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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HEALTH, HOUSING AND COMMUNITY SERVICES LEGISLATION AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Health, Housing and Community Services, the Honourable Brian Howe, MP.)

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HEALTH, HOUSING AND COMMUNITY SERVICES LEGISLATION AMENDMENT BILL 1992

GENERAL OUTLINE

Part 2 of the Bill amends the Disability Services Act 1986

Amendments to the Objects of the Disability Services Act

The amendments to the objects of the Disability Services Act 1986 clarify that the Disability Services Program and the Commonwealth Rehabilitation Service are assistance programs that operate within budget constraints.

Amendments to Part II of the Disability Services Act

The amendments to Part II of the Disability Services Act 1986 are part of a new strategy to assist Commonwealth funded service providers improve the standard of service they provide for people with a disability. The primary focus of the amendments is on providing people with the services which best meet their needs and aspirations, and to ensure that the quality of these services is subject to safeguards.

Under the Act, accommodation services, sheltered workshops, activity therapy centres, and other pre-1987 services (prescribed services) had a five year period, ending 30 June 1992, to meet the higher standards of service embodied in the objects, and principles and objectives of the Act, and become eligible services. Although significant achievements have been made, it has become clear that for many prescribed services this five year period was not long enough to deal with the complexity of change required.

The amendments contained in the Bill will provide for ongoing funding to prescribed services so that they can complete their transition. To be assured of ongoing funding, services will have to meet prescribed minimum standards. The minimum standards were introduced administratively in February 1991 and all services are expected to meet these standards by 30 June 1992.

Ultimately, all funded organisations will be required to become eligible for funding under section 10 of the Act by providing a service at a standard consistent with the objects, and the principles and objectives of the Act.

However, to give recognition and assistance to those organisations who are continually and substantially improving their services, but who have not reached the standard for eligibility for funding under section 10, the Bill establishes an intermediate level of service standard and attainment. To reflect their progress and transition on the path to higher service standards, these services will be called transitional services.

The Bill provides for the Minister to determine clear and objective standards which services will be expected to meet. Where a service fails to meet the applicable standards, the Minister will be able to take actions under the terms and conditions contained in the funding agreement; however, this action will be subject to a review by a Disability Standards Review Panel. The amendments provide that the performance of all services funded under Part II of the Act must be reviewed at least once every five years with particular attention paid to whether the service is meeting the applicable standards.

The Department is currently consulting with a wide cross section of the community about setting appropriate standards, the processes for monitoring service performance, and the operation of the review panels.

The Commonwealth/State Disability Agreement was signed by all Heads of Government on 30 July 1991. The Agreement marks a turning point in the provision of more efficient and better services for people with a disability in Australia, by rationalising the responsibilities of each level of government and by ensuring co-ordinated service delivery. The Bill contains provisions to allow State and Territory Government employment services which are transferring to the Commonwealth, but which are not yet furthering the objects, principles and objectives of the Act, to be funded as prescribed services under section 13.

The Bill removes the restriction on funding for-profit organisations. This will allow the Minister to fund, on a case-by-case basis, services which are provided by other than non-profit organisations; for example, some attendant care services for which there is currently no option but to fund outside the Act.

The Bill provides for some other minor and technical amendments to Part II of the Act.

Amendments to Part III of the Disability Services Act

With respect to the amendments to Part III of the Disability Services Act 1986, the amendments clarify that the Commonwealth Rehabilitation Service (CRS) does not have liability for payments under the Higher Education Contribution Scheme (HECS) for pensioners and beneficiaries whose rehabilitation programs involve tertiary training. As is the case for other Australian students, it is appropriate that students with disabilities should meet these costs when their income exceeds the HECS liability threshold.

Other minor amendments to Part III of the Act would achieve an increase in the operational flexibility of the CRS by: providing legislative support for the reasonable termination of CRS programs; deleting and/or replacing outdated references to goods, services and Social Security allowances; clarifying eligibility for free services; and allowing administrative arrangements to be put in place with other Commonwealth entities.

Part 3 of the Bill makes a number of amendments to the First Home Owners Act 1983. As part of the Government's data-matching arrangements, the First Home Owners Act 1983 was amended in 1990 to insert a provision requiring clients upon request to provide, within 60 days, their tax file number. Failure to comply results in the termination of their monthly assistance payments. The proposed amendments will enable the reinstatement of those payments to clients who supply a tax file number outside the 60 day period, for and after the month in which they return the tax file number.

