

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMMUNITY SERVICES AND HEALTH  
LEGISLATION AMENDMENT BILL (No. 2) 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Honourable Neal Blewett, M.P.,  
Minister of State for Community Services and Health)

COMMUNITY SERVICES AND HEALTH  
LEGISLATION AMENDMENT BILL (No. 2) 1988

OUTLINE

This Bill proposes amendments to the First Home Owners Act 1983 which will clarify the circumstances under which a person is eligible for assistance under that Act, and simplify the recovery of monies paid in certain cases (Part II).

2. It is also proposed in the Bill to amend the Health Insurance Act 1973 to restrict eligibility for Medicare benefits to persons residing in Australia on a legally permanent basis, and withdraw from Australian residents living or travelling overseas entitlement to Medicare benefits in the absence of a reciprocal health care agreement with the other country concerned. The Bill also amends the provisions of the Health Insurance Act 1973 governing the content of agreements between the Commonwealth and States for the provision of hospital and other health services and provides for the entering into of such agreements with the Australian Capital Territory in the event of its self-government. The Bill also inserts new definitions of "hospital treatment" and "nursing-home type patient" as part of the authorisation of the payment of health benefits to persons who are long stay nursing home type patients in approved hospitals (Part III).

3. The Bill also proposes to make amendments to several parts of Commonwealth legislation dealing with the provision of financial assistance for the operation of nursing homes and hostels, and with the provision of financial assistance to meet part of the fees being charged for nursing home care. The main objectives are -

- (a) to amend the National Health Act 1953 to introduce a system whereby a number of nursing homes will be able to charge fees which are higher than the Commonwealth-imposed maximum that would otherwise apply and for which the Commonwealth daily benefit will be reduced below that which would otherwise be payable (Part IV);
- (b) to amend the National Health Act 1953 to introduce lodgement fees prior to the making of appeals against the setting of specific maximum nursing home fees, and to introduce an appeal processing fee based on the time used by an independent Nursing Homes Fees Review Committee to consider that appeal (Part IV); and
- (c) to amend the Community Services and Health Legislation Amendment Act 1988 to clarify arrangements to be made for the provision of financial assistance to patients receiving respite care in approval nursing homes, and to make other minor amendments (Part V).

4.

4. The Bill also amends the National Health Act 1953 to ensure that registered health benefits organizations continue the payment of health benefits to persons who are long stay nursing home type patients in approved hospitals.

5. The Bill also proposes to make amendments to a number of Acts for the purpose of empowering the Minister and the Secretary of the Department to delegate their powers and functions to persons performing the duties of an office in the Department but who are not officers of the Australian Public Service (Part I of the Schedule).

6. Other minor amendments to various Acts are set out in the Schedule.

#### FINANCIAL IMPACT STATEMENT

7. No financial impact is anticipated from the proposed amendments to the First Home Owners Act 1983.

8. The proposed amendment to the Health Insurance Act 1973 contained in clause 7 is not expected to achieve immediate savings. Moderate savings in Medicare benefits are, however, expected in the future.

9. The proposed repeal of section 21 of the Health Insurance Act 1973 contained in clause 13 is expected to save approximately \$5 million a year in Medicare benefits from 1 January 1989.

10. The proposed amendments to the Health Insurance Act 1973 contained in clauses 7, 14, 15, 16 and 19 constitute a new program that will cost the Commonwealth, in payments to all States and the Northern Territory in aggregate, an estimated \$3025 million in 1988-89.

11. The Australian Capital Territory will receive a payment analogous to the hospital grants of \$38 million in 1988-89.

12. The total of the above of \$3063 million can be compared with specific purpose health funding in 1987-88 under the Medicare compensation grants of \$1092 million. To this amount has to be added untied assistance of \$1782 million provided under the same terms as general revenue assistance.

13. As a consequence of the increase in specific purpose hospital funding there has been a compensating adjustment in the level of general revenue assistance provided to the States and Territories in 1988-89.

14. The amendments to both the Health Insurance Act 1973 and the National Health Act 1953 to include, as part of the business of a registered health benefits organization, the

payment of health benefits to persons who occupy a bed in a hospital but who do not receive professional attention will have no financial impact on the Commonwealth.

15. The financial impact of the proposed amendments to the National Health Act 1953 which will introduce the exempt nursing home bed arrangements will depend on:

- (a) the number of nursing homes which apply for, and are granted, exempt bed status; and
- (b) the level of the additional exempt bed fees and the extent of a benefit discount proposed by these homes in their applications.

It is estimated that when the system has been fully implemented, savings in Commonwealth benefits of \$10 million a year will accrue.

16. The proposed lodgement fee of \$500 and an additional processing fee of \$500 per half day will have a deterrent effect on nursing home proprietors lodging non-genuine appeals. Proprietors who have their appeal wholly or substantially upheld will have their lodgement fee refunded and no processing fee will be applied. The main Commonwealth savings will be in avoiding non-quantifiable additional costs in processing non-genuine review applications. It is to be expected this initiative will yield revenue estimated at \$100,000 this year, with anticipated revenue of \$40,000 and \$30,000 in 1989-90 and 1990-91 respectively.

