

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMMUNITY SERVICES AND HEALTH LEGISLATION AMENDMENT BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of Honourable Dr Neal Blewett MP,
Minister for Community Services and Health)

COMMUNITY SERVICES AND HEALTH LEGISLATION AMENDMENT BILL 1988

GENERAL OUTLINE

The main purpose of this Bill is to amend the National Health Act 1953 in three ways -

- (a) To introduce new arrangements for nursing and personal care of patients in nursing homes. The arrangements, which are based on recommendation of a Working Party on Nursing Home Standards (comprising Commonwealth, State and Territory representatives), are -
 - . the introduction of categories of nursing home patient, assessed according to the level of nursing and personal care required by the patient; and
 - . the determination of fees, and the payment of Commonwealth benefit, in respect of a nursing home patient by reference to the category of the patient.
- (b) To introduce new respite care arrangements in non Government nursing homes by enabling the Minister to make regulations covering, among other things, fixing the level of supplementary respite care subsidy for all classes of patient, conditions of eligibility and the number of beds in a nursing home to which the provisions apply.
- (c) To enable contributors to a health benefit organisation to transfer their membership to another without the imposition of a waiting period or with reduced waiting periods where the waiting period has been served in whole or in part.

The Bill also seeks to amend the Aged or Disabled Persons Homes Act 1954 to introduce a second level of respite care subsidy in hostels linked to the assessed level of care of the resident.

The Bill also seeks to amend the Australian Institute of Health Act 1987 to clarify a cross-reference related to the declaration of interests and to remove an expended provision relating to the making of annual reports.

The Bill also seeks to amend the Nursing Homes and Hostels Legislation Amendment Act 1987 to remove unexpected anomalies caused by the wording of a transitional provision.

The Bill also seeks to amend the States Grants (Nurse Education Transfer Assistance) Act 1985 to simplify the process of appropriating monies for the purposes of that scheme.

FINANCIAL IMPACT STATEMENT

The new hostel respite care arrangements under the Aged or Disabled Persons Homes Act 1954 are expected to cost an additional \$1.9m in 1988-89, \$3.4m in 1989-90 and \$5.2m in 1990-91.

The new financial arrangements for nursing homes and related arrangements are expected to result in increased expenditure of \$17.6m in 1988-89, \$44.7m in 1989-90 and \$58.7m in 1990-91.

There is no financial impact consequent upon the amendments to the Australian Institute of Health Act 1987, the Nursing Homes and Hostels Legislation Amendment Act 1987 and the States Grants (Nurse Education Transfer Assistance) Act 1985.

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PART I - PRELIMINARY

Clause 1 : Short Title

This clause provides that the Act may be cited as the Community Services and Health Legislation Amendment Act 1988.

Clause 2 : Commencement

This clause provides for the coming into operation of various provisions of the Act.

Clause 2(1) provides that sections 1, 2, 7, 8, 9, 10, 13, 15 and 17 and paragraph 20(b) shall commence on the day on which the Act receives the Royal Assent.

Clause 2(2) provides that section 31 shall be deemed to have commenced on 1 July 1987.

Clause 2(3) provides that Part II shall commence on the day on which section 17 of the Community Services and Health Legislation Amendment Act 1987 commences.

Clause 2(4) provides that sections 11, 14, 16, 18, 19, 20 (except paragraph (b)), 21-26 (inclusive) and 29 shall commence on 1 July 1988.

Clause 2(5) provides that the remaining provisions of the Act shall commence on a day or days to be fixed by Proclamation.

**PART II - AMENDMENTS OF THE AGED OR DISABLED PERSONS
HOMES ACT 1954**

Clause 3 : Principal Act

This clause defines "Principal Act" in this Part to mean the Aged or Disabled Persons Homes Act 1954.

Clause 4 : Interpretation

This clause amends the definition of "respite care bed" in section 10A of the Principal Act to clarify that the process of approving such a bed is to be done by a written instrument and makes a referential change to that definition consequent upon clause 5.

Clause 5 : Payments of financial assistance

This clause amends section 10D of the Principal Act to introduce a second level of benefit for eligible persons occupying respite care beds and assessed as requiring both hostel and personal care services.

The clause provides for the amount of the payments, the circumstances in which the payments may be made and the variation of the amount of the payments by Ministerial determination.

Clause 6 : General conditions of recurrent grants

This clause amends section 10F of the Principal Act to clarify a cross reference.

