

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMMUNITY SERVICES AND HEALTH LEGISLATION

AMENDMENT BILL (NO. 2) 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Honourable Mr Peter Staples MP,
Minister for Aged, Family and Health Services.)



COMMUNITY SERVICES AND HEALTH LEGISLATION
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GENERAL OUTLINE

One purpose of this Bill is to give effect to measures relating to nursing homes and hostels announced in the 1990 Budget, as well as implementing the Government's policy on residents' rights in nursing homes and aged persons hostels. The Bill also gives effect to new nursing home leave arrangements announced by the Minister for Aged, Family and Health Services in February 1990, and makes minor administrative improvements. To this effect, the Bill amends the Aged or Disabled Persons Homes Act 1954 and the National Health Act 1953.

Amendments to the Aged or Disabled Persons Homes Act

The amendments implement the Government's Budget decision to abolish Hostel Care Subsidy in respect of residents of aged persons hostels other than those who are financially disadvantaged. The "General Conditions of Recurrent Subsidies" will continue to apply to residents even though they are not subsidised. The amendments will also enable private organisations, as well as non-profit bodies, to be eligible to apply for recurrent funding, but not capital funding, for aged persons hostels.

The Bill also incorporates a Charter of Residents' Rights and Responsibilities into the Act as a Schedule. Although this has previously been tabled as a statement pursuant to Section 10DA of the Act, incorporation into the substantive Act strengthens its legal power and emphasises its key role in the provision of hostel care for the aged.

Amendments to the National Health Act

These amendments enable nursing home residents to have unlimited hospital leave while still having nursing home benefits paid while they are absent.

Nursing home residents transferring to a hospital will be able to be absent beyond the current limit of 28 days in a year that applies to all residents without losing their nursing home benefits. The change is being made retrospective to 1 March 1990.

The amendments also supplement changes being made to the Respite Care Regulations to facilitate the use made of respite care provisions in nursing homes. Changes to the Act are necessary to allow nursing homes to charge prospective respite care residents a booking fee, which is refundable on admission, and to limit the size of that fee. Current provisions in the Act prohibit nursing homes charging any fee prior to the admission of a resident.

The Bill also proposes to incorporate a Charter of Residents' Rights and Responsibilities for nursing home residents into the Act as a Schedule. This Charter has previously been tabled by the Minister for Aged, Family and Health Services as a statement pursuant to Section 45F of the Act. Incorporating the Charter into the substantive Act strengthens the legal power of the Charter and stresses the key nature of this Charter in implementing Government policy on residents rights.

The amendments also enable more than one Nursing Home Fees Review Committee to be established in each State to help clear a backlog of cases.

The Bill also amends the Health Insurance Act 1973 to implement the Government's decision to place restrictions on the payment of Medicare benefits for diagnostic imaging services, such as diagnostic radiology, to curb inappropriate entrepreneurial activity in this area. The principal amendments provide that benefits will generally not be payable for these services unless they have been requested by a practitioner who has no financial interest in the requesting or rendering of those services.

The Bill provides for exemptions from this "arms length" referral requirement for general practitioners in remote areas and specialists providing necessary services in the course of practising their particular specialty.

The Bill also includes a provision allowing the Health Insurance Commission to bring to the attention of the relevant State or Territory authority suspected breaches of a law relating to the use of diagnostic imaging procedures or diagnostic imaging equipment (e.g. radiation safety regulations) of the State or Territory concerned.

The Bill also amends the definition of "medical practitioner" in section 3 of the Health Insurance Act 1973 by excluding suspended or de-registered medical practitioners from the Medicare arrangements for the period of their suspension or de-registration.

The Bill also contains amendments to the Health Insurance Act 1973 which gives the Medicare Benefits Advisory Committee the additional function of making recommendations to the Minister in respect of health services not in the Medicare Benefits Schedule but which, on Ministerial determination, would be treated as if in the Schedule.

The Bill also picks up a number of new provisions from the Crimes Act 1914 for the purposes of Medicare prosecutions.

The Bill also amends the Health Insurance Act 1973 by repealing various sections and Divisions of the Act and making other consequential amendments where new administrative procedures have made the current legislation redundant and also rectifies a minor typographical error in the legislation.

The Bill includes amendments to provisions in the National Health Act relating to pharmaceutical benefits relating to the issuing of a Concession Card.

With the introduction of the two step Safety Net for general patients a second "entitlement" card, the Concession Card, will be issued to those persons who reach the first step, the \$300 Safety Net limit. The Safety Net Concession Card, entitles the holder to pharmaceutical benefits at the general patient reduced charge of \$2.50 for a further expenditure of \$50.

The Concession Card is also being added to the refund provisions of the Act to allow persons who through no fault of their own fail to establish their entitlement to pharmaceutical benefits at the general patient reduced charge.

The card is to issued in the same way as the existing Safety Net Entitlement Card and is to become operative from 1 January 1991.

The Bill includes amendments to the States Grants (Nurse Education Transfer Assistance) Act 1985. Commonwealth support for basic nursing education courses in the higher education sector under that Act is currently limited to courses at diploma level which are usually of three years duration. It is likely in 1991 that some higher education institutions will seek to have their basic nursing courses granted degree status. The proposed amendments to the Bill will enable support under the Act to also be provided for three years of degree level basic nurse education courses, for persons who are not registered or eligible to be registered as nurses.

The Bill includes amendments to the Therapeutic Goods Act 1989 which are intended to clarify the operation of certain provisions of that Act. The proposed amendments will more clearly identify persons who are to fall within, or outside, certain regulatory measures contained in the Act. The Secretary's power to aggregate a group of therapeutic goods, so that they are deemed to be single goods for certain regulatory purposes, has also been made clearer.

FINANCIAL IMPACT STATEMENT

The measure to allow nursing home benefits to be paid in respect of nursing home residents while on unlimited hospital leave is estimated to cost \$700,000 p.a..

The abolition of Hostel Care Subsidy for residents of aged persons hostels other than those who are financially disadvantaged will realise a saving of \$6.5 million in the 1990-91 financial year, increasing to \$21.8 million in the 1993-94 financial year. Allowing private participation in the aged persons hostels program will save \$2.3 million in the 1990-91 financial year, increasing to \$28.4 million in the 1993-94 financial year.

These savings will result from the provision of private sector hostel places for the frail aged without any capital expenditure by the Commonwealth.

The costs of implementing the Charter of Residents' Rights in nursing homes and aged persons hostels will be \$150,000.

Allowing a nursing home to charge a booking fee for respite residents, and allowing more than one Nursing Home Fees Review Committee in each State will have no financial impact.

The restrictions on the payment of Medicare benefits for diagnostic imaging services are expected to reduce the rate of growth in diagnostic imaging services, resulting in anticipated future savings. Other amendments to Medicare will have minimal financial impact.

The amendments relating to the Pharmaceutical Benefits Scheme Concession Card will have minimal financial impact.

The amendments to the States Grants (Nurse Education Transfer Assistance) Act are revenue neutral.

It is not anticipated that the amendments to the Therapeutic Goods Act will have any financial impact on the Therapeutic Goods Administration.

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NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

This is a formal provision that specifies the short title of the Act as the Community Services and Health Legislation Amendment Bill (No. 2) 1990.

Clause 2 - Commencement

Subclause 2(1) provides that the provisions of the legislation, with the exception of those provisions specified in subclauses 2(2) to (6), commence on the day of Royal Assent.

