

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**HEALTH AND COMMUNITY SERVICES LEGISLATION
AMENDMENT BILL 1993**

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Health, Senator
the Hon. Graham Richardson)



HEALTH AND COMMUNITY SERVICES LEGISLATION AMENDMENT BILL 1993

GENERAL OUTLINE

Part 2 of the Bill amends the Aged or Disabled Persons Care Act 1954 by inserting new sections 10JA and 10JB which create criminal offences relating to false or misleading statements which may be made in support of various applications under the Act. These amendments remove doubts over whether false or misleading statements made in these applications are offences currently covered by the general provisions of the Crimes Act 1914.

Parts 3 and 4 of the Bill correct drafting errors in the Health Insurance Act 1973 following the introduction, respectively, of the Health and Community Services Legislation Amendment (No.2) Act 1992 and the Health, Housing and Community Services Legislation Amendment Act 1992.

Part 5 of the Bill corrects anomalies in the Health Insurance Act 1973 following the introduction of the Health Insurance (Pathology) Amendment Act (No.2) 1991. It also rectifies a drafting error in the Health Insurance Act 1973 following the introduction of the Health Insurance (Quality Assurance Confidentiality) Amendment Act 1992.

Part 6 of the Bill amends the National Health Act 1953 by removing several redundant provisions in the Act. The Bill also rectifies several anomalies in the Act following the introduction of the National Health Amendment Act 1992. The Bill clarifies the length of time records are to be kept by nursing home proprietors that relate to the verification of claims for Commonwealth benefits (i.e. seven years).

FINANCIAL IMPACT STATEMENT

None of the measures contained in this Bill have any financial impact.

HEALTH AND COMMUNITY SERVICES LEGISLATION AMENDMENT BILL 1993

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 Health and Community Services Legislation Amendment Act 1993.

Clause 2 - Commencement

This clause provides that, with the exception of the matters dealt with in subclauses (2) to (4), the provisions of the Act will commence on the day on which it receives Royal Assent.

PART 2 - AMENDMENTS TO THE AGED OR DISABLED PERSONS CARE ACT 1954

Clause 3 - Principal Act

This clause is a formal provision that specifies the Aged or Disabled Persons Care Act 1954 as the Principal Act referred to in this Part of the Bill.

Clause 4 - Insertion of new sections

This clause inserts two new sections, 10JA and 10JB, in the Principal Act.

New Section 10JA - Statements that are false or misleading

The new subsection 10JA(1) of the Principal Act sets out the range of statements to which the section applies which include statements made in applications for financial assistance. The new subsection 10JA(2) provides that it is an offence for a person to knowingly or recklessly make a statement of a kind described in subsection (1) that is false or misleading in a material particular; or to submit to the Minister or the Department a document that is false or misleading in a material particular without indicating how it is false or misleading and without providing the correct information if this is reasonably possible. The maximum penalty for the new offence is 5 years imprisonment.

New Section 10JB - Submissions that are false or misleading

The new section 10JB provides that it is an offence for a person to knowingly or recklessly make a submission under section 10AC or 10GD of the Principal Act that is false or misleading in a

material particular. These are submissions which may be made by the holders of certain approvals under the Principal Act, contesting the Minister's intention to revoke those approvals. The maximum penalty for the new offence is 5 years imprisonment.

PART 3 - AMENDMENTS TO THE HEALTH AND COMMUNITY SERVICES LEGISLATION AMENDMENT (NO.2) ACT 1992

Clause 5 - Principal Act

This clause is a formal provision that specifies the Health and Community Services Legislation Amendment (No.2) Act 1992 as the Principal Act referred to in this Part of the Bill.

Clause 6 - Commencement

This clause amends the Principal Act by providing that Part 6 of the Principal Act is taken to have commenced immediately after the commencement of section 11 of the National Health Amendment Act 1987, namely, 26 May 1987. Part 6 of the Principal Act amended the National Health Amendment Act 1987 to relocate section 99AB (Advances) of the National Health Act 1953 from Division 4 (Provisions relating to members of the Pharmaceutical Benefits Remuneration Tribunal) to Division 3 (Payment for Supply of Pharmaceutical Benefits). This provision overcomes a drafting error by inserting section 99AB in the appropriate Division of Part VII of the Principal Act.