Part 4 of the Bill makes a number of amendments to the Health Insurance Act 1973. The proposed amendments introduce powers to enable the determination of an increased fee where the pathology service is of unusual length or complexity. Where the Health Insurance Commission is unable to determine an increased fee, the Bill provides for the question to be referred to the Pathology Services Table Committee for determination.

The Bill provides for offences where the approval of premises as an accredited pathology laboratory has been revoked and the proprietor fails to inform a treating medical practitioner that medicare benefits will not be payable for the rendering of a pathology service at that laboratory.

The Bill inserts a new Division 4 in Part IIB of the Health Insurance Act 1973 to regulate the initiation of excessive diagnostic imaging services by a practitioner (which includes chiropractors, physiotherapists and podiatrists who may refer persons for certain diagnostic imaging services), as a parallel to similar provisions in the Act for excessive pathology services. The proposed amendments provide for questions of excessive diagnostic imaging services to be referred to a Medical Services Committee of Inquiry for investigation before reporting to the Minister. Penalties for the initiation of excessive diagnostic imaging services are also contained in the Bill.

The Bill repeals the provisions in the Health Insurance Act 1973 relating to prescribed GP services.

The Bill also provides for some minor and technical amendments to the three Acts in Schedule 1 to the Bill.

Part 5 of the Bill amends the Hearing Services Act 1991. The Hearing Services Act 1991 was given Royal Assent on 20 November 1991 and provides for the establishment of the Hearing Services Authority, and it will come into effect from 1 July 1992. The first amendment relates to a Guarantee of Borrowings by the Hearing Services Authority. The second amendment relates to an undertaking given by the Minister to the Senate Scrutiny of Bills

Committee to amend section 66 of the Act to reduce the possible protection offered by that section to any prescribed name.

Part 6 of the Bill amends the National Health Act 1953 by extending the safety net arrangements under the Pharmaceutical Benefits Scheme to include medication supplied by out-patient departments of State public hospitals and Repatriation hospitals. Expenditure by patients on such medication will be able to be recorded by the hospital authority and thus counted towards the threshold for issue of concession and entitlement cards. Hospital authorities will be empowered to issue these cards where appropriate.

As charges made by public hospitals for supplies of out-patient medication do not exactly mirror those made under the Pharmaceutical Benefits Scheme, the Minister will, following consultation with State and Territory governments, annually determine the amounts which are to be counted towards the safety net.

By agreement with those governments, these arrangements are to be retrospective to 1 January 1992. Administrative procedures have been put in place for the recording of supplies of out-patient medication made from 1 January 1992 until the passage of this Bill. Concession or entitlement cards will then be issued to persons who have qualified for them and refunds made where appropriate.

Other amendments will ensure that refunds are available in respect of pharmaceutical benefits supplied after qualification for, but before issue of, concession or entitlement cards; and that, in the case of an amalgamation agreement, the grant of financial assistance is paid to the pharmacist whose pharmacy is to be closed.

The Bill also provides that the Chairperson or Acting Chairperson of the Pharmaceutical Benefits Remuneration Tribunal must be either a Senior Deputy President or a Deputy President of the Australian Industrial Relations Commission. This change follows the passage of the Industrial Relations Legislation Amendment Act (No. 2) 1991, which created the new position of Senior Deputy President.

Part 7 of the Bill contains further amendments to the National Health Act 1953 in respect of nursing home matters together with a number of minor amendments contained in Schedule 3 to the Bill.

The Bill provides for an amendment to the National Health Act 1953 to require former proprietors of approved nursing homes to keep their nursing home records for twelve months after they have sold or transferred their nursing home. At present, former proprietors

may, by disposing of their records following the sale of their business, prevent the identification of overpayments made to them. The amendment also enables the Secretary to approve a location for the keeping of the records, and provides appropriate penalties for former proprietors who fail to maintain their records accordingly.

The nature of the funding system in relation to approved nursing homes is such that overpayments of Commonwealth benefit made to a proprietor may be recovered from a new proprietor who has bought the nursing home. While this process is well known in the industry, the secrecy provisions of the National Health Act 1953 have previously prevented the Department from disclosing information concerning a nursing home's funding and the likelihood of such recovery action to prospective purchasers. While prospective purchasers may be aware of the possibility of recovery action being taken, without knowing the quantum of current or impending recovery action in respect of overpayments, they may be unable to adequately address the matter in the contract of sale. As a consequence, they may be disadvantaged by underestimating quantum of overpayments which may be recovered. This may potentially place some strain on the home's financing, thus making it harder for the new proprietor to provide quality care to the residents. This amendment enables the Department to provide the prospective purchaser with the information needed for a purchaser to make an informed decision about a sale.