PART III - AMENDMENTS OF THE AUSTRALIAN INSTITUTE
OF HEALTH ACT 1987

Clause 7 : Principal Act

This clause defines "Principal Act" in this Part to mean the Australian Institute of Health Act 1987.

Clause 8 : Disclosure of Interests

This clause amends subsection 14(3) of the Principal Act to include a cross-reference to paragraph 8(1)(h) of that Act.

The effect of the amendment is to provide that the member of the Australian Institute of Health who is nominated by the Consumers' Health Forum of Australia will not be required, pursuant to section 14 of the Principal Act, to declare an interest in any matter being considered or about to be considered by the Institute if that interest is solely due to the fact that the member was nominated by that Forum.

Clause 9 : Application of Part XI of the Audit Act

This clause omits subsection 24(3) of the Principal Act.

Subsection 24(3) made provision for the submission of the Institute's first Annual Report. The subsection is no longer required, and the opportunity is being taken to repeal it.

PART IV - AMENDMENTS OF THE NATIONAL HEALTH ACT 1953

Clause 10 : Principal Act

This clause defines "Principal Act" in this Part to mean the National Health Act 1953.

Clause 11 : Interpretation

This clause amends section 4 of the Principal Act to insert definitions of "approved nursing home patient" and "classified patient". The new definitions are consequential upon the introduction of the substantive provisions of the Amendment Act.

Clause 12 : Waiting period

This clause amends subsection 4A(2A) of the Principal Act.

At present this section defines "waiting periods" only in relation to basic and supplementary hospital tables. In consequence of the amendment to the Schedule of the Act in relation to portability of membership entitlements, it has been necessary to amend this section to refer to other tables operated by health benefits organisations.

Clause 13 : Approval in principle of nursing home etc.

This clause omits subsection 39A(13) of the Principal Act.

Pursuant to subsections 39A(2), (2A), (3), (3A), (4), (4A) or (4B) of the Principal Act, the Minister for Community Services and Health is empowered to make certain decisions by issuing a certificate to the proprietor (or intended proprietor) of a nursing home. Pursuant to subsection 39A(13) of that Act, the Minister is also required to publish a notice in the Gazette that sets out such particulars in relation to the Minister's decision as the Minister considers to be appropriate. This latter requirement is considered unnecessary, and is proposed to be repealed.

Clause 14 : Approval of nursing home

This clause makes four amendments to section 40AA of the Principal Act.

Clause 8(a) clarifies the language of subparagraph 40AA(6)(c)(i).

Clause 8(b) also amends subparagraph 40AA(6)(c)(i) to reflect the amendments made by clause 8(c).

Clause 8(c) inserts a new subsection 40AA(6C) in the Principal Act to empower the Minister to determine scales of fees in relation to nursing homes generally, to classes of nursing homes, to specified nursing homes or parts of specified nursing homes, and classes of nursing home patients.

Clause 8(d) amends paragraph 40AA(7)(a) to reflect the amendments made by clause 8(c).

Clause 15 : Approval of admission to approved nursing home

This clause is consequent on the amendments made in clause 19 and omits subsection 40AB(3A) of the Principal Act and inserts new subsections 40AB(3A).

Proposed subsection 40AB(3B) clarifies that an approval of admission may be in respect of a particular nursing home, a class of nursing home or a class of nursing homes situated in a particular region.

Sub-clause 15(2) also makes transitional arrangements for approvals granted prior to the commencement of the clause.

Clause 16 : Alteration of conditions applicable to a nursing home

This clause amends section 40AD of the Principal Act.

The existing subsection 40AD(1BA) of the Principal Act provides in effect that applications for fee increases in relation to costs or parts of costs that arose before 1 July 1987 will not be approved if the application is submitted on or after 26 February 1988.

Clause 16 allows, in specified circumstances, for proprietors to submit an application after 26 February 1988 where the proprietor could not reasonably have been expected to submit an application before that date. The specified circumstances will be set down in Principles which will be subject to Parliamentary disallowance.

Clause 17 : Interim decisions on applications under subsection 40AD(1B)

This clause inserts a new section 40ADA in the Principal Act.

The new section empowers the Secretary to deal with an application by the proprietor of a nursing home, pursuant to subsection 40AD(1B) of the Principal Act, for the substitution of a new scale of fees in relation to the home by making an interim decision to substitute a new scale of fees while the application is being fully considered. This will avoid financial disadvantage to the proprietor during the period before a final decision is made.