Subclause 2(2) provides for the amendments relating to unlimited recognised days of absence of qualified nursing home patients receiving treatment in hospital to be made retrospective to 1 March 1990.

Subclause 2(3) enables the amendments concerning the charging of fees by nursing home proprietors to proposed short term respite care patients to apply from 1 January 1991.

Subclause 2(4) provides for amendments to payments of financial assistance to hostels to commence on 9 January 1991.

Subclause 2(5) provides for amendments contained in Part 3 (amendments relating to diagnostic imaging services) to commence on 1 May 1991.

Subclause 2(6) provides that the amendments to the Therapeutic Goods Act commence when that Act commences. The Therapeutic Goods Act has not commenced, its commencement is dependent on approval, by both Houses, of Regulations made pursuant to that Act.

PART 2 - AMENDMENTS OF THE AGED OR DISABLED PERSONS HOMES ACT 1954

Clause 3 - Principal Act

This is a formal provision identifying the Aged or Disabled Persons Homes Act 1954 as the Principal Act referred to in this Part.

Clause 4 - Interpretation

This clause amends subsection 2(1) of the Principal Act to insert a definition of "Charter" being the Charter of Residents' Rights and Responsibilities in Approved Hostels, which is referred to in section 10DA of the Principal Act.

Clause 5 - Payments of financial assistance

Section 10D (1)(a) of the Principal Act provides that hostel care subsidy be paid in respect of each approved hostel place occupied by an eligible person who is assessed as requiring hostel care and is receiving this care.

The proposed amendment incorporates a requirement that persons requiring hostel care services only, but not for respite purposes, must also be financially disadvantaged before any financial assistance is payable.

Clause 6 - Charter of Residents' Rights and Responsibilities

The proposed amendment repeals the existing section 10DA of the Principal Act and substitutes a new section 10DA.

Under the existing provision, the Minister is empowered to formulate a statement of the rights and responsibilities of the residents of approved hostels, to be known as the Charter of Residents' Rights and Responsibilities in Approved Hostels and to prescribe matters that may be included in the statement.

New section 10DA provides that this Charter of Residents' Rights and Responsibilities in Approved Hostels be set out in a Schedule to the Act instead of being issued as a Ministerial statement.

The Charter of Residents' Rights and Responsibilities in Approved Hostels was formulated by the Minister and tabled earlier this Session under the existing provision. The Charter of Residents' Rights and Responsibilities in Approved Nursing Homes was also formulated and tabled at the same time under a parallel provision in the National Health Act 1953. It was necessary to table the Charter for Approved Nursing Homes in order to comply with section 40ABB of the National Health Act 1953 which requires that the resident/proprietor Agreement (also formulated and tabled earlier this Session) be consistent with the Charter formulated by the Minister. The Charter for Approved Hostels was tabled concurrently to secure the protection of the rights of hostel residents at the same time, and to ensure that both documents were afforded the same degree of consideration by Parliament.

The effect of the proposed amendment will be that the Charter scheduled to the Principal Act will supersede the Charter tabled in Parliament as a "statement" under the existing 10DA.

Clause 7 - Agreement between proprietor and resident

This clause amends section 10DB of the Principal Act by omitting from subsection (2) "statement formulated under section 10DA" and substituting "Charter". This amendment is consequent upon the repeal of the existing section 10DA of the Principal Act.

Clause 8 - General conditions of recurrent subsidies

Section 10F(1) of the Principal Act requires that the Minister formulate conditions for the provision of financial assistance by way of recurrent subsidies under this Division.

The proposed amendment is an explanatory provision which ensures that the General Conditions formulated under Section 10F will apply to all residents, including respite residents, in any hostel which is approved for recurrent funding, irrespective of whether financial assistance is payable in respect of that resident.

Clause 9 - New schedule

This clause amends the Principal Act by adding a Schedule at the end. The Schedule is the Charter of Residents' Rights and Responsibilities in Approved Hostels.

The Charter is a statement of the philosophy that underpins all initiatives which aim to promote and protect the rights of hostel residents. It sets out the philosophy that the personal, civil, legal and consumer rights of a person do not diminish when they move into a hostel, regardless of their physical or mental frailty or their ability to exercise or fully appreciate their rights.

The Charter states the rights each of resident of a hostel, including the right to quality care, the right to be treated with dignity and respect, the right to maintain personal independence and the right to redress. The Charter also states the responsibilities of each resident, including the responsibility to respect the rights and needs of others and the responsibility for their own health and well-being.

Clause 10 - Further amendments

Private enterprise organisations are currently specifically excluded from participating in the Commonwealth's program for hostels. Funding granted according to this Act is subject to the organisation being an "eligible organisation".

Section 2(3) of the Act restricts eligible organisations to organisations carried on otherwise than for the purpose of profit or gain to its individual members.

Clause 10 of this Bill removes all eligibility restrictions on organisations applying for approval for recurrent subsidy. This is achieved by the amendment of the listed sections to enable any "organisation", rather than an "eligible organisation", to receive recurrent funding and to enable the provisions of the Act to apply to such an organisation. Capital funding will remain restricted to "eligible organisations".

The amendments in the Bill affect the following provisions in the Aged or Disabled Persons Homes Act 1954:

- . Subsection 2(1)(definition of "hostel place")
 - The proposed amendment removes the word "eligible" from the definition to ensure that a hostel place is a place in a hostel operated by any organisation, not just an eligible organisation.
- . Clause 10 of the Bill amends each of the following sections of the Principal Act to permit the recurrent funding of private for profit hostels, by replacing "eligible organisation" with "organisation" in each of the sections.
 - Paragraph 9AA(9)(a)
 - This paragraph allows a certificate of approval in principle for recurrent funding to continue in force until the organisation enters into a recurrent funding agreement under section 10B of the Act.
 - Subsections 9AB(4),(5),(6),(9),(10)
 - These subsections allow the Minister to grant or refuse an approval in principle for recurrent subsidy.
 - Subsection (4) refers to an organisation which has acquired or erected hostel premises, or proposes to do so.
 - Subsection (5) refers to an organisation which proposes to demolish and reconstruct a hostel premises.
 - Subsection (6) allows the Minister to issue a certificate which binds the Minister to issue the approval under subsections 9AB(4) or (5) provided the conditions specified in the certificate are met.
 - Subsection (9) refers to approval of funding for additional places.

- Subsection (10) allows the Minister to issue a certificate which binds the Minister to issue the approval under subsections 9AB(9) provided the conditions specified in the certificate are met.
- Subsection 9AB(17)
 - This subsection allows the Minister to revoke a certificate under this section.
- Subsection 9AB(18)
 - This subsection requires the Minister to give the organisation concerned notice in writing of any decision to refuse to grant an approval in principle.
- Paragraphs 9AC(1)(a) and (2)(a)
 - This paragraph allows for an organisation to transfer a specified number of hostel places to another hostel or proposed hostel.
- The heading of Division 4
 - This heading relates to the Division under which recurrent subsidies are paid.
- Subsection 10B(1)
 - This subsection allows for applications for recurrent funding to be made.
- Subsection 10B(4)
 - This subsection requires that, where an organisation has been granted an approval in principle for funding, the Minister shall not determine a number of places, or respite places which is inconsistent with that certificate.
- Subsection 10C(1)
 - This subsection gives the Minister authority to provide financial assistance by way of recurrent subsidies.
- Subsection 10D(3)
 - This subsection enables the Minister to determine the manner of payment of subsidies.

