be inspected under this section.

**Offences**

“61E. (1) A person shall not, without reasonable excuse, refuse or fail:

- (a) to attend before an authorised officer;
- (b) to take an oath or make an affirmation; or
- 10 (c) to answer a question or produce an account, book, document or other record;

when so required pursuant to this Act.

Penalty:

- 15 (d) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both; or
- (e) in the case of a body corporate—\$5,000.

“(2) A person shall not:

- 20 (a) knowingly or recklessly make to an authorised officer exercising a power under section 61B a statement, either orally or in writing, that is false or misleading in a material particular; or
- (b) knowingly or recklessly present (otherwise than pursuant to subsection 61B (1)) to an authorised officer exercising a power, or performing a function or duty, under this Act an account, book, document or other record that is false or misleading in a material particular.

Penalty:

- 25 (c) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both; or
- (d) in the case of a body corporate—\$5,000.”.

30 **Officers to observe secrecy**

31. Section 135A of the Principal Act is amended by omitting paragraph

(3) (b) and substituting the following paragraph:

“(b) divulge any such information to an authority or person if:

- 35 (i) the authority or person is a prescribed authority or person for the purposes of this paragraph; and
- (ii) the information is information of a kind that may, in accordance with the regulations, be provided to the authority or person; or”.

**Further amendments**

40 32. The Principal Act is further amended as set out in Schedule 3.

**PART V—AMENDMENT OF THE STATES GRANTS (NURSE  
EDUCATION TRANSFER ASSISTANCE) ACT 1985**

**Special nurse education transfer grants**

33. Section 4 of the *States Grants (Nurse Education Transfer Assistance) Act 1985*<sup>4</sup> is amended:

- (a) by omitting from paragraph (4) (b) “and”; and
- (b) by omitting paragraph (4) (c) and substituting the following paragraphs:
  - “(c) in respect of the year 1987—\$10,080,000;
  - (d) in respect of the year 1988—\$14,000,000;
  - (e) in respect of the year 1989—\$21,000,000; and
  - (f) in respect of each subsequent year to which this Act applies—\$28,000,000.”.

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**SCHEDULE 1**

Subsection 20 (1)

**FURTHER AMENDMENTS OF THE AGED OR DISABLED PERSONS HOMES  
ACT 1954**

**Subsection 2 (1) (definition of “capital cost” in relation to an approved home):**

Omit “Secretary” (wherever occurring), substitute “Minister”.

**Subsection 6 (1):**

- (a) Omit “Secretary”, substitute “Minister”.
- (b) Omit “he may, in his discretion”, substitute “the Minister may, in his or her discretion, by instrument in writing”.

**Subsection 7 (1):**

- (a) Omit “Secretary may, in his discretion”, substitute “Minister may, in his or her discretion”.
- (b) Omit “in accordance with this Act”.

**Subsection 7 (2):**

Omit “Secretary” (wherever occurring), substitute “Minister”.

**Subsection 7 (3):**

Omit “Part”, substitute “section”.

**Subsection 8 (1):**

- (a) Omit “this Part”, substitute “section 7”.
- (b) Omit “terms and”.
- (c) Omit “Secretary”, substitute “Minister”.

**Subsection 8 (2):**

- (a) Omit “this Part”, substitute “section 7”.
- (b) Omit “Secretary”, substitute “Minister”.
- (c) Omit “him”, substitute “the Minister”.
- (d) Omit “terms and”.

**Subsection 8 (4):**

- (a) Omit “this Part”, substitute “section 7”.
- (b) Omit “terms and” (wherever occurring).
- (c) Omit “Secretary”, substitute “Minister”.

**Subsection 9 (1):**

Omit “this Part”, substitute “section 7”.

**SCHEDULE 1**—continued

**Subsection 9 (1A):**

Omit “Secretary”, substitute “Minister”.

**Subsection 9 (1C):**

Omit “Secretary”, substitute “Minister”.

**Subsection 9 (2):**

- (a) Omit “Secretary”, substitute “Minister”.
- (b) Omit “this Part”, substitute “section 7”.
- (c) Omit “he”, substitute “the Minister”.

**Subsection 9 (8):**

Redesignate as subsection (4).

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**SCHEDULE 2**

Subsection 20 (2)

FURTHER AMENDMENTS OF THE AGED OR DISABLED PERSONS HOMES  
 ACT 1954

**Section 10A (definition of “respite care bed”):**

Omit “Secretary”, substitute “Minister”.

**Subsection 10C (1):**

Omit “Secretary”, substitute “Minister”.

**Subsection 10C (2):**

Omit “Secretary”, substitute “Minister”.

**Subsection 10D (1):**

Omit “Secretary” (wherever occurring), substitute “Minister”.

**Subsection 10D (2):**

- (a) Omit “Secretary”, substitute “Minister”.
- (b) Omit “him”, substitute “the Minister”.

**Subsection 10D (3):**

Omit “Secretary”, substitute “Minister”.

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**SCHEDULE 3**

Section 32

FURTHER AMENDMENTS OF THE NATIONAL HEALTH ACT 1953

**Subsection 40AA (3):**

After “39A (2) or (2A)”, insert “or 39B (5)”.

**SCHEDULE 3—continued**

**Subsection 40AA (3A):**

After “39A (2) or (2A)” (wherever occurring), insert “or 39B (5)”.