Clause 7 - Interpretation

This clause amends section 20 of the Principal Act by substituting "patient" for "person" to rectify an incorrect reference to "person" in paragraph 4(1)(da) of the National Health Act 1953.

PART 4 - AMENDMENT OF THE HEALTH, HOUSING AND COMMUNITY SERVICES LEGISLATION AMENDMENT ACT 1992

Clause 8 - Principal Act

This clause is a formal provision that specifies the Health, Housing and Community Services Legislation Amendment Act 1992 as the Principal Act referred to in this Part.

Clause 9 - Remuneration and allowances

This clause makes a drafting amendment to section 63 of the Principal Act by adding "(first occurring)" to identify the position in section 99B of the National Health Act 1953 where the words "a Senior Deputy President or" were to be included. Section 99B of that Act has two references to "duties as". This amendment confirms that the amendment effected to this section was to take place after the first reference.

PART 5 - AMENDMENTS OF THE HEALTH INSURANCE ACT 1973

Clause 10 - Principal Act

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

Clause 11 - Accredited pathology laboratories

This clause substitutes a reference to subsection 23DN(2) for a reference to subsection 23DN(1) in subsection 23DN(6) of the Principal Act. The clause also omits subsection 23DN(8), which is a redundant provision as it reflects past requirements, and omits subsections 23DN(9), (10), (11) and (12), because determinations of the principles are now made under section 23DNA of the Principal Act. The tabling and evidentiary provisions are preserved by clause 12 of this Bill.

Clause 12 - Determination of principles for accreditation as pathology laboratory

This clause amends section 23DNA of the Principal Act by adding new subsection 23DNA(6) to ensure that the determination of principles made under section 23DNA are disallowable instruments. The clause also adds a new subsection 23DNA(7), an evidentiary provision, to replace the existing subsection 23DN(12).

Clause 13 - Application for grant of licence

This clause amends paragraph 23DND(5)(d) of the Principal Act by making the four conditions to be met by applicants for licences for temporary collection centres in subsection 23DND(4), cumulative (rather than alternative) requirements.

Clause 14 - Review of decisions

This clause amends paragraph 23DO(5)(a) of the Principal Act by inserting the words 'in principle' after the word 'approving' to correct an omission. It also substitutes in paragraph 23DO(5)(b) a reference to subsection 23DN(2) for a reference to subsection 23DN(1).

Clause 15 - Renumbering of Part VC

This clause makes a purely technical amendment to overcome the effect of a drafting error in the Health Insurance (Quality Assurance Confidentiality) Amendment Act 1992 which resulted in the insertion of Part VC into the Principal Act with section numbering out of sequence having regard to the position of Part VC in the Principal Act.

Clause 16 - Officers to observe secrecy

This clause amends section 130 of the Principal Act by inserting a new subsection 130(5A), the purpose of which is to enable the release of certain specified information about hospitals by an authorised officer to any person requesting the information. The information would include the hospitals' names and addresses, their bed capacity, their teaching status and whether they are public or private hospitals. New subsection 130(5B), also inserted by this clause, defines "authorised officer".

Clause 17 - Further Amendments of the Principal Act

This clause makes purely technical amendments, as set out in the Schedule to the Bill, to Part VC of the Principal Act to correct internal references to sections in consequence of the renumbering to be effected by clause 15 of this Bill.

PART 6 - AMENDMENTS OF THE NATIONAL HEALTH ACT 1953

Clause 18 - Principal Act

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

Clause 19 - Interpretation

This clause amends section 4 of the Principal Act by omitting the second definition of "supplementary hospital table".

Clause 20 - Recognised days of absence of qualified nursing home patients etc.

This clause amends subsection 4AA(6A) of the Principal Act by changing the reference to "section 46B" to "section 46AB". The National Health Act 1953 currently has two sections 46B. Clause 22 of this Bill would renumber the first occurring of these sections as section 46AB. This clause reflects that proposed numbering.