- Subsection 10FA(1)
 - This subsection specifies that the Minister must enter into an agreement with an organisation before any subsidy can be paid. The agreement specifies the conditions under which payment will be made.
- Subsection 10FA(2)
 - This subsection allows the agreement referred to in 10FA(1) to be varied by agreement between the parties.
- Subsection 10FAA(1)
 - This subsection allows the Minister to review the organisation's recurrent funding.
- Subsection 10FAA(3)
 - This subsection allows the Minister to revoke the organisation's recurrent funding, should an organisation apply in writing for this revocation.
- Subsection 10FAA(5)
 - This subsection requires the Minister to give a copy of a determination of revocation or variation to the organisation operating the hostel.
- Subsection 10FAA(6)
 - This subsection sets out the avenues of appeal for organisations which have had a approval for funding revoked or varied.
- Subsection 10FB(2)
 - This subsection lists the information which is relevant for the Minister to include in a statement published in relation to certain hostels.
- Subsection 10FB(5)
 - This subsection specifies that the Minister must give the organisation not less than thirty days to consider a statement being made under this section, and to make submissions in relation to changes to that statement, before that statement is published.

- Subsection 10FB(6)
 - This subsection requires that the Minister must alter the statement described above if it appears, in light of a submission made, that this is necessary.
- Section 10G
 - This subsection describes the appropriation of these funds.
- Subsection 10J(1)
 - This subsection allows the Minister to enter into an agreement with a second organisation to whom a hostel is being transferred.
- Subsection 10J(2)
 - This subsection allows the Minister to vary the agreement described above, with the organisation's consent.

Clause 10 of the Bill also amends each of the following sections in order to allow the Minister to formulate conditions for recurrent funding for private enterprise organisations in addition to charitable and government organisations, by replacing "eligible organisation" with "organisation" wherever that phrase occurs.

- Subsection 10DB(1)
 - This subsection allows the Minister to formulate a common form of agreement to be used between proprietor and resident.
- Subsection 10F(2)
 - This subsection relates to the conditions which the Minister can formulate for the provision of recurrent subsidies. It sets out those matters which can be considered by the Minister in formulating these conditions.

**PART 3 - AMENDMENTS OF THE HEALTH INSURANCE ACT 1973
RELATING TO DIAGNOSTIC IMAGING SERVICES**

Clause 11 - Principal Act

Clause 11 is a formal provision which identifies the Health Insurance Act 1973 as the Principal Act referred to in this part of the Bill.

Clause 12 - Interpretation

Clause 12 modifies a number existing definitions and introduces some new ones.

Paragraphs (a), (b) and (c) provide for the transfer of diagnostic imaging items from the general services table to a separate diagnostic imaging services table.

Paragraph (d) defines "chiropractor", "diagnostic imaging equipment", "diagnostic imaging procedure", "diagnostic imaging service", "diagnostic imaging services table", "NR-type [non-referred] diagnostic imaging service", "prohibited diagnostic imaging practice", "R-type [referred] diagnostic imaging service" and "subsection 16B(1) request" [for referred services].

Paragraph (e) specifies that a diagnostic imaging service includes the interpretation, analysis and reporting. It also defines an imaging service which is covered by both a referred and unreferred item.

Clause 13 - Insertion of new section : Diagnostic imaging service table

This clause inserts a new section 4AA into the Principal Act. New subsection 4AA(1) enables the prescribing of the diagnostic imaging services table in the regulations in a form setting out referred and non-referred items, fees for those items and rules for the table's interpretation.

Also inserted is new subsection 4AA(2) which specifies the period of time for which the regulations remain in force.

Clause 14 - Insertion of new section : Medicare benefits in relation to R-type diagnostic imaging services

This clause inserts new subsections 16B(1), 16B(2), 16B(3), 16B(4), 16B(5), 16B(6), 16B(7), 16B(8), 16B(9), and 16B(10) into the Principal Act.

New subsection 16B(1) [General rule - request required for services] specifies that in general, a Medicare benefit will only be payable when, prior to commencing the relevant service, the providing practitioner receives a signed and dated written request from the referring practitioner who does not stand to gain financially from that referral. For the purposes of this subsection a referring practitioner may be another medical practitioner, a dentist or a chiropractor.

New subsections 16B(2) and 16B(3) [dentists and chiropractors may only request certain services] provide that requests for diagnostic imaging services by dentists and chiropractors respectively can only be for particular services which are to be specified in regulations.

New subsection 16B(4) [Referral to specified practitioner not required] specifies that the request need not necessarily be addressed to the providing practitioner or to the practice of which he or she is a member nor need the service be performed by that practitioner. This recognises the fact that patients often take a request to a diagnostic imaging practice other than that specified by the requesting doctor, either as a matter of convenience or of personal choice. This section protects that freedom of choice, provided that the chosen provider is financially distant from the requester.

New subsection 16B(5) [Request may be for more than one service] allows a requesting practitioner to use a single request to order a number of imaging services over a period of 7 days.

New subsection 16B(6) [Exemption - specialists] recognises that certain specialist practitioners such as cardiologists, vascular surgeons, obstetricians and gynaecologists have particular skills in the provision of certain diagnostic imaging services and that, if such a specialist determined the service necessary and the service falls within the competence of that specialty, it is appropriate that benefits be paid.

New subsection 16B(7) [Remote area exemption] provides for practitioners in remote areas to be exempted from the referral requirements. It recognises that in remote and rural areas there is no reasonable access to a practitioner specialising in the provision of diagnostic imaging services.

New subsection 16B(8) [Exemption - emergencies] enables Medicare benefits to be paid, notwithstanding the lack of a request, in emergency situations where a providing practitioner considers that a diagnostic imaging service should be provided as quickly as possible and that it would not be in the patient's best interests to await a written request from another practitioner.

New subsection 16B(9) [Exemption - lost requests] addresses those occasions when a patient may present at the premises of a provider of diagnostic imaging services claiming that a practitioner has

provided a written request for such services but that the patient had either lost the request or it had been stolen or destroyed. Benefits are to be payable provided that the providing practitioner, or his or her staff, verifies with the requesting practitioner that a written request had in fact been made.

New subsection 16B(10) [Exemption - additional necessary services] provides for the payment of benefits for a diagnostic imaging service without a specific request if that service was rendered after a service which was requested and the providing practitioner determined the additional service was necessary.

New section 16C introduces a provision into the Principal Act denying the availability of Medicare benefits for services rendered contrary to relevant State legislation pertaining to the use of diagnostic imaging procedures or diagnostic imaging equipment, e.g. a law relating to radiation equipment licensing or registration, safety or quality standards for radiological equipment or the operation of radiological equipment).

Clause 15 - Medicare benefit not payable in respect of services rendered by disqualified practitioners etc.

This clause amends the existing legislation by introducing a distinction between fully and partly disqualified practitioners and also relates disqualification for contravention of prohibited diagnostic imaging practices.

Clause 16 - Offences in relation to disqualification of practitioner

This clause amends the existing subsection 19D(11) by including contravention of prohibited diagnostic imaging practices as offences.