The Bill enables the Minister to approve liquidators, managers, receivers and other people appointed to run a nursing home as temporary operators, thereby making them subject to the same conditions and responsibilities as approved operators (who are usually proprietors). This makes it clear that people appointed to run a nursing home in lieu of the proprietor may be subject to the same requirements as the proprietor in operating the nursing home. The Bill also amends the secrecy provision contained in the National Health Act 1953 to clarify the Department's authority to divulge key information to persons appointed to manage a proprietor's approved nursing home.

The Bill also contains amendments to impose certain conditions on the transfer of nursing home beds and enable decisions to approve or refuse transfers to be made by reference to principles specifically formulated for that purpose. These conditions will provide a further mechanism to protect and ensure the quality of nursing home service provision. The Bill also makes it clear that the home from which beds are to be transferred must continue to be conducted in accordance with its conditions of approval.

The Bill also amends the Act to enable new residents up to two days of their 28 day non-hospital leave entitlement to be taken before they actually enter the nursing home. This will enable new residents time to settle their affairs prior to admission to a nursing home.

Part 8 of the Bill amends the Therapeutic Goods Act 1989 to bring the definition of "therapeutic devices" in line with the definition for therapeutic devices used by countries in the European Community. Part 8 also effects further changes that will implement a number of recommendations contained in Professor Peter Baume's "Report on the Future of Drug Evaluation in Australia", which was adopted as a package by the government in July 1991.

The Therapeutic Goods Act 1989 is to be amended to:

(a) extend the definition of therapeutic device to include goods that achieve their intended principal action by immunological, metabolic or pharmacological, and not just chemical, means, and goods whose therapeutic uses include controlling or influencing conception and the replacement or modification of parts of the anatomy in persons or animals;

(b) enable applicants to treat a failure by the Secretary to complete an evaluation of drugs within the prescribed time limit as a decision to refuse registration of an applicant's drug, for the purposes of allowing the applicant to directly appeal to the Administrative Appeals Tribunal;

(c) in line with Professor Baume's recommendations, insert provisions in the Act, along the lines of section 22 of the Agricultural and Veterinary Chemicals Act 1988, that will require a sponsor to inform the Therapeutic Goods Administration of any adverse effects of the sponsor's therapeutic goods approved for marketing, of which the sponsor becomes aware, or where a general marketing application is lodged and subsequently withdrawn, require the applicant to provide any adverse safety data in the applicant's possession at the time of withdrawal;

(d) enable the Secretary and the Minister to delegate their powers under the Act to persons who have not been appointed under the Public Service Act 1922 but who may be contracted to assume duties within the Therapeutic Goods Administration;

(e) in line with Professor Baume's recommendation, enable the Secretary to publish the deliberations of the Australian Drug Evaluation Committee.

Schedule 1 to the Bill contains a number of technical amendments to the Community Services and Health Legislation Amendment Act (No.2) 1990 and the Aged or Disabled Persons Care Act 1954. This Schedule also contains some minor amendments to the Health Insurance Act 1973 to ensure consistency with the Social Security Act 1991.

Schedule 2 to the Bill contains a number of amendments to the Health Insurance Act 1973 in order to remove the enabling

provisions for the Health Insurance Regulations (the Regulations) to reduce medicare benefits, to permit a co-payment and to pay doctors an additional (transaction) fee on prescribed bulk billed services, that is to:

(a) remove the provision for a reduction to medicare benefits for prescribed GP services;

(b) remove the provision which permit medical practitioners to charge a co-payment amount for prescribed GP services where a patient assigns the right of the payment of the medical benefit to the practitioner (that is, bulk billed services);

(c) withdraw arrangements for the payment of an indexed $1.00 additional fee to general practitioners for prescribed GP services provided to persons, other than concessional beneficiaries who are bulk billed;

(d) provide for the Act to continue to have effect for professional services rendered over the period 1 December 1991 to 29 February 1992 as if the amendments had not been made and preserves the transitional arrangements for the medicare safety-net concerning the change for individuals from a financial to a calendar year. In addition, Schedule 2 contains provisions for minor amendments to the arrangement for the medicare safety-net necessitated by the principle changes to the Act; and

(e) remove all references to the eligibility, coverage and need for additional or replacement safety-net concession cards, period of effect and return of safety-net concession cards since evidence will no longer be required for exemption from the benefit reduction or co-payment.

Schedule 3 to the Bill contains a number of technical amendments to the National Health Act 1953 to repeal a number of redundant provisions relating to medical and hospital benefits funds which have previously been replaced by registered health benefits organisations.