The clause also provides for procedural and transitional matters associated with this new power.

Clause 18 : Patients requiring extensive care

This clause inserts a new subsection 40AF(1A) in the Principal Act to limit the circumstances in which extensive care will be provided, and extensive care benefit will be paid to a nursing home proprietor, in respect of a person who requires extensive care.

Because of other arrangements being introduced by the Amendment Act, it will only be appropriate to provide extensive care and extensive care benefit in their current forms in respect of persons in a Government nursing home or a nursing home for disabled people. The new subsection reflects this change.

Clause 19 : Classification of nursing home patients

This clause inserts new sections 40AFA to 40AFF in the Principal Act to introduce provisions relating to the classification of certain nursing home patients.

New section 40AFA empowers the Secretary to give classifications to nursing home patients according to their degree of need of nursing and personal care. The section also

provides that Commonwealth benefit is not payable in respect of a nursing home patient who is subject to classification but who does not have a classification. The section further provides that the system of classification is to be given effect through written determinations made by the Minister on the classification of patients, the principles by reference to which the classifications are to be given to particular patients and the period of effect of a classification.

New section 40AFB provides for the types of nursing home patients who will be subject to classifications, being (in general) -

- . patients who are admitted to an approved nursing home on or after 1 July 1988;
- . patients in a nursing home which is first approved on or after 1 July 1988; or
- . patients in a class of patients determined by the Minister to be patients to whom section 40AFA applies.

The section also provides for exemptions from these requirements.

New section 40AFC provides for an application for classification to be made in anticipation of the admission of a person to a nursing home and the conditions under which such an application can be made. On receipt of such an application subsection (4) provides that the Secretary may classify the person as if the person were a nursing home patient to whom section 40AFA applies. Subsection (5) outlines the effect of a person becoming a nursing home patient to whom section 40AFA applies before an approval for admission to a nursing home under subsection 40AB(3) expires.

New section 40AFD provides for an application for classification to be made by the proprietor of a nursing home in which a person is a patient.

The section also provides for the date of commencement of a classification, and for the making of a further application for classification when the period of effect of a classification expires.

New section 40AFE provides for review, by the Secretary, at any time, of the classification of a nursing home patient. The Secretary is empowered to either confirm the classification or to revoke it and substitute a higher or lower classification. The section also provides for the date of effect of the Secretary's decision and for the giving of written notice of the Secretary's decision and, in the case of a revocation of a classification, the reasons for that decision.

New section 40AFF provides for the review, by the Minister upon application by the proprietor of a nursing home, of a decision of the Secretary pursuant to new section 40AFE. The Minister is empowered to either confirm the Secretary's decision or to set the decision aside and substitute a decision that the Minister thinks appropriate. The section also provides for the date of effect of the Minister's decision and for the giving of written notice of that decision and, in the case of a revocation, the reasons for that decision.

Clause 20 : Standard fee for non-classified patients

This clause amends section 40AG of the Principal Act.

The existing section 40AG covers the procedures for setting a standard ordinary care fee for non-Government homes for the aged and, using these procedures and other factors specified in Principles, a scale of fees.

Clause 20 amends this -

- . to limit its application to non-classified patients;
- . to reflect that extensive care benefits no longer apply in these homes; and
- . as a consequence of the overall changes, to modify part of the formula for determining the standard fee for 1989-90 and beyond.

The clause also makes minor technical changes to section 40AG.

Clause 21 : Standard fee for classified patients

This clause inserts a new section 40AGA in the Principal Act to empower the Secretary to determine a standard fee for patients included in each classification in each approved nursing home for a financial year.

The standard fee is to be calculated by reference to one of two formulae (depending upon whether the nursing home is a Class 1 or a Class 2 home as defined in subsection 40AG(1) of the Principal Act) -

- . For a Class 1 nursing home, the formula is

$$\frac{AIA}{ABD} + N$$

where AIA/ABD is the same infrastructure fee component as is currently used to calculate fees, covering such costs as food and administration; and N is the product of the relevant number of staff hours of nursing and personal care and the cost per staff hour of that care.

For a Class 2 nursing home, the formula is

$$\text{SAM} + \text{N}$$

where SAM is the same standard infrastructure allowance per occupied bed day as is currently used to calculate fees; and N is the product of the relevant number of staff hours of nursing and personal care and the cost per staff hour of that care.