Clause 17 - Insertion of new Part : Part IIB - SPECIAL PROVISIONS RELATING TO DIAGNOSTIC IMAGING SERVICES

This clause inserts a new Part IIB after Part IIA of the Principal Act. This Part (Special Provisions Relating to Diagnostic Imaging Services) makes provision for the form in which requests for diagnostic imaging services should be made, the manner in which records of those services should be stored, the procedures involved in the granting or otherwise of remote area exemptions as well as defining prohibited practices under the legislation and action the Minister might take in respect of those practices.

New subsection 23DQ(1) [Form etc. of requests] provides for the making of regulations which may specify the form in which a written request must be made and the information to be included in such a request.

Subsections 23DQ(2) and 23DQ(3) prohibit a practitioner from either making a request or providing another practitioner with documentation which would enable him or her to make a request which would contravene regulations governing the making of requests for diagnostic imaging services. Breaches of these provisions render an offending practitioner liable to a fine of \$1000.

New subsection 23DR(1) [Retention of requests etc.] stipulates that providing practitioners must retain requests for a period of 18 calendar months from the date of providing the service(s).

New subsection 23DR(2) provides that a practitioner who has rendered an "R-type" (referred) diagnostic imaging service must produce, if requested by the General Manager of the Health Insurance Commission, the written request to an officer of the Commission as soon as practicable or, in any event, no later than the end of the day after the day on which the request was made. New subsection 23DR(3) empowers officers of the Commission to make and retain copies, or take and retain extracts, of such requests.

New subsection 23DR(4) makes contravention of subsections 23DR(1) and 23DR(2) an offence which carries a penalty of \$1000.

New subsection 23DS(1) [Other records of diagnostic imaging services] provides for the making of regulations imposing specific requirements for the preparation and maintenance of records of diagnostic imaging services. New subsection 23DS(2) makes it a requirement that practitioners comply with regulations made for the purposes of subsection 23DS(1).

New subsection 23DS(3) provides that records mandated by regulations for the purposes of subsection 23DS(1) must be retained for a period of 18 calendar months from the date of the service(s) and subsection 23DS(4) requires that such records be produced within 7 days of a request to do so by the General Manager of the Health Insurance Commission.

New subsection 23DS(5) empowers officers of the Commission to make and retain copies, or take and retain extracts of such records. New subsection 23DS(6) makes it an offence to contravene subsections 23DS(2), 23DS(3) or 23DS(4) and provides for a penalty of \$1000 for such an offence.

New section 23DT is an interpretation provision which states that exemptions from the general referral requirements will only apply to those "R-type" [referred] items of service for which there are no corresponding "NR-type" [non-referred] items of service.

New subsection 23DU(1) [Remote areas] enables the Minister to determine in writing areas which are to be taken as remote areas for the purposes of exemption from the general "arms length" referral requirements for the provision of diagnostic imaging services.

New subsection 23DU(2) makes such a determination a disallowable instrument for the purposes of the Acts Interpretation Act 1901.

New section 23DV [Application for remote area exemption] requires that applications for remote area exemption be made in writing to the Minister and in a form approved by the Minister.

New section 23DW [Request for further information] empowers the Minister to require that, within 60 days after a remote area exemption application is made, the practitioner who applied for the exemption provide such further information as is specified in a written notice to that practitioner.

New section 23DX [Grant of remote area exemption] requires that the Minister formally advise an applicant in writing of his or her decision to grant such an exemption. It also requires that the Minister be satisfied that the application is in the approved form, that the applicant's practice is in a remote area, and that the facilities for the rendering of referred services in the area are such that imposing the general referral requirement for diagnostic imaging services would lead to patients in the area suffering physical or financial hardship.

New subsection 23DY(1) [Restrictions on remote area exemptions] provides that, if the Minister is satisfied that any physical or financial hardship referred to in new section 23DX would only be suffered in respect of certain referred services, the Minister may restrict the remote area exemption to those services.

New subsection 23DY(2) requires that the Minister specify the reasons for only granting a restricted remote area exemption in the notice granting that exemption.

New subsection 23DY(3) entitles a person who is granted a restricted remote area exemption to apply for the removal of restriction or for a reduction in the scope of that restriction.

New subsection 23DY(4) specifies that the Minister may require that, within 60 days after an application for the removal of a restriction in a remote area exemption or for a reduction in the scope of such a restriction, the applicant provide such further information as is notified by the Minister.

New subsection 23DY(5) requires that, if the Minister is satisfied that not removing a restriction in a remote area exemption or not reducing the scope of such a restriction would cause physical or financial hardship of the kind referred to in new section 23DX, the Minister must remove that restriction or reduce its scope accordingly.

New subsection 23DZ(1) [Refusal of application] that the Minister provide the applicant with a written statement of the reasons for any decision to refuse an application for (a) a remote area exemption, (b) the removal of a restriction in a remote area exemption, or (c) a reduction in the scope of a restricted remote area exemption.

Subsection 23DZ(2) provides that, for the purposes of review by the Administrative Appeals Tribunal, the Minister will be deemed to have refused an application for a remote area exemption, the removal of a remote area exemption restriction or a reduction in scope of such a restriction, if, at the end of 60 days after the application, no decision has been made and no request has been made to the applicant for further information. Similarly, the Minister will be deemed to have refused an application if a request for further information was made and, at the end of 60 days after that request was made, the exemption, restriction removal or restriction scope reduction, as the case may be, has not been granted.

New section 23DZA [Duration of remote area exemption] specifies that a remote area exemption remains in force for 3 years unless the exemption is revoked by the Minister.

New section 23DZB [Renewal of remote area application] allows holders of remote area exemptions to apply for renewal of that exemption 6 months before it is due to expire. New subsection 23DZB(2) indicates that the arrangements for dealing with initial applications also apply to renewal applications.

New section 23DZC [Revocation of remote area exemption] sets out the circumstances under which the Minister may revoke a remote area exemption. New subsection 23DZC(1) allows the Minister to revoke an exemption if the Minister is satisfied that the practitioner granted the exemption is no longer situated in a remote area, or that adequate diagnostic imaging facilities have become available in the relevant area to enable the general referral requirements to operate without causing physical or financial hardship to patients.

This subsection also allows the Minister to revoke an exemption if a Medicare Participation Review Committee has advised the Minister that the exemption should be revoked because of a finding by that committee that the practitioner engaged in, or caused or permitted another person to engage in, prohibited diagnostic imaging practices.

New subsection 23DZC(2) specifies that the Minister must not revoke a remote area exemption unless the practitioner has been given a written notice indicating that revocation is being considered, the grounds for such consideration, and stating that the practitioner has the right to make a written submission (within 6 months of being given the notice) explaining why the exemption should not be revoked.

New section 23DZD [Review of decisions] provides that application may be made to the the Administrative Appeals Tribunal for the review of a decision: (a) not to grant a remote area exemption, (b) to revoke an exemption, (c) to restrict an exemption, (d) not to remove an exemption restriction, or (e) not to reduce the scope of an exemption restriction.

New section 23DZE [Statements to accompany notification of decisions] requires that a practitioner's rights to appeal to the Administrative Appeals Tribunal be included in all notices advising of decisions which are specified in section 23DZD (above) as being subject to review by the Tribunal. Subsection 23DZE(2) provides that failure to convey details of the the right of appeal in relation to a particular decision does not affect the validity of that decision.