COMMUNITY SERVICES AND HEALTH  
LEGISLATION AMENDMENT BILL (No. 2) 1988

PART I - PRELIMINARY

Clause 1 : Short title

17. When enacted, the Bill will be cited as the Community Services and Health Legislation Amendment Act (No. 2) 1988.

Clause 2 : Commencement

18. The Bill will commence upon Royal Assent, with the exception of several provisions which will commence under separate arrangements:

(a) clauses 10, 12 and 13 will commence on 1 January 1989

(b) clauses 14, 15 and 21 to 36 (inclusive) and 38 will commence on a day or days to be fixed by Proclamation

8.

- (c) clauses 16 and 19 will be taken to have commenced on  
1 July 1988
- (d) Part V will be taken to have commenced on 24 June  
1988
- (e) subclause 43(2) will be taken to have commenced on  
16 December 1987
- (f) subclause 43(3) will be taken to have commenced on  
6 November 1987
- (g) subclause 43(4) will commence on the same day as  
section 11 of the Crimes Legislation Amendment Act  
1987

PART II - AMENDMENTS OF THE FIRST HOME OWNERS ACT 1983

Clause 3 . Principal Act

19. This clause cites the First Home Owners Act 1983 as the Principal Act for the purpose of Part II of this Bill.

Clause 4 . Person not intending to reside in dwelling

20. This clause amends section 5 of the Principal Act.

21. The proposed amendment to section 5 of the Act will ensure that in all cases where a person has not resided and has no intention of residing in the dwelling he or she will be deemed not to be a prescribed person.

Clause 5 : Adjustment of payments of assistance

22. The proposed amendment to section 37 of the Act will provide that where a direction under section 5 is made, assistance which has been paid becomes recoverable. The

amendment will simplify the recovery of moneys paid in cases where the dwelling proves to be an investment home. The amendment will also assist in cases where only one of two or more applicants ever occupies the dwelling. The person who never occupies the dwelling would be deemed not to be a prescribed person and would therefore be able to reapply later in respect of any other first home. The person who did occupy the dwelling would continue to be an applicant in his or her own right.

PART III - AMENDMENTS OF THE HEALTH INSURANCE ACT 1973

Clause 6 : Principal Act

23. This clause cites the Health Insurance Act 1973 as the Principal Act for the purpose of Part III of this Bill.

Clause 7 : Interpretation

24. Subclauses (a) and (d) of this clause replace the definition of "hospital patient" in subsection 3(1) of the Principal Act with a definition in exactly the same terms of "public patient" and make a consequential amendment to the definition of "private patient". This is to reflect the more common public acceptance of the term "public patient".

25. Subclause (b) of this clause would repeal the present definition of "Australian resident" in subsection 3(1) of the Principal Act and insert a new definition of that term in its place. The definition of "Australian resident" is important primarily for determining a person's entitlement to Medicare benefits. To be eligible for Medicare benefits a person must

be either an "Australian resident" or an "eligible overseas representative" (diplomatic personnel).

26. The proposed new definition would, in short, provide that only persons residing in Australia on a legally permanent basis are "Australian residents" for the purposes of the Act.

Illegal immigrants, persons with only temporary entry permits, persons who have overstayed their legal time limit and persons merely visiting Australia would all be excluded from this category.

27. Subclause (c) of this clause will repeal the definitions of "hospital treatment" and "nursing-home type patient" and will insert new definitions to reflect the intention that registered health benefits organizations should provide benefits in respect of persons who are long stay nursing home type patients in approved hospitals -

- (a) "hospital treatment" will mean accommodation and nursing care, whether provided for the purpose of permitting the provision of professional attention or, in the case of a nursing-home type patient, as an end in itself;
- (b) a "nursing-home type patient", in relation to a hospital, will be a patient in the hospital who has been provided with accommodation and nursing care for a continuous period exceeding 35 days and

includes any person included in a class of persons that the Minister, by notice in writing given for the purposes of this definition, has declared to be a class of nursing-home type patients but does not include -

- . a patient in respect of whom there is in force a determination under section 3A or a certificate given under section 3B; or
- . a person included in a class of persons that the Minister, by notice in writing given for the purposes of this definition, has declared not to be a class of nursing-home type patient

A notice made by the Minister is to be a disallowable instrument for the purposes of the Acts Interpretation Act 1901.

Clause 8 : Determination that particular patients need acute care

28. This clause amends section 3A of the Principal Act, which empowers the Secretary of the Department of Community Services and Health to make determinations that acute care is required in particular hospitals. This power can at present only be

exercised in respect of an "in-patient" as defined in the Principal Act; under the proposed amendment, the power will be exercised in respect of any "patient" in the hospital. The proposed amendment is consistent with the amendments proposed in clause 7.

29. The clause also makes transitional arrangements to deal with determinations made under section 3A of the Principal Act prior to the commencement of the proposed amendment, so that they will continue in force as if they had been made under section 3A as amended.

Clause 9 : Certification of patients needing acute care

30. This clause amends section 3B of the Principal Act, which empowers a medical practitioner to give a certificate that a person in a hospital is in need of acute care. This power can at present only be exercised in respect of an "in-patient" as defined in the Principal Act; under the proposed amendment, the power will be exercised in respect of any "patient" in the hospital. The proposed amendment is consistent with the amendments proposed in clause 7.