The clause further provides that the standard fee calculated by reference to the formulae shall be used by the Secretary in determining a scale of fees in relation to classified patients in an approved nursing home for the purposes of paragraph 40AA(6)(c)(i) of the Principal Act.

The clause also provides for the making of annual and supplementary determinations of the standard fee, and for the notification, in the Gazette, of certain matters which must be determined for the purpose of establishing the figure "N" in the formulae.

Clause 22 : Additional patient contribution

This clause, which needs to be used in conjunction with clause 24, inserts a new section 40AI in the Principal Act to empower the Minister to determine an amount in respect of approved nursing home patients, or a class of approved nursing home patients receiving care in a particular nursing home (other than patients in transferred homes), as an additional patient contribution applicable to the patients included in the determination.

Clause 23 : Basic benefit for Government nursing homes and nursing homes for disabled people

This clause amends subsection 47(1) of the Principal Act.

Section 47 currently provides for the payment by the Commonwealth of a Commonwealth benefit, in respect of each approved nursing home patient for each day on which the patient receives nursing home care in that nursing home, to the

proprietor of an approved nursing home, other than a transferred home. Because of other arrangements being introduced by the Amendment Act, it will only be appropriate to pay this Commonwealth benefit in its current form in respect of persons in a Government nursing home or a nursing home for disabled people. The proposed amendment reflects this change.

Clause 24 : Benefit for patients in other approved nursing homes

This clause inserts a new section 47A in the Principal Act.

The effect of the new section is to authorise the payment by the Commonwealth of a Commonwealth benefit, in respect of each approved nursing home patient in the home for each day on which the patient receives nursing home care in the home, to the proprietor of an approved nursing home (other than a Government nursing home, a transferred home or a nursing home for disabled people).

The new section will provide that the amount of Commonwealth benefit will be the difference between -

- . the fee payable to the proprietor for the provision of nursing home care for the patient on the relevant day; and
- . the combined total of the amount prescribed for the purpose of subparagraph 47(2)(b)(iii) of the Principal Act and any additional patient contribution required by new section 40AI of the Principal Act.

The effect of this clause, together with clause 22, is that the amount that the patient pays will no longer increase automatically whenever the fee increases, but will always be the sum of the additional patient contribution (which could be zero) and the maximum patient contribution set by subparagraph 47(2)(b)(iii) of the Act.

Clause 25 : Benefit for nursing home care in transferred homes

This clause omits paragraph 48A(2)(a) of the Principal Act and inserts a new paragraph 48A(2)(a).

The existing section 48A determines the Commonwealth benefit to be paid in respect of patients in a transferred home. Clause 25 makes a minor amendment consequential on other changes introduced by this Bill.

Clause 26 : Extensive care benefit

Clause 26 inserts a new subsection 49(2) in the Principal Act.

Because the payment of extensive care benefit in its current form is proposed to be limited to specific circumstances (see clause 18), the proposed amendment imposes a termination date of 1 July 1988 on payments of the benefit outside those specific circumstances.

Clause 27 : Respite care

This clause inserts a new section 49AA in the Principal Act.

New section 49AA enables the Minister to make regulations to pay benefits in respect of the provision of respite care in nursing homes.

Respite care is an arrangement designed to permit persons receiving care to enter a nursing home for a period so that the person will continue to receive care while the person's usual carers are able to put aside their caring responsibilities for that time.

The new section authorises the making of regulations to provide, among other things, for the payment of a supplementary benefit in respect of respite care patients and for the conditions of eligibility for that benefit. Provision is made to enable the regulations to adopt (if necessary, in a modified form) the provisions of the Principal Act.

Clause 28 : Offences

This clause inserts a new subsection 62(2A) in the Principal Act relating to the furnishing of false or misleading information or documents.

The proposed amendment introduces a new offence related to the introduction of the arrangements for payment of benefits in clause 27. Under those arrangements, proprietors of nursing homes may be required to furnish information regarding the provision of respite care, or nursing home care in respect of Repatriation nursing home patients.

Clause 29 : Certain instruments subject to disallowance

This clause omits section 139B of the Principal Act and substitutes a new section 139B.