New section 23DZF [Interpretation] defines a providing practitioner, a service provider and a treating practitioner for the purposes of the prohibited diagnostic imaging practices provisions.

New section 23DZG [Prohibited diagnostic imaging practices] specifies the circumstances under which a person is taken to have engaged in a prohibited diagnostic imaging practice.

New paragraph 23DZG(a) makes it a prohibited practice for a service provider to directly or indirectly offer or threaten any detriment or disadvantage to a practitioner or any other person in order to encourage that practitioner to request the rendering of a diagnostic imaging service.

New paragraph 23DZG(b) makes it a prohibited practice for a service provider to invite a practitioner to request the rendering of diagnostic imaging services or to do anything that the service provider knows or ought reasonably to know is likely to have the effect of encouraging a practitioner to request the rendering of such services.

New paragraph 23DZG(c) makes it a prohibited practice for a practitioner to ask for, receive or obtain, or agree to receive or obtain, any property, benefit or advantage from a service provider or a person acting on behalf of the service provider.

New paragraph 23DZG(d) makes it a prohibited practice for a providing practitioner to accept a request from a treating practitioner to render a service, and, in respect of that service and equipment used in the rendering of that service, to make a payment to (a) the treating practitioner, (b) the employer of the treating practitioner, or (c) another employee of the treating practitioner's employer. It also provides that (b) and (c) do not apply to services rendered in a hospital.

New paragraph 23DZG(e) makes it a prohibited practice for a practitioner to accept a request for a diagnostic imaging service from another practitioner in circumstances where the two practitioners share the cost of employing staff or of buying, renting or maintaining equipment and where relevant charges are not fixed at normal commercial rates.

New paragraph 23DZG(f) makes it a prohibited practice for a practitioner to accept a request for a diagnostic imaging service from another practitioner in circumstances where the two practitioners share space in a building or one practitioner provides space in a building for the other or permits the other practitioner to occupy space and the charges under this arrangement are not fixed at normal commercial rates.

New paragraph 23DZG(g) makes it a prohibited practice for a specialist to station diagnostic imaging equipment or employees of the specialist at a practitioner's premises to enable diagnostic imaging services to be provided to the practitioner's patients by or on behalf of the specialist.

New subsection 23DZH(1) [Notices etc. in relation to possible prohibited diagnostic imaging practices] provides that, where the Minister has reasonable grounds for believing that a person has engaged in prohibited diagnostic imaging practices, the Minister must notify that person in writing giving him or her particulars of the prohibited practice and the grounds for that belief. It also provides that the Minister must invite that person (within 28 days of the date the person was given notice by the Minister) to show cause why further action should not be taken.

New subsection 23DZH(2) provides that, where the person makes a submission within 28 days, the Minister must have regard to that submission in determining whether further action should be taken.

New subsection 23DZJ(1) [Minister may take further action] provides that, if the person has not made a submission or if the Minister is satisfied (notwithstanding a submission) that the person engaged in a prohibited practice, the Minister must give a notice to a Chairperson of a Medicare Participation Review Committee setting out the same particulars as provided in the notice to that person.

New subsection 23DZJ(2) stipulates that the Minister must determine that no further action is to be taken if the person has made a submission and the Minister is satisfied that the person has not engaged in a prohibited practice. New subsection 23DZJ(3) provides that the Minister's decision not to take further action must be in writing.

Clause 18 - Repeal of section and substitution of new sections

This clause repeals existing section 124E of the Principal Act and introduces a number of new sections.

New section 124E retains most of the provisions repealed and inserts additional provisions enabling Medicare Participation Review Committees to consider and determine whether a person has engaged in prohibited diagnostic imaging practices. Amendments made to existing provisions are of a consequential nature.

New subsection 124E(4) provides that upon receiving a notice that a person is believed to have engaged in a prohibited diagnostic imaging practice, the Chairperson of a Medicare Participation Review Committee (MPRC) must establish a Committee.

Subsection 124E(6) replaces existing subsection 124E(2C). It provides that a Chairperson who has a direct or indirect interest in a matter to be the subject of proceedings before a MPRC must not establish a Committee but must notify the Minister who must give another notice in the same terms to another Chairman.

New section 124EA [Membership of Committees] replaces existing subsection 124E(3) and provides that, for the purposes of considering whether a person has engaged in a prohibited diagnostic imaging practice, the MPRC shall consist of five persons (subsection 124EA(1)). These are to be the Chairperson, two persons selected by the Chairperson from a list of names submitted by a professional organisation and two persons selected by the Chairperson from a list of names submitted by the Minister.

Subsections 124EA(2) and 124EA(3) provide for the nomination of persons by a professional organisation and the Minister respectively. Subsection 124EA(4) allows for the revocation of a nomination at any time by the person nominated (by written notice delivered to the Minister) or by the Minister.

Subsection 124EA(5) requires the Minister to inform each Chairperson in writing of any persons nominated for the purposes of MPRC membership selection and of any revocations of nominations.

Subsection 124EA(6) provides that, where no person is available for a Chairperson to select from a list submitted by a professional organisation, the Minister must appoint the person he considers to be the most appropriate for appointment. Under subsection 124EA(7), such a person is deemed to have been selected as if nominated by a professional organisation.

Subsection 124EA(8) provides that, where a member of a MPRC has a direct or indirect interest in a matter to be the subject of proceedings before the MPRC, the member (who is taken to be disqualified from membership) must immediately inform the Chairperson, and another selection is to be made.

Section 124EB [Qualification of members] specifies the qualifications a person selected for membership of a MPRC must possess. In relation to a person selected to be a member of a MPRC set up to consider and determine whether a person has engaged in prohibited diagnostic imaging practices, it provides (subsection 124EB(4)) that the person must be a medical practitioner experienced in the rendering of diagnostic imaging services.

Section 124EC [Provision of information to the person in relation to whom a Committee is convened] provides that any information given to a MPRC by the Health Insurance Commission for the purpose of assisting the MPRC in making a determination in relation to a person must also be given to that person at or about the same time.

Clause 19 - Insertion of new sections

This clause inserts a new section 124FE [Committee may add parties to proceedings in relation to prohibited diagnostic imaging practices] which replaces existing section 124FE. Subsection 124FE(1) provides that, if a MPRC has reasonable grounds to believe that a person employs or employed the practitioner (in respect of whom the MPRC was established), or is or was an officer of a body corporate that employs or employed that practitioner, may have caused or permitted the practitioner (or any other person) to engage in prohibited diagnostic imaging practices, the MPRC may determine whether the person caused or permitted those prohibited practices.

Subsection 124FE(2) provides that, where a MPRC has been established in relation to a body corporate that employs or employed a practitioner and the MPRC had reasonable grounds to believe that a person who is or was an officer of the body corporate caused or permitted the practitioner to engage in a prohibited diagnostic imaging practice, the MPRC may determine whether it should consider whether that officer caused or permitted that practice to be engaged in.

Subsection 124FE(3) specifies that in making a determination to add another person to proceedings in relation to prohibited diagnostic imaging practices, the MPRC must provide that person with a written notice of the determination.

New section 124FF [Determinations in relation to prohibited diagnostic imaging practices] sets out the action to be taken by a MPRC in determining that a person has been involved in prohibited diagnostic imaging practices. New subsection 124FF(1) stipulates that an MPRC must determine whether that has been the case.