31. The clause also makes transitional arrangements to deal with certifications given under section 3B of the Principal Act prior to the commencement of the proposed amendment, so that

they will continue in force as if they had been made under section 3B as amended.

Clause 10 : Certain Persons in Australia to be Treated as Eligible Persons

32. This clause would amend section 6 of the Principal Act by repealing subsection 6(3). This amendment is a consequential amendment made necessary by the repeal, in clause 13 of this Bill, of section 21 of the Principal Act.

Clause 11 : Repeal of Section 13

33. This clause would amend the Principal Act by repealing section 13. This section presently provides, in respect of the fitting of contact lenses, for a reduced Medicare benefit where the patient either does not have a prescribed condition or is undergoing a course of attention for the fitting of such lenses which has commenced within three years of the commencement of an earlier similar course of attention. If neither situation applies to the patient then the full Medicare benefit is payable.

34. Once section 13 is repealed the concept of a reduced benefit will disappear. There will then be just one single rate of benefit available - available only, however, under the Medicare Benefits Schedule once every three years unless the further courses have been certified as necessary by a doctor.

Clause 12 : Medicare Benefits in Relation to Pathology Services

35. This clause would amend section 16A of the Principal Act by repealing subsection 16A(13). This is a minor consequential amendment made necessary by the repeal of section 21 of the Principal Act effected by clause 13 of this Bill.

Clause 13 : Repeal of Section 21

36. This clause would amend the Principal Act by repealing section 21. Section 21 presently provides, in short, for the payment of Medicare benefits, in specified circumstances, for medical services rendered to Australian residents while overseas. Section 21 would, after its repeal, continue to apply in respect of such services rendered prior to 1 January 1989. Services rendered after that date would, however, no longer attract Medicare benefits.

Clause 14 : Interpretation

37. This clause repeals section 23E of the Principal Act and inserts a new section 23E. Section 23E presently includes provision that a reference to a State in Part III of and Schedule 2 to the Principal Act includes a reference to the Northern Territory.

38. New section 23E will provide similarly to existing section 23E except that a reference to a State will include a reference to the Australian Capital Territory. It is intended that the new provision would commence following the institution of self-government in the Australian Capital Territory. This would permit the entering into of agreements by the Commonwealth with the Australian Capital Territory under section 23F of the Principal Act in relation to the provision of hospital and other health services.

Clause 15 : Repeal of section 23G

39. This clause repeals existing section 23G of the Principal Act which as amended by the Bill will provide for the making of payments to the Australian Capital Territory Community and

Health Service in relation to the provision of hospital and health services. The provision would come into operation upon proclamation following the institution of self-government in the Australian Capital Territory. Commencement of the amendment to section 23E of the Principal Act would then permit the entering into by the Commonwealth of an agreement under section 23F of the Principal Act.

Clause 16 : Payments in respect of recognised hospital in the Australian Capital Territory

40. This clause amends section 23G of the Principal Act which provided until 30 June 1987 for the making of payments by the Commonwealth to the Australian Capital Territory Health Authority in relation to the provision of hospital and other health services. The amendments will provide for the making of such payments to the Australian Capital Territory Community and Health Service for successive financial years from 1 July 1988 and before 1 July 1993. The clause substitutes new subsections 23G(1) and (2) and makes a minor consequential amendment to subsection 23G(3).

41. New subsection 23G(1) defines a "relevant period" and "Service" for the purposes of section 23G. A "relevant period" is defined as the period of the financial year commencing on

1 July 1988 and each succeeding financial year before 1 July 1993 and "Service" as the Australian Capital Territory Community and Health Service.

42. New subsection 23G(2) provides that there is payable by the Commonwealth to the Australian Capital Territory Community and Health Service in respect of the relevant period an amount determined by the Minister to be appropriate for assisting the Service in meeting the costs of the recognised hospital system in the Australian Capital Territory, and for providing incentives to encourage the more effective use of recognised hospital resources.

Clause 17 : Knowingly Making False Statements Relating to  
Medicare Benefits

43. This clause will amend section 128B of the Principal Act by repealing subsection 128B(4). Section 128B concerns the wilful making by a person of a statement which that person knows is false or misleading and which is capable of being used in connection with a claim for benefits under the Principal Act. Subsection 128B(4) presently allows the jury or court to find a person not guilty of that offence but guilty of a related, but less serious, offence where it does not believe the accused possessed the necessary guilty intent. The offence

of which the accused may be found guilty concerns the same actions (the making of false or misleading statements) but does not require a guilty intent (in this case, knowledge that the statement in question was false or misleading). All that need be established is that the accused made the statement and that it was false or misleading.

44. This amendment would give effect to recommendations made by the Commonwealth Director of Public Prosecutions and the Attorney-General's Department that this provision should be repealed as it is both unnecessary and undesirable. It is regarded as undesirable because its presence could, in certain circumstances, result in an accused being forced to incriminate himself or herself. A similar provision in the Veterans' Entitlements Act 1986 is also being repealed for the same reasons.

Clause 18 : Delegation

45. This clause amends section 131 of the Principal Act to empower the Minister and the Secretary to delegate their powers and functions to persons performing the duties of an office in the Department. This will rectify an anomaly which has prevented persons who work within the Department, but who are not officers of the Australian Public Service (eg persons on

exchange programs or persons on temporary placements) from acting as delegates of the Minister or the Secretary.