Clause 21 - Approval of nursing home

The clause amends subparagraph 40AA(6)(bb)(i) of the Principal Act to identify the type of patient permitted to occupy a temporarily vacated nursing home place. The intent of subparagraph 40AA(6)(bb)(i) of the Principal Act is to allow beds temporarily vacated by qualified nursing home patients to be occupied on a temporary basis by leave respite residents. The section currently refers to section 40ABA of the Principal Act which was repealed by Amendment Bill No. 3 of 1990.

This clause also amends the Principal Act by omitting subsection 40AA(11) which refers to the previously repealed section 40ABA. This subsection is omitted as it now has no function.

Subsection 40AA(13) of the Principal Act provides for the proprietor of a nursing home to notify the Secretary if a person is admitted to a nursing home without approval under either section 40AB or 40ABA of this Act. This clause also removes the reference to the repealed section 40ABA.

Subsections 40AA(14), (15) and (16) of the Principal Act outline administrative requirements for an approval for admission to a nursing home. This clause also removes references to the repealed subsection 40AA(10).

Clause 22 - Approved nursing home patients

The Principal Act currently has two sections 46B, with the second to commence in July 1993. This clause would renumber the first occurring section 46B as 46AB.

Clause 23 - Benefit payable for up to 2 days prior to admission

This clause is a consequential amendment to section 46A of the Principal Act by changing the reference to "section 46B" to "section 46AB" in light of the above proposed amendment.

Clause 24 - Secretary to determine accounting period in respect of certain approved nursing homes

This clause amends subsection 46C(3) of the Principal Act by omitting the words "this Act" and substituting "the National Health Amendment Act 1992". Section 46C of the Principal Act allows the Secretary to determine accounting periods in respect of certain approved nursing homes. The intention of subsection 46C(3) is that an accounting period in respect of an approved nursing home must not begin before the commencement of the National Health Amendment Act 1992 in July 1993. Clause 24 would amend the wording of the section to clarify this commencement date.

Clause 25 - records to be kept by proprietors of approved nursing homes

Clause 25 amends section 61 of the Principal Act by changing the requirements in relation to records which must be kept by nursing home proprietors under that section. Paragraph (a) alters the way in which the penalty for an offence under section 61 of the Principal Act is expressed, without changing the level of the penalty. Paragraph (b) inserts two new subsections in section 61. Under section 61, proprietors are required to keep such records as will enable verification of claims for Commonwealth benefit and verification of compliance with conditions of approval.

New subsection 61(4A) provides that any records required to be kept under section 61 must be kept for a period of seven years from the end of the financial year to which they relate. (There was previously no time limit to this requirement).

New subsection 61(4B) provides that subsection (4A) applies to any such records held by a proprietor at the time of the commencement of the new subsection (4A).

Clause 26 - Interpretation

This clause amends paragraph 65(4)(a) of the Principal Act by omitting "the commencement of this Act" and substituting "1 July 1993". This is a technical amendment to correct a drafting error, which may otherwise cause confusion, about the application of Part VD of the Principal Act to the events described in paragraph 65(4)(a).

Clause 27 - Investigation of accounts etc. of approved nursing home

This clause amends section 65C of the Principal Act. Paragraph (a) amends the wording of paragraph (1)(c) from "last preceding 30 June" to "30 June last past" for clarity. Paragraph (b) amends the wording of paragraph (1)(d) from "immediately preceding 1 July" to "1 July last past" for clarity.

Clause 28 - Treatment of amount paid in respect of overpayment outstanding to which subsection 65K(6) applies - Step 2: second investigation amount

This clause corrects minor drafting errors in section 65S of the Principal Act by:

- amending the wording of Example 1, under heading Result 1. from "is paid" to "as paid"; and
- amending the wording of Example 2, under heading Result 1. from "to be paid" to "as paid".

Clause 29 - Time when principles take effect

This clause amends section 65T of the Principal Act by changing the reference in subsection (1) from "65G(8)" to "65G(7)" to correct a minor drafting error.

Clause 30 - Applications for review by the Tribunal of certain decisions under Part V

This is a technical amendment to omit reference to subsections which have been previously repealed.