New subsection 124FF(2) provides that, in respect of a person determined by a MPRC to have been involved in prohibited practices, the MPRC must determine whether (a) no action be taken, (b) it should counsel the person, (c) it should reprimand the person, (d) the person [if a practitioner] be disqualified (for the purposes of some or all his or her services attracting Medicare benefits) for a specified period of not more than 5 years, (e) any practitioner be taken to be disqualified if they are in the person's employ, or (f) any practitioner be taken to be disqualified if the person is or has been an officer of a body corporate that employs or employed a practitioner.

New subsection 124FF(3) provides that, where a MPRC determines that a practitioner is disqualified or taken to be disqualified, it must specify whether that disqualification is full or partial. If partial disqualification is determined, the MPRC must indicate whether this is in respect of one or more of the following:

- . The provision of specified services or services other than specified ones.
- . The provision of services to a specified class of persons or services to persons other than a specified class of persons.
- . The provision of services within a specified location or otherwise than within a specified location.

New subsection 124FF(4) provides that, where a MPRC determines that a practitioner is disqualified, or taken to be disqualified, for a prohibited diagnostic imaging practice, the MPRC must specify in the determination the period of disqualification, being a period of not more than 5 years after the date on which the determination takes effect.

New subsection 124FF(5) requires that a MPRC must identify all services it has determined were rendered as the result of a person engaging in prohibited diagnostic imaging practices and, if Medicare benefits were paid, must determine that the benefits or a specified part of the benefits are payable by that person to the Commonwealth. If Medicare benefits have not been paid, the MPRC must determine that the benefits or a specified proportion of the benefits cease to be payable.

Subsection 124FF(6) provides that, if a MPRC determines that a medical practitioner who has been granted a remote area exemption has been involved in prohibited diagnostic imaging practices, the MPRC must include in its determination advice on whether the remote area exemption should be revoked and give its reasons for so advising.

Subsection 124FF(7) provides that the MPRC's determinations must comply with any guidelines which may be set by the Minister for the making of determinations by MPRCs. Subsection 124FF(8) states that MPRC determinations must be in writing.

Clause 20 - Insertion of new sections

This clause inserts a new sections 129AE and 129AF. Section 129AE provides that any Medicare payment made for a diagnostic imaging service which contravened a State or Territory law relating to the use of diagnostic procedures or equipment is payable to the Commonwealth by the person who contravened the law.

Section 129AF provides that the General Manager of the Health Insurance Commission may notify the relevant State or Territories of any person who is believed (on reasonable grounds) to have contravened State or Territory law relating to the use of diagnostic procedures or equipment.

Clause 21 - Consequential amendments relating to diagnostic imaging services

This clause states that consequential amendments to the Principal Act are identified in Schedule 1 to the Bill.

PART 4 - OTHER AMENDMENTS TO THE HEALTH INSURANCE ACT 1973

Clause 22 - Principal Act

This is a formal amendment that specifies the Health Insurance Act 1973 as the Principal Act referred to in this Part.

Clause 23 - Amendment to the definition of medical practitioner

This clause amends the definition of "Medical Practitioner" in sub-section 3(1) of the Principal Act. The amendment excludes from the Medicare arrangements any medical practitioner whose licence to practise has been suspended or cancelled in any State or Territory following an enquiry by the State/Territory medical board.

This amendment is designed to exclude from the Medicare benefits arrangements any medical practitioner who is de-registered or de-licenced in any State or either Territory.

Clause 24 - Health services not specified

This clause amends Section 3(C) of the Principal Act as a consequential amendment to that referred to in Clause 31.

Clause 25 - Medicare benefit not payable in respect of services rendered in prescribed circumstances

Amendments to the Health Insurance Act 1973 regarding the abolition of the Pathology Services Advisory Committee were passed in the Budget Sittings 1989 with effect from 1 August 1989. Clause 25 is a consequential amendment and removes references to that Committee.

Clause 26 - Offence in relation to deregistered practitioner

This clause as a consequence of the amendments in clause 23 requires a medical practitioner who has been suspended or cancelled in the circumstances set out in clause 23 to inform a person that a Medicare benefit is not payable in respect of the medical service the practitioner intends to provide.

Clause 27 - Initiation of excessive pathology services

This clause amends section 23DM by referring any matter concerning the possible initiation of excessive pathology services to a Medicare Services Committee of Inquiry rather than to the more formal (and difficult to establish) Medicare Participation Review Committee. Consequential amendments are contained in clauses 32-33 and 44.

Clause 28 - Accredited pathology laboratories

Sub-clause (a) omits sub-section 23DN(2) relating to the determination of principles to be applied by the Minister in relation to the accreditation of pathology laboratories and proposes a new section 23DNA described in clause 29.

Sub-clause (b) amends the earliest possible day on which an approval as an accredited pathology laboratory may be given to the day on which the application was received.

Clause 29 - Insertion of new section: Determination of principles for accreditation as pathology laboratory

This clause proposes a new section 23DNA expanding and replacing sub-section 23DN(2) - see clause 28 - providing, in part, definitions required for the proposed amendments to section 23DO in clause 30.

Clause 30 - Review of decisions

Clause 30 amends section 23DO by providing rights of review of any adverse decision of the Minister in respect of a qualification of a person in relation to an application for approval of premises as an accredited pathology laboratory.

Clause 31 - Functions of Committee

Subclause (a) amends section 67 by allowing the Medicare Benefits Advisory Committee to consider whether the fee for a pathology service of unusual length or complexity should be increased.

Subclause (c) amends section 67 of the Principal Act, which sets out the functions of the Medicare Benefits Advisory Committee, to provide the Medicare Benefits Advisory Committee with the additional function of considering and making recommendations to the Minister in respect of health services which may be subject to a determination of the Minister under section 3(C) of the Principal Act.

Clause 32 - Functions of Committees

Clause 32 (a consequential amendment to clause 27) proposes new functions for the Medicare Services Committee of Inquiry to examine the reference to it of matters concerning the possible initiation of excessive pathology services.

Clause 33 - Insertion of new section: Guidelines relating to making of determinations

Clause 33 proposes a new section 82A to allow the Minister to determine guidelines to be applied by a Medicare Services Committee of Inquiry in making its own determination of a matter referred to it.

Clause 34 - Determination by Minister

This clause is a consequential amendment to that referred to in Clause 39.

Clause 35 - Determination by Minister

This clause is a consequential amendment to that referred to in Clause 39.

Clause 36 - Heading to Part VA

This clause is a consequential amendment to that referred to in Clause 39.

Clause 37 - Interpretation

This clause is a consequential amendment to that referred to in Clause 39.

Clause 38 - References to Tribunal

This clause is a consequential amendment to that referred to in Clause 39.

Clause 39 - Repeal of Division 4 of Part VA

Clause 39 repeals Division 4 of Part VA and makes other consequential amendments to the Health Insurance Act which have become redundant because they deal with applications to a prescribed court for review of a judicial determination, whereas now the Administrative Decisions (Judicial Review) Act 1977 and the Federal Court provide such review mechanisms.

Clause 40 - Heading to Division 5 of Part VA

This clause is a consequential amendment to that referred to in Clause 39.

Clause 41 - Appeals from Tribunal

This clause is a consequential amendment to that referred to in Clause 39.

Clause 42 - Appeal to Federal Court of Australia

This clause is a consequential amendment to that referred to in Clause 39.