Clause 19 : Schedule 2

46. This clause amends Schedule 2 to the Principal Act which contains the Heads of Agreement for the purposes of agreements under section 23F of the Principal Act between the Commonwealth and a State (presently defined to include the Northern Territory) for and in relation to the provision of hospital and other services. Such agreements are required to be in terms that give effect substantially to the Heads of Agreement.

47. The amendments to the Heads of Agreement -

- (a) omit present paragraph 3 which contains obsolete provisions relating to Commonwealth payments appropriate to the implementation phase of the Medicare scheme, and substitute a new paragraph 3 providing for Commonwealth payments to a State to assist the State in meeting the costs of its recognized hospital system; and to provide incentives to the State to encourage the more effective use of recognized hospital resources;

- (b) amend paragraph 7 so that agreements shall make provision for certain charges to apply in recognized hospitals but need not specify them as at present; and
- (c) add a new paragraph 11 providing that agreements shall authorise the Commonwealth to vary the amount of its payments if a State fails to comply with conditions specified in the agreement, or in accordance with any agreement for such variation between the Commonwealth and the State.

PART IV - AMENDMENTS OF THE NATIONAL HEALTH ACT 1953  
AND CONSEQUENTIAL PROVISIONS

Clause 20 : Principal Act

48. This clause cites the National Health Act 1953 as the Principal Act for the purpose of Part IV of this Bill.

Clause 21 : Recognised days of absence of qualified nursing  
home patients etc

49. This clause amends section 4AA of the Principal Act to make it clear that certain parts of agreements entered into under that section do not apply to exempt beds (established under this Part of the Bill) in transferred nursing homes.

Clause 22 : Interpretation

50. This clause inserts new definitions in section 39 of the Principal Act. Several of the definitions have been relocated from other places in the Principal Act, with the effect that they now will apply throughout Part V of the Principal Act, and of the other definitions the most important are:

- (a) "additional exempt bed fee", which is an amount specified by the proprietor of an approved nursing home in an application for exempt bed status made under the proposed section 39AB (or an amount which has been obtained following a redetermination of that amount under subsection 40AD(1BB)); and
- (b) "reference fee", which is an amount determined in accordance with the existing fee determination procedure set out in the Principal Act, and which forms the basis from which nursing home fees may be increased by the additional exempt bed fee pursuant to the proposed exempt bed system contained in proposed sections 39AB and 40AAA.

Clause 23 : Determination of maximum number of exempt beds etc

51. This clause inserts a new section 39AAA in the Principal Act, which will empower the Minister to determine maximum numbers of exempt nursing home beds within a State, a Territory or a planning region. The effect of these maximum numbers will be to limit the number of beds which may be granted exempt bed status under the arrangements set out in proposed section 39AB of the Principal Act during a relevant period.

Clause 24 : Applications for exempt bed status

52. This clause inserts a new section 39AB in the Principal Act to set out the means by which nursing home beds may be granted exempt bed status for the purpose of modifying a number of Commonwealth-imposed conditions applying to the beds and the nursing home in which they are located.

53. Under the proposed section, the proprietor of a nursing home (or the proprietor of a nursing home for which approval in principle has been sought or given) may apply to the Minister for a grant of exempt bed status to be given for all of the beds in that nursing home. The application is required to be

accompanied by specific information, including information specified in the proposed subsection 39AB(3):

- (a) the proposed level of the additional exempt bed fee applying to all beds in the nursing home; and
- (b) the proposed reduction in the Commonwealth benefit payable in respect of each bed. That reduction will be by a proportion (not less than 50%) of the increase in the fee which the proprietor has proposed.

54. If the application is successful, the effect of these actions will be that nursing homes which wish to provide services to their patients, the cost of which cannot currently be recovered due to the Commonwealth-imposed condition that nursing home fees will not exceed a maximum level, and for which the patients are prepared to pay, will be able to provide those services in return for increased fees which will not be in breach of that condition.

55. This proposed system will not apply to Government nursing homes or nursing homes for disabled people.

56. It is not intended that every nursing home will be able to have exempt bed status granted, and the Minister will be empowered to establish principles which will enable the

Minister to evaluate applications and to grant exempt bed status. Those principles are to include a number of matters, including whether the granting of the application would unreasonably reduce access to nursing home care to financially disadvantaged persons. The Minister will also be empowered to obtain information from an applicant to allow for the proper evaluation of applications.

57. Once this evaluation is completed, proposed subsection 39AB(8) will empower the Minister with a discretion to grant exempt bed status to all beds in a nursing home for a specified period. Proposed subsection 39AB(9) will provide for the date of commencement of that specified period in respect of a nursing home which has only been approved in principle.

58. Proposed subsections 39AB(10) and (11) will provide for the revocation of a grant of exempt bed status, which will occur if the approval of the nursing home is revoked or on application by the proprietor.

Clause 25 : Approval of nursing home

59. This clause amends section 40AA of the Principal Act to make it clear that:

- (a) the condition that additional charges in the nursing home may not be imposed without a request from the patient; and
- (b) the formulation of principles for the determination of scales of fees in a nursing home

are matters which only apply to nursing homes which have not been granted exempt bed status.