**Paragraph 40AA (6) (a):**

After “39A (3)”, insert “or 39B (5)”.

**Subsection 40AA (6AAA):**

After “39A (2)”, insert “or 39B (5)”.

**Subsection 40AA (6AA):**

After “39A (2)”, insert “or 39B (5)”.

**Subsection 40AB (4AA):**

After “section 39A”, insert “or 39B”.

**Subsection 40ABA (5):**

After “section 39A”, insert “or 39B”.

**Subsection 40AD (1CA):**

After “39A (3)”, insert “or 39B (5)”.

**Subsection 40AD (4):**

Omit “\$200”, substitute:

- “(a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.”.

**Subsection 41 (3):**

Omit “\$200”, substitute:

- “(a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.”.

**Subsection 41 (5):**

Omit “\$200”, substitute:

- “(a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.”.

**Subsection 42 (2):**

Omit “\$1,000”, substitute:

- “(a) in the case of a natural person—\$2,000 or imprisonment for 12 months, or both; or
- (b) in the case of a body corporate—\$10,000”.

**Subsection 43 (2):**

Omit “\$200”, substitute:

- “(a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.”.

**SCHEDULE 3—continued**

**Subsection 50 (1):**

Omit “\$1,000”, substitute:

- “(a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.”.

**Section 58K:**

Repeal the section, substitute the following section:

**Interpretation**

“58K. (1) In this Part, unless the contrary intention appears:

‘authorised officer’ means a person who is an authorised officer for the purposes of this Part because of an appointment under subsection (2);

‘Commonwealth benefit’ means an amount payable by the Commonwealth by way of benefit in accordance with Part VA or VB.

“(2) The Minister may, by writing signed by the Minister, appoint:

- (a) a specified person;
- (b) a person for the time being holding, or performing the duties of, a specified office; or
- (c) persons included in a specified class of persons;

to be an authorised officer, or authorised officers, for the purposes of this Part.”.

**Paragraph 62 (1) (aa):**

After “39A”, insert “or 39B”.

**Subsection 62 (1):**

Omit “\$10,000 or imprisonment for 5 years, or both”, substitute:

- “(g) in the case of a natural person—\$10,000 or imprisonment for 5 years, or both; or
- (h) in the case of a body corporate—\$50,000”.

**Subsection 62 (2):**

Omit “\$10,000 or imprisonment for 5 years, or both”, substitute:

- “(a) in the case of a natural person—\$10,000 or imprisonment for 5 years, or both; or
- (b) in the case of a body corporate—\$50,000”.

**Section 134B:**

Omit “section 62”, substitute “subsection 42 (2) or section 61A or 62”.

**Subsection 135B (1):**

After “against section”, insert “61A,”.

**SCHEDULE 3—continued**

**Paragraph 135B (3) (b):**

After “against section”, insert “61A,”.

**Subsection 139B (1):**

After paragraph (a), insert the following paragraph:

“(aa) an instrument for the purposes of paragraph 40AA (6) (ce);”.

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**NOTES**

1. No. 81, 1954, as amended. For previous amendments, see No. 47, 1957; No. 83, 1967; No. 68, 1969; No. 84, 1972; Nos. 128 and 216, 1973; No. 115, 1974; No. 91, 1976; No. 157, 1980; No. 61, 1981; No. 98, 1982; No. 69, 1983; Nos. 78, 134 and 165, 1984; Nos. 24, 95 and 127, 1985; Nos. 115 and 163, 1986; and No. 72, 1987.
2. No. 42, 1974, as amended. For previous amendments, see No. 58, 1975; Nos. 59, 91, 101, 109 and 157, 1976; No. 75, 1977; Nos. 36, 89 and 133, 1978; Nos. 53 and 123, 1979; No. 132, 1980; Nos. 118 and 176, 1981; Nos. 49, 80 and 112, 1982; Nos. 54 and 139, 1983; Nos. 15, 46, 63, 120, 135 and 165, 1984; Nos. 24, 65, 70, 95 and 167, 1985; Nos. 28, 75 and 94, 1986; and No. 44, 1987.
3. No. 95, 1953, as amended. For previous amendments, see No. 68, 1955; Nos. 55 and 95, 1956; No. 92, 1957; No. 68, 1958; No. 72, 1959; No. 16, 1961; No. 82, 1962; No. 77, 1963; No. 37, 1964; Nos. 100 and 146, 1965; No. 44, 1966; Nos. 14 and 100, 1967; No. 100, 1968; No. 102, 1969; No. 41, 1970; No. 85, 1971; No. 114, 1972; Nos. 49 and 202, 1973; No. 37, 1974; Nos. 1, 13 and 93, 1975; Nos. 1, 60, 91, 99, 108, 157 and 177, 1976; Nos. 98 and 100, 1977; Nos. 36, 88, 132 and 189, 1978; Nos. 54, 91 and 122, 1979; Nos. 117 and 131, 1980; Nos. 40, 74, 92, 118, 163 and 176, 1981; Nos. 49, 80 and 112, 1982; Nos. 35, 54 and 139, 1983; Nos. 46, 63, 72, 120, 135 and 165, 1984; Nos. 24, 53, 65, 70, 95, 127 and 167, 1985; Nos. 28, 75, 94 and 115, 1986; and Nos. 22, 44, 72 and 000, 1987.
4. No. 164, 1985, as amended. For previous amendments, see No. 75, 1986.