The current section 139B specifies certain instruments, required by the Principal Act, which are subject to disallowance by either House of Parliament. The proposed amendment provides for an expanded list of instruments -

- . an instrument for the purpose of paragraph 40AA(6)(ce);
- . a determination of principles under subsection 40AFA(3);
- . a determination of principles under subsection 40AFB(4);
- . a determination of principles under subsection 40AG(9);
- . a notice under subsection 40AG(8), section 40AH or 45D, subsection 47(2B) or section 49;
- . rules under subsection 99AAA(4); and
- . rules under subsection 99AAB(3).

In order to clarify the status of the instruments specified in the section if they are disallowed, the clause applies the provisions of section 46A of the Acts Interpretation Act 1901.

Clause 30 : Schedule

This clause amends the Schedule to the Principal Act by inserting new paragraphs (la), (lb), (lc), (ld), (le), (lf) and (lg). The Schedule, which is authorised by section 73BA of the Principal Act, sets out the conditions of registration of a health benefits organisation.

New paragraph (la) defines the conditions under which a contributor to a health benefits organisation shall, when transferring to a second organisation, become entitled to a waiving of waiting periods in whole or in part. The conditions are -

- . that the contributor was, at the time of the transfer, a financial contributor to the first organisation;
- . that the transfer between health benefit organisations was effected within a specified period; and

that the benefits or parts of benefits to which the waiting period concession relates in the relevant tables of both organisations can be regarded as comparable.

New paragraph (lb) defines "the relevant part of the relevant benefit" for the purposes of paragraphs (ld) and (le). The purpose of the relevant part of the relevant benefit is to identify, when the contributor seeks to transfer between organisations, those parts of the contributor's benefits which are subject to the waiting period concession arrangements.

New paragraph (lc) provides that, for the purposes of paragraph (lb), where a comparable benefit can be either the payment of a benefit or the provision of services or treatment, it shall be assumed that the benefit could consist only of a payment.

New paragraph (ld) ensures that if, prior to the transfer, the transferred contributor was subject to a waiting period imposed by the first organisation, the second organisation may only impose a waiting period on the transferred contributor which is equal to the difference between the second organisation's waiting period and the unexpired amount of the first organisation's waiting period (or, if the whole waiting period has expired, the whole waiting period).

New paragraph (le) is a transitional provision which has the effect that a contributor, who became a transferred contributor before clause 30 of the Bill came into force, who is serving a waiting period at the commencement of clause 30 and who has served a waiting period in respect of a comparable benefit, shall be granted a similar waiting period concession to contributors who became transferred contributors after the commencement of clause 30.

New paragraph (lf) prohibits any health benefits organisation from imposing, upon any contributor, any waiting period, or a similar limitation or restriction, in excess of the period authorised by the conditions specified in the Schedule to the Principal Act.

New paragraph (lg) prohibits any health benefits organisation from offering its contributors directly or through a third party any inducement, or imposing on its contributors any penalty or disadvantage, for the purpose of encouraging the contributor to transfer to another health benefits organisation.

**PART V - AMENDMENT OF THE NURSING HOMES AND HOSTELS
LEGISLATION AMENDMENT ACT 1987**

**Clause 31 : Transitional provision in relation to
transferred homes**

This clause amends section 31 of the Nursing Homes and Hostels
Legislation Amendment Act 1987, which is a transitional
provision dealing with arrangements existing prior to 1 July
1987.

The wording of the exclusory provision in subsection 31(8),
affecting "patients of a nursing home", has produced unintended
anomalies due to the use of the indefinite article. The
anomalies will be removed by altering the exclusion to
"patients of the nursing home".

The clause will be deemed to have commenced on 1 July 1987.

PART VI - AMENDMENT OF THE STATES GRANTS
(NURSE EDUCATION TRANSFER ASSISTANCE) ACT 1985

Clause 32

This clause omits subsection 4(4) of the States Grants (Nurse Education Transfer Assistance) Act 1985.

Subsection 4(4) limits the amount of financial assistance that the Minister may determine is to be provided to the States and the Northern Territory for basic nurse undergraduate courses at colleges of advanced education.

The amount to be provided to the States and the Northern Territory is also limited by section 7 of the Act which provides that payments under the Act shall be made out of moneys appropriated by Parliament for the purposes of the Act. Subsection 4(4) is therefore unnecessary. Further, the repeal of subsection 4(4) will remove the need for frequent amendment of the Act to increase the amounts in that subsection to compensate for inflation.