Clause 26 : Modification of conditions of approval for exempt beds

60. The Principal Act makes the approval of a nursing home subject to a number of specified conditions. Where beds in an approved nursing home are granted exempt bed status pursuant to proposed section 39AB, it is intended that a number of these conditions will be modified for the period of the exemption. This clause inserts a new section 40AAA in the Principal Act to specify the conditions which will be modified. The modifications mainly affect the limitations which are placed on the fees which can be charged by the proprietor for each nursing home bed.

61. The proposed section provides for approved nursing homes which have been granted exempt bed status:

(a) The maximum fee per day which can be charged for a short-term respite care patient will be the sum of:

- the amount determined for the purpose of paragraph 47(2)(b)(iii) of the Principal Act (currently \$16.85 per day);
- the additional exempt bed fee, being the amount proposed by the proprietor, in the application for exempt bed status, as the excess over the reference fee (or an amount subsequently redetermined by the proprietor pursuant to subsection 40AD(1BB)); and
- the amount proposed by the proprietor, in the application for exempt bed status, as the amount by which the Commonwealth benefit payable to the proprietor in respect of that bed is to be reduced.

(b) The maximum fee per day which can be charged to a patient in any other case will be the sum of the reference fees determined pursuant to paragraph 40AA(6)(c)(i) of the Principal Act and the additional exempt bed fee as described above.

- (c) The current paragraph 40AA(6)(c)(ii) of the Principal Act imposes a condition that enables the imposition of additional charges in the nursing home, in respect to a matter not related to nursing home care, where specifically requested by the patient. Proposed paragraph 40AAA(e) modifies that condition to prohibit nursing homes with exempt bed status from making such additional charges.

Clause 27 : Alteration of conditions applicable to a nursing home

62. The existing subsection 40AD(1B) of the Principal Act empowers the Secretary to redetermine fees in a nursing home. The clause amends section 40AD to provide two methods for the redetermination of fees, depending on whether the home has been granted exempt bed status or not.

63. In the case of a home which has not been granted exempt bed status, the existing method is to be retained. The proposed amendment to subsection 40AD(1B) makes this arrangement clear.

64. In the case of a home which has been granted exempt bed status, the arrangements are to be as follows:

- (a) Pursuant to proposed subsections 40AD(1BB) to (1BG), the additional exempt bed fee, being the amount proposed by the proprietor, in the application for exempt bed status, as the excess over the reference fee may be redetermined by the proprietor once in every 12 month period, subject to approval by the Secretary. The Secretary is to approve a proposed redetermination if it is in accordance with principles established by the Minister.
- (b) Pursuant to proposed subsection 40AD(1BH), the reference fee (as defined in section 39 of the Principal Act) may be redetermined by the Secretary at any time, with or without an application having been made by the proprietor.

Proposed subsections 40AD(1BJ) and (1BK) make administrative arrangements relating to the implementation of redeterminations which have been made.

Clause 28 : Existing patients in nursing homes containing exempt beds

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

66. One of the objectives of the proposal to grant exempt bed status is to authorise an additional fee in a nursing home which has that status above the current maximum fee. The proposed section 40ADB is intended to protect the rights of existing patients in nursing homes which are granted exempt bed status.

67. An existing patient may elect, at any time within a 6 month period after a nursing home is granted exempt status, to have the proposed provisions of the Principal Act applied to him or her as soon as the 6 months have elapsed. Proposed subsections 40ADB(2) to 40ADB(9) deal with the manner in which such an election is to be made, including provisions dealing with patients who are, by reason of physical or mental incapacity, unable to make the election.

68. Proposed subsection 40ADB(10) provides that if an election is not made within the 6 months period, then the nursing home is subject to the provisions of the Act in respect to the patient for a period of two years from the date of the grant of exempt bed status as if the bed were not an exempt bed. The proposed provisions of the Principal Act will automatically apply to the patient at the end of 2 years following the grant of exempt bed status.

69. Proposed subsection 40ADB(11) provides for administrative matters relating to the making of an election.

70. In summary, the arrangements for protecting existing residents are to be:

- . no existing resident of a nursing home that becomes an exempt home can be charged the exempt bed fees during the first 6 months;
- . after that 6 months expires, and until a date 2 years after the nursing home became an exempt home, only those residents who during the first 6 months elected to be subject to the exempt bed fees can be charged those fees; and
- . after the 2 years has expired all existing residents can be charged the exempt bed fees.

Clause 29 - Repeal of section 40AE and substitution of new sections

71. Subclause 29(1) repeals section 40AE of the Principal Act and substitutes new sections 40AE, 40AEA, 40AEB, 40AEC, 40AED, 40AEE, 40AEF, 40AEG and 40AEH to make provision for the charging by the Commonwealth of fees in respect of appeals

against decisions of the Secretary under subsection 40AD(1B) and new subsections 40AD(1BC), (1BD) and (1BH) relating to fees charged by nursing homes.

72. The existing section 40AE provides for Ministerial review upon request by a proprietor of a decision of the Secretary under subsection 40AD(1B) made without application by a proprietor, a decision to refuse an application, or a decision made otherwise than in accordance with an application.

73. Subsection 40AD(1B) provides that the Secretary may at any time, upon application by the proprietor of a nursing home or otherwise, alter the conditions applicable to an approval of a nursing home under section 40AA by substituting a new scale of fees to be charged in respect of qualified nursing home patients or Repatriation nursing home patients determined in accordance with subparagraph 40AA(6)(c)(i).