Clause 43 - Interpretation

This clause extends the definition of 'relevant offence' to include additional Crimes Act provisions

The clause amends the definition of relevant offence in Section 124B of the Health Insurance Act. The definition includes offences against the Health Insurance Act and derived offences under the Crimes Act 1914 where the substantive offence is against the Health Insurance Act.

Clause 44 - Repeal of certain sections

This clause repeals sections 124FE and 124FF relating to certain functions of the Medicare Participation Review Committee proposed elsewhere to be considered by the Medicare Services Committee of Inquiry (see clauses 27 and 32-33).

Clause 45 - Further amendments of the Principal Act

This clause provides that further consequential amendments contained in Schedule 2 of the Bill are to be made to the Principal Act. Schedule 2 also remedies a typographical error in Section 124.

PART 5 - AMENDMENTS OF THE NATIONAL HEALTH ACT 1953

Clause 46 - Principal Act

This is a formal provision which identifies the National Health Act 1953 as the Principal Act referred to in this Part of the Bill.

Clause 47 - Recognised days of absence of qualified nursing home patients

Previously under the recognised absence provisions under Subsection 4AA(6) a nursing home patient could be absent from a nursing home for up to 28 days each year. This amendment introduces separate leave entitlements to allow nursing home patients unlimited hospital leave as well as retaining provision for 28 days leave for any other purpose.

Subsection 4AA(6) of the Principal Act is omitted, and new subsections 4AA(6)(a) and (b) have been inserted to re-define days which are treated as recognised days of absence for the purposes of payment of Commonwealth nursing home benefits when a qualified nursing home patient is absent from a nursing home.

Paragraph 4AA(6)(a) defines any absence from a nursing home where the patient has to be, is, or has been, in attendance at a hospital for the purpose of receiving hospital treatment, as recognised days of absence.

Paragraph 4AA(6)(b) clarifies that if a patient is absent from a nursing home for any other reason, the patient is eligible for up to 28 days recognised absence in each year commencing 1 July.

The amended leave provisions will have retrospective effect from 1 March 1990, as indicated in subclause 2(2) of the Bill.

Clause 48 - Interpretation

This clause amends section 39 of the Principal Act to insert a definition of "Charter" being the Charter of Residents' Rights and Responsibilities in Approved Nursing Homes, which is referred to in section 45F of the Principal Act.

Clause 49 - Approval of Nursing Homes

Paragraph 49(a) amends section 40AA of the Principal Act by omitting from subparagraph (6)(bc)(ii) all words after "Charter", that is, "of Residents' Rights and Responsibilities formulated under section 45F". This amendment is consequent upon the repeal of section 45F of the Principal Act and its replacement by a new section 45F as indicated in Clause 52 of this Bill.

After paragraph (6)(cd) new paragraphs (cda) and (cdb) are inserted.

Previously, nursing home proprietors were prohibited from raising any charges associated with the admission of a patient to a nursing home by Section 40AA(6)(cd).

Insertion of the new paragraph (6)(cda) enables a nursing home proprietor to charge a booking fee in relation to the admission of a short-term respite care patient. The amount charged, however, cannot exceed the amount which is to be set out in the National Health (Nursing Home Respite Care) Regulations.

Paragraph (6)(cdb) states that where a booking fee has been paid in respect of an intended short-term admission, and the person is subsequently not admitted, the proprietor must refund the amount to the payee, except in circumstances where the regulations otherwise provide.

The introduction of respite care booking fees in nursing homes will be effective from 1 January 1990 (as indicated in subclause 2(3) of the Bill).

Clause 50 - Agreement between proprietor and patient

This clause amends section 40ABB of the Principal Act by omitting from subsection (2) "statement formulated under section 45F" and substituting "Charter". This amendment is consequent upon the repeal of section 45F of the Principal Act.

Clause 51 - Referral of request to Nursing Homes Fees Review Committee of Inquiry

Section 40AEC of the Principal Act is amended to make it clear that:

- (a) the request involved is a request by the proprietor of a nursing home; and
- (b) the appropriate Committee to which such a request is to be referred is a Nursing Homes Fees Review Committee of Inquiry established for that State.

Clause 52 - Repeal of section and substitution of new section:
Charter of Residents' Rights and Responsibilities

The proposed amendment repeals the existing section 45F of the Principal Act and substitutes a new section 45F.

Under the existing provision, the Minister is empowered to formulate a statement of the rights and responsibilities of the residents of approved nursing homes, to be known as the Charter of Residents' Rights and Responsibilities in Approved Nursing Homes, and to prescribe matters that may be included in the statement. New section 45F provides that the Charter be set out in a schedule to the Act (Schedule 2) instead of being formulated as a statement.

The Charter of Residents' Rights and Responsibilities in Nursing Homes was formulated by the Minister and tabled earlier this Session under the existing provision. It was necessary to table the Charter for Approved Nursing Homes in order to comply with section 40ABB of the Principal Act which requires that the resident/proprietor Agreement (also formulated and tabled earlier this Session) be consistent with the Charter formulated by the Minister. The Charter for Approved Hostels (provided for under section 10DA of the Aged or Disabled Persons Homes Act 1954) was tabled concurrently to secure the protection of the rights of nursing home and hostel residents at the same time, and to ensure that both documents were afforded the same degree of consideration by Parliament.

Clause 53 - Conditions of registration

This is a consequential amendment required so that the existing provision of the Principal Act refers to the appropriate schedule.

Clause 54 - Interpretation

This clause amends subsection 84(1) of the Principal Act by adding a definition of "concession card", to mean a Safety Net card to which new section 84DA of the Act applies.

The clause adds a definition of "concession card prescription" and amends the definition of "general benefit prescription" to exclude a concessional card prescription.

The clause also amends the definition of an "entitlement card" to make it clear in the Safety Net provisions of the Act which card, entitlement or concession, is being referred to.

Clause 55 - Concessional benefit prescriptions, concession card prescriptions and entitlement card prescriptions.

This clause adds to the existing provisions of section 84AA of the Principal Act, the concession card being the card issued to persons who reach the general Safety Net limit of \$300.

Clause 56 - Heading to Division 1A of Part VII

This clause amends the heading of Division 1A of the Principal Act to include the Safety Net Concession Cards in the provisions of Division 1A.

Clause 57 - Eligibility for safety net concession cards and pharmaceutical benefits entitlement cards

Section 84C of the Principal Act is amended by the addition of a new subsection 84C(1AA) to provide for the issue of a concession card to a person and the person's family who have during a calendar year been supplied with pharmaceutical benefits, both those priced at above and below the general patient contribution, the amounts of which total not less than \$300.

Clause 58 - Insertion of new section: Issue of safety net concession card

Clause 58 amends the Principal Act by adding the new section 84DA which provides for the issue of a concession card by the Secretary to the Department of Community Services and Health, an approved pharmacist, approved medical practitioner or approved hospital authority where requested by a person who meets the criteria set out in new subsection 84C(1AA).

The new section requires the person making the application to provide particulars and such documentation as are prescribed.

The clause requires that where a concession card has been issued by a pharmacist, medical practitioner or a hospital authority the application and all accompanying documentation must be submitted to the Secretary within one month after the day on which the concession card was issued. Other periods in which to submit this material can be prescribed.

Clause 59 - Form of cards

This clause amends section 84F of the Principal Act by adding a reference to the concession card to the current provisions relating to the Safety Net entitlement card.