74. New subsection 40AE(1) provides, in relation to decisions of the Secretary under subsection 40AD(1B) made after 24 August 1988, the same rights of review as are available in the present section 40AE.

75. Consequent upon the insertion of new subsections 40AD(1BC), (1BD) and (1BH) (which relate to exempt nursing homes), providing for approval of, or redetermination by the Secretary of additional exempt bed fees and reference fees within the meaning of the new definitions of those terms to be

inserted in section 39, new subsection 40AE(2) will provide for Ministerial review of decisions under subsections 40AD(1BC), (1BD) and (1BH) made after a date to be gazetted, where such decisions are made without application by the proprietor, a decision is made to refuse an application, or a decision is made upon application to redetermine reference fees.

76. New subsection 40AE(3) provides that a valid request under section 40AE shall be made only by the existing proprietor on an appropriate authorised form and within 42 days of notice of the decision.

77. New subsection 40AE(4) provides that a valid request under section 40AE shall include an authorisation for a Committee processing fee for which provision is made in new section 40AEE and a lodgment fee of \$500 to be deducted from any benefits payable to the proprietor under Part VA of the Act. It is also provided in this section that the amount of lodgement fee may be varied by the Minister by notice published in the Gazette. Such notices will be subject to tabling in, and disallowance by Parliament.

78. New subsection 40AE(5) provides for the deduction of such fees from benefits payable to a proprietor.

79. New section 40AEA provides that a request to the Minister to review a decision may be withdrawn by the existing proprietor at any time before the Minister has confirmed or

varied the decision by written notice signed by the proprietor and lodged with the Secretary.

80. New section 40AEB provides for a refund or non-deduction of the lodgment fee where a request is withdrawn within the 42 day period provided for in this new section, or where the decision is varied by the Minister wholly or substantially in favour of the applicant.

81. New section 40AEC provides for the Minister, following the expiration of the 42 day period provided for in this new section, to refer requests for review to the appropriate Nursing Homes Fee Review Committee of Inquiry established under Division 3A Part VIII of the Principal Act, for examination and report before a decision is taken. Such referral will only take place where the proprietor has provided full and detailed reasons for request, copies of relevant documents, such information and relevant documents as the Minister has specified by gazettal as necessary for the purposes of review, and such further information and documents as the Minister requires by written notice for the purposes of deciding the particular request.

82. New section 40AED will provide for the examination and report by the Committee, for such report to include a report of time taken by the Committee to examine the matter, and for specification of the Committee processing fee calculated under section 40AEE and payable by the proprietor.

83. New subsection 40AEE(1) provides that the Committee processing fee shall be \$500 (or another amount fixed by the Minister in accordance with the definition of "prescribed amount" in new subsection 40AEE(6)) for a relevant period not exceeding four hours or, for a relevant period in excess of four hours, \$500 for each period of four hours and for any additional period of less than four hours. Provision is also made for the amount of \$500 to be varied by the Minister by notice published in the Gazette. Such notices will be subject to tabling in, and possible disallowance by Parliament.

84. New subsection 40AEE(2) provides that a Committee processing fee shall not exceed \$1,000 per day (or twice the four hourly rate if varied by the Minister).

85. New subsections 40AEE(3) and (4) provide for deduction of the fee from benefit payments where authorised and recovery of the fee as a debt due and payable to the Commonwealth.

86. New subsection 40AEE(5) defines "relevant period" for the purposes of the section as being the period, or the aggregate of the periods, during which a Committee met to examine a matter pursuant to new section 40AED.

87. New subsection 40AEE(6) defines "relevant period" for the purposes of the section as being the period, or the aggregate of the periods, during which a Committee meets to examine a matter pursuant to new section 40AED. The subsection also

defines the "prescribed amount", which is the Committee processing fee, as being \$500 or another amount fixed by the Minister.

88. New section 40AEF makes similar provisions to those in the existing section 40AE which is to be repealed by this clause. Consequential reference is made to principles under subsection 40AE(1BE) which is inserted by this clause.

89. New section 40AEG provides for the non-deduction or refund of Committee processing fees where a decision is varied in a manner wholly or substantially in favour of the proprietor.

90. New subsections 40AEH(1) and (2) provide that the Minister may, before the Committee has commenced to consider the matter, require notification within 28 days by a proprietor of a nursing home of whether there has been a change in proprietorship of the nursing home since a request for review was made, failing which notification the request will be treated as withdrawn.

91. New subsection 40AEH(3) provides that where, following a request for review and before a Committee has commenced consideration of the matter, the Minister becomes aware of a change of proprietorship of a nursing home, he shall provide details of the request to the new proprietor by written notice and inform him that if he does not within a specified period authorise the Minister to proceed the request shall be taken to

have been withdrawn. The subsection provides that the Minister shall take no further action on the matter before receipt of authorisation or the expiry of 28 days (or such longer period as the Minister specifies in writing to the proprietor), whichever first occurs.

92. New subsection 40AEH(4) provides that where a new proprietor authorises the Minister to proceed or to continue to proceed with a request as required by new paragraph 40AEH(3), that proprietor shall be taken to have authorised the deduction of the Committee processing fee from benefits payable to that proprietor.

93. New subsection 40AEH(5) provides that where a new proprietor does not authorise the Minister to proceed or continue to proceed with a request as required by new paragraph 40AEH(3)(d), the request shall be taken to have been withdrawn.

94. New subsection 40AEH(6) provides that where a request is taken under subsection (2) or (5) to have been withdrawn, the lodgment fee shall be deducted from benefits payments and shall not be refundable.

95. Subclauses 29(2), (3), (4), (5), (6) and (7) are transitional provisions in relation to requests made under the present section 40AE on or before 23 August 1988 and not referred to a Committee before the commencement of this provision.

96. Subclauses 29(2) and (3) provide that such a request shall be taken to have been withdrawn unless the proprietor authorises the Minister to proceed with the request within 28 days of notification by the Minister under the provisions.

97. Subclause 29(4) provides that, where the proprietor authorises the Minister under subclause 29(2) to proceed with the request, it shall be taken to have been validly made on 24 August 1988 under the new provisions. Thus those new provisions apply in such case, except that it is provided in this subclause that the Committee processing fee but not the lodgment fee may be deducted from payments of benefits under Part VA of the Act.

98. Subclauses 29(5), (6) and (7) provide, in relation to a request received before 24 August 1988, for notification of a change in proprietorship in similar terms to new subsection 40AEH(3). It is also provided that where the new proprietor authorises the Minister to proceed with the request it shall be treated as having been validly made on 24 August 1988 or otherwise shall be taken to have been withdrawn.

99. Subclause 29(5) provides, in relation to a request to the Minister for review of a decision in circumstances set out in paragraphs 29(2)(a) and (b), that where there is a new proprietor of the nursing home the Minister shall give written notice to the new proprietor of the details of the request and shall notify the proprietor that if no authorisation to proceed

is received within 28 days the request shall be treated as withdrawn.

100. Subclauses 29(6) and (7) provide that where no such authorisation is received from the new proprietor the request shall be treated as withdrawn; and that where the new proprietor does authorise the Minister to proceed the request shall be taken to have been validly made by the new proprietor on 24 August 1988 under the new provisions. The effect of an authorisation to proceed is therefore to bring the new provisions into operation in relation to such a request except that it is provided that the Committee processing fee but not the lodgment fee may be deducted from benefits payments under Part VA of the Act.

Clause 30 : Standard fee for non-classified patients

101. This clause amends subsection 40AG(1) of the Principal Act by omitting two definitions which are to be relocated to section 39 by virtue of clause 22. The effect of this is that those definitions apply throughout Part V of the Principal Act instead of only to section 40AG.

Clause 31 : Standard fee for classified patients

102. This clause amends subsection 40AGA(1) of the Principal Act by omitting two definitions which are to be relocated to section 39 by virtue of clause 22. The effect of this is that those definitions apply throughout Part V of the Principal Act instead of only to section 40AGA.

Clause 32 : Variation or revocation of approval

103. This clause amends paragraph 44(3)(b) of the Principal Act by inserting a cross-reference consequential on the insertion of proposed section 40AEH in the Principal Act.

Clause 33 : Revocation of exempt bed status

104. This clause inserts a new section 44A in the Principal Act to set out the grounds on which a grant of exempt bed status may be revoked by the Minister. The grounds are.

(a) that the proprietor of the nursing home has charged fees in excess of the maximum fees permitted under the proposed exempt bed system; or

(b) that an election made under new section 40ADB by or in respect of a patient, with the result that the patient becomes subject to the proposed exempt bed arrangements and will therefore pay additional nursing home fees, was obtained as a result of a misrepresentation or duress exercised, or a threat of detriment or disadvantage made or offered by -

- . the proprietor;
- . an employee of the proprietor;
- . a person (such as a relative) acting on behalf of the proprietor or that employee; or
- . by virtue of section 134E of the Principal Act, an agent, director or employee of a corporation which is the proprietor of the nursing home.

105. The Minister is also empowered to suspend or revoke the approval of the nursing home (from which the provision of Commonwealth financial assistance flows) on those grounds if the Minister considers this appropriate.

Clause 34 : Principles under section 39A, 39AB, 40AA and 40AD

106. This clause inserts a new section 45C in the Principal Act. That section provides, as existing section 45C does, that principles established for various purposes are subject to the making, tabling and disallowance requirements of the Acts Interpretation Act 1901. The new section 45C provides that principles referred to in new subsections 39AB(4) and 40AD(1BE) are also subject to those requirements.

Clause 35 : Benefit for patients in other approved nursing homes

107. This clause amends section 47A of the Principal Act to provide for the amount of daily financial assistance which will be provided by the Commonwealth to meet part of the fees charged in approved nursing homes. The proposed amendments reflect the introduction of the proposed exempt bed system.

108. Proposed subsection 47A(3) of the Principal Act will empower the Commonwealth to pay a benefit in respect to a patient in an exempt bed which is equal to the difference between:

(a) the reference fee applicable to the patient; and

(b) the sum of

- an amount determined for the purpose of paragraph 47(2)(b)(iii) of the Principal Act; and
- the amount proposed by the proprietor, in the application for exempt bed status, as the amount by which the Commonwealth benefit payable to the proprietor in respect of that bed is to be reduced.