Clause 60 - Persons covered by card

The clause adds a reference to the concession card to section 84G of the Principal Act which provides that all persons in the family are card holders and thus are equally covered by the provisions of the Act.

Clause 61 - Additional and replacement cards

This clause adds provisions to the Principal Act to allow the issue of additional and replacement concession cards under the same conditions as apply to the existing Safety Net entitlement card.

Clause 62 - Fee to approved pharmacist etc. for issuing card

Clause 62 adds to section 84HA of the Principal Act a reference to the concession card, thus allowing issuing pharmacists etc. to be paid a fee, determined by the Minister, for the issue of original, additional and replacement concession cards.

Clause 63 - Period of effect of card

The Principal Act is amended by this clause by the addition of a reference to a concession card to the existing provisions.

Clause 64 - Return of the card

This clause adds a reference to the concession card to the existing provisions of the Principal Act allowing the return of cancelled cards.

Clause 65 - Offences

This clause adds adds a reference to the concession card to the offence provisions of section 84L of the Principal Act.

Clause 66 - Limited charges for pharmaceutical benefits

This clause adds a reference to the holder of a concession card to those persons listed in subsections 87(3A) and 87(3B) of the Principal Act as being eligible for free or concessional pharmaceutical benefits only where the supplier is satisfied that the person is entitled to that benefit.

Clause 67 - Entitlement to refund in certain circumstances

This clause adds a reference to the concession card to the refund provisions of section 87A of the Principal Act thus allowing person who through no fault of their own failed to be issued with a concession card when entitled, to receive a refund of extra moneys expended on pharmaceutical benefits as a result of not being issued with this card.

Clause 68 - Approvals to be subject to conditions

Clause 68 includes a concession card prescription with those other prescriptions in paragraph 92A(1)(ca) of the Principal Act the eligibility details of which pharmacists are required to enter on the prescription if these details are communicated to the pharmacist.

Clause 69 - Interpretation

This clause amends the indexation provisions of section 99F of the Principal Act by expanding the definition of "general patient restricted safety net" by adding the new subsection 84C(1AA) which relates to those persons who have been issued with a concession card.

Clause 70 - Repeal of section and substitution of new section: Nursing Homes Fees Review Committees of Inquiry

Section 117A of the Principal Act is replaced to allow the Minister to establish more than one Nursing Homes Fees Review Committee of Inquiry in a State at any one time.

Concurrent sittings by more than one Committee may be necessary in some States to avoid delays in the hearing of requests for review.

Clause 71 - Schedule

This clause amends the Schedule by omitting the heading and substituting "SCHEDULE 1". This is consequent upon the amendment of section 45F, which adds a second Schedule to the Principal Act.

Clause 72 - New Schedule

This clause amends the Principal Act by adding a new Schedule (Schedule 2). The Schedule is the Charter of Residents' Rights and Responsibilities in Approved Nursing Homes.

The Charter is a statement of the philosophy that underpins all initiatives which aim to promote and protect the rights of nursing home residents. It sets out the philosophy that the personal, civil, legal and consumer rights of a person do not diminish when they move into a nursing home, regardless of their physical or mental frailty or their ability to exercise or fully appreciate their rights.

The Charter states the rights of each resident of a nursing home, including the right to quality care, the right to be treated with dignity and respect; the right to maintain personal independence and the right to redress. The Charter also states the responsibilities of each resident, including the responsibility to respect the rights and needs of others and the responsibility for their own health and well-being.

The Charter is also a Schedule to the common form of Agreement to be entered into between the residents and proprietors of nursing homes provided for under section 40ABB of the Act. This Agreement must be consistent with the principles of the Charter.

PART 6 - AMENDMENTS OF THE STATES GRANTS (NURSE EDUCATION TRANSFER ASSISTANCE) ACT 1985

Clause 73 - Principal Act

Clause 73 provides that the States Grants (Nurse Education Transfer Assistance) Act 1985 is referred to as the Principal Act in this part of the Bill.

This provision is to commence on Royal Assent.

Clause 74 - Interpretation

Clause 74 inserts definitions of "approved course", "basic nurse degree course", "eligible student" and "extended nurse degree course".

The definition of "approved course" extends the courses covered under the Act to basic nurse degree courses and extended nurse degree courses and maintains coverage of basic nurse education courses as defined.

The definitions of "basic nurse degree course" and "extended nurse degree course" describe the nature of the courses. The former are three year courses leading to an initial qualification, and the latter are similar courses exceeding three years in length.

The definition of "eligible student" describes the students who are eligible to attract assistance under the Act. These will be students who at the relevant time are enrolled in a basic nurse undergraduate course or a basic nurse degree course, or who are enrolled in an extended degree course but have not completed three years of that course. Students in the fourth year of an extended degree course are thus not included.

Clause 75 - Special nurse education transfer grants

Paragraph 75(a) deletes reference to "basic nurse education courses" and substitutes reference to "approved courses to eligible students" in subsections 4(1), 4(2) and 4(3) of the Act and so redefines the courses in respect of which the Minister may enter into agreements in respect of the making of grants under the Act.

Paragraph 75(b) inserts the word "eligible" before the word "students" in subparagraphs 4(3)(c)(i) and (ii) of the Act and so redefines the classes of students that attract assistance under the Act.

Paragraph 75(c) substitutes the word "approved" for the words "basic nurse undergraduate" in subparagraphs 4(3)(c)(i) and (ii) of the Act thus broadening the range of courses covered by the Act.

PART 7 - AMENDMENTS OF THE THERAPEUTIC GOODS ACT 1989

Clause 76 - Principal Act

Provides that references to the "Principal Act" are to the Therapeutic Goods Act 1989.

Clause 77 - Interpretation

This clause clarifies the description of persons intended to come within, or fall outside, the operation of certain provisions of the Principal Act. The proposed amendment limits the present exception in the definition of "sponsor" so that only a person who exports, imports or manufactures therapeutic goods, or arranges these activities on behalf of another person engaged in any of these activities, who is also either a resident of, or carrying on business in, Australia at the time of engaging in such an activity, will not fall within the exception. This is intended to remove the possibility of agents of overseas principals being considered not to fall within the scope of relevant regulatory provisions of the Principal Act.

Clause 78 - Forms etc. of therapeutic goods

Paragraph 78(a) clarifies the nature of the Secretary's power in subsection 16(2) of the Principal Act to determine by order published in the Gazette that a group of therapeutic goods is to be treated as a single therapeutic goods under Part 3 of the Principal Act. The new provision makes it clear that this power is not restricted by the factors set out in subsection 16(1) of the Principal Act, which otherwise determine whether therapeutic goods are to be treated as separate and distinct goods under Part 3.

Paragraph 78(b) substitutes new subsections 16(2) and (3). New subsection 16(2) is of similar effect to that which it replaces, except that therapeutic devices are excluded from its operation. New subsection 16(3) is a new provision applicable to therapeutic devices. Under this, the Secretary will be empowered to determine by order published in the Gazette that a group of therapeutic goods (which are therapeutic devices), because the relevant therapeutic goods have common characteristics and have been produced by the same manufacturer, is to be treated as single therapeutic goods under Part 3 of the Principal Act.

Clause 79 - Schedule

This clause corrects an existing error in the citation for the Sea Installations Act 1987.