Clause 36 : Benefit for nursing home care in transferred homes

109. This clause amends section 48A of the Principal Act to provide for the amount of daily financial assistance which will be provided by the Commonwealth to meet part of the cost of providing nursing home care in transferred homes. The proposed amendments reflect the introduction of the proposed exempt bed system.

110. Proposed subsection 48A(2A) of the Principal Act will empower the Commonwealth to pay a benefit in respect to a patient in an exempt bed which is equal to the difference between:

- (a) the reference fee applicable to the patient; and
- (b) the sum of
  - an amount determined for the purpose of paragraph 47(2)(b)(iii) of the Principal Act; and
  - the amount proposed by the proprietor, in the application for exempt bed status, as the amount by which the Commonwealth benefit payable to the proprietor in respect of that bed is to be reduced.

Clause 37 : Health insurance business

111. This clause amends section 67 of the Principal Act by including additional matters as part of the "hospital treatment" for which a registered health benefits organization may offer benefits in its health insurance business.

112. "Hospital treatment" will, under the proposed amendment, be extended to include accommodation and nursing care provided to a nursing-home type patient who is in a hospital. The result will be that registered health benefits organizations will provide benefits for nursing-home type patients who find themselves in that situation, and it will not be necessary for those patients to receive professional attention before benefits can be provided.

Clause 38 : Functions of State Committees

113. This clause amends section 117B of the Principal Act consequential upon the repeal of the present provisions and insertion of new provisions by clause 29 in relation to requests for review under section 40AE of the Principal Act.

Clause 39 : Fund benefits in respect of accommodation and nursing care provided to nursing-home type patients before Royal Assent

114. This clause makes transitional arrangements consequent upon the amendments made by clauses 7, 8, 9 and 37 of this Bill.

115. The effect of the transitional arrangements is to require all registered health benefits organisations to provide benefits to persons affected by clauses 7, 8, 9 and 37 (ie. nursing-home type patients who receive accommodation and nursing care in a hospital) as if those persons had been eligible for such benefits under the definition of "hospital treatment" (as amended by clause 37) when they received the accommodation and nursing care. This requirement will arise for any period, before or after the day on which this Bill receives Royal Assent, if the organizations have not already provided benefits.

116. The amount of benefits to be provided by the organizations will, in all cases, be equal to the amount of benefits in force at the time that the accommodation and nursing care was provided.

PART V - AMENDMENTS OF COMMUNITY SERVICES AND HEALTH  
LEGISLATION AMENDMENT ACT 1988

Clause 40 : Principal Act

117. This clause cites the Community Services and Health Legislation Amendment Act 1988 as the Principal Act for the purposes of Part V of this Bill.

Clause 41 : Commencement

118. This clause omits subsection 2(3) of the Principal Act and inserts a new subsection which specifies a different commencement date for Part II of the Principal Act.

119. Part II amends the Aged or Disabled Persons Homes Act 1954, and is currently expressed to commence on the day on which section 17 of the Community Services and Health Legislation Amendment Act 1987 commences. It is no longer appropriate for this to occur, and in order to allow section 17 to commence first in a separate action, Part II is to be expressed to commence upon Proclamation.

Clause 42 : Repeal of section 27

120. This clause repeals section 27 of the Principal Act and inserts a new section 27.

121. Section 27 of the Community Services and Health Legislation Amendment Act 1988 inserted in the National Health Act 1953 a new section 49AA. This section was intended to provide for the formulation of new arrangements on respite care which would be prescribed in detail by regulation. Subsequent advice has indicated that the proposed respite arrangements as contemplated would not be able to be implemented under the new section 49AA. To achieve the original objective it has been necessary to replace section 49AA with a new section 49AA which puts beyond doubt the regulation making power to implement the proposed respite care arrangements. Regulations are, of course, subject to tabling in Parliament and possible disallowance.

122. The proposed new section 27, inserted by this clause, will commence upon Proclamation.

PART VI - AMENDMENT OF CERTAIN ACTS

Clause 43 : Amendment of certain Acts

123. The Schedule to this Bill is in four Parts to achieve various purposes:

124. Part I amends a number of Acts for the purpose of empowering the Minister and the Secretary to delegate their powers and functions to persons performing the duties of an office in the Department. This will rectify an anomaly which has prevented persons who work within the Department, but who are not officers of the Australian Public Service (eg. persons on exchange programs or persons on temporary placements) from acting as delegates of the Minister or the Secretary.

125. Part II amends a transitional provision of the Community Services and Health Legislation Amendment Act 1987 to clarify that an approval of an eligible organisation which was given before the commencement of section 14 of that Act is intended to be followed by the making of a funding agreement in accordance with the legislation as it existed before the commencement of section 14. This amendment will prevent the detriment which would be caused to eligible organisations which were approved before the commencement of section 14 if a

funding agreement were to be made in accordance with the legislation as amended by this Act.

126. Part III corrects a spelling error in paragraph 42(e) of the Sea Installations (Miscellaneous Amendments) Act 1987.

127. Part IV amends the Therapeutic Goods Act 1966 to reflect the repeal of section 41 of the Acts Interpretation Act 1901 and its reproduction, without substantive amendment, as section 4D of the Crimes Act 1914. This change will take place when section 11 of the Crimes Legislation Amendment Act 1987 comes into operation.