FINANCIAL IMPACT STATEMENT

Part 2 of the Bill

With the exception of the Disability Standards Review Panel and the changes to HECS payments, the amendments proposed in Part 2 of the Bill are budget neutral.

The costs associated with the Disability Standards Review Panel should be minimal, and will be financed within the Disability Services Program's budget.

To the extent that the CRS does not pay up front HECS contributions for clients, outlays from the Commonwealth Budget on tertiary education will increase in the short term. There will, however, be no net impact on the level of resources available to tertiary education institutions. The amounts involved would be minor.

Part 3 of the Bill

A substantial number of clients have provided a timely response to the Department's request for tax file number data. However, some five hundred clients have responded outside the 60 day period specified in section 17B of the First Home Owners Act 1983. To reinstate payments to these clients, the proposed amendment will cost $250,000 in monthly instalments during their remaining entitlement period of up to 44 months. Also it is expected that a small number of those who have not yet replied at all may still do so, and thus will benefit under the proposed amendment.

Part 4 of the Bill

There are no financial implications directly as a result of the amendments.

Part 5 of the Bill

The two proposed amendments to the Hearing Services Act 1991 will have no financial impact.

Part 6 of the Bill

The extension of the pharmaceutical benefits safety net arrangements to include supplies of out-patient medication is estimated to cost $100,000 in 1991-92, $2.25 million in 1992-93, $2.5 million in 1993-94 and $2.7 million in 1994-95.

The amendment to the refund provisions will have only minimal cost while the other changes are revenue neutral.

Part 7 of the Bill

None of the measures in Part 7 have any financial impact.

Part 8 of the Bill

Apart from the impact of the penalties associated with the creation of 2 new offences, relating to the requirement for sponsors and applicants to report adverse safety data concerning their therapeutic drugs, no financial impact is anticipated in relation to the proposed amendments for this Part.

Schedule 1 to the Bill

None of the measures in this Schedule have any financial impact.

Schedule 2 to the Bill

There are no financial implications directly as a result of the amendments in this Schedule as the operative provisions in the Health Insurance Regulations which contained the list of prescribed GP services have already been repealed.

Schedule 3 to the Bill

None of the measures in this Schedule have any financial impact.

HEALTH, HOUSING AND COMMUNITY SERVICES LEGISLATION AMENDMENT BILL 1992

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, Housing and Community Services Legislation Amendment Act 1992.

Clause 2 - Commencement

This clause provides that, with the exception of the matters dealt with in subclauses (2) to (6), the provisions of the Act will commence on the day on which the Act receives Royal Assent.

Clause 3 - Amendments of various Acts

This clause provides for the minor amendments to the three Acts listed in Schedule 1 to the Bill.

Subclause 2 ensures the continued operation of agreements under section 10GG of the Aged or Disabled Persons Care Act 1954 as if the Commonwealth was substituted for the Minister as a party to each agreement.

PART 2 - AMENDMENTS OF THE DISABILITY SERVICES ACT 1986

Clause 4 - Principal Act

This clause is a formal provision which identifies the Disability Services Act 1986 as the Principal Act referred to in this Part of the Bill.

Clause 5 - Objects

Paragraph 5(a) replaces paragraph 3(b) in the Principal Act with a goal statement that is more appropriate given the nature of the programs provided under the Principal Act.

Paragraphs 5(b) through to 5(e) also amend the objects clause, section 3, of the Principal Act to make it reflect the purpose of the Act which is to assist people with a disability achieve certain outcomes rather than ensure that they achieve those outcomes.

Paragraphs 5(f) and 5(g) amend the Principal Act to confirm that the Act is not entitlement legislation, and that the administration of the Act is constrained by finite resources and requires the consideration of equity and merit in accessing those resources.

Clause 6 - Interpretation

This clause amends section 7 of the Principal Act (the Interpretation section for Part II of the Act).

Paragraph 6(a) amends the Principal Act so that the Minister may, on a case-by-case basis, approve societies, associations and bodies corporate, which are carried on for the purposes of gain to their individual members as eligible organisations. As a consequence of this amendment, the Minister may approve grants of financial assistance to such organisations in respect of an eligible service. This amendment will enable the Minister to fund the attendant care services under the Principal Act which are currently operated by for-profit organisations. It will also allow the Minister to fund co-operatives which are managed by the people who receive the services provided by the co-operative.

Paragraph 6(b) amends the definition of a "prescribed service" in section 7 of the Principal Act ("prescribed services" are those services funded under the Handicapped Persons Assistance Act 1974 before the introduction of the Principal Act) to include those services approved by the Minister under the new section 9B of the Principal Act. Section 9B of the Principal Act allows the Minister to approve employment services previously funded by State and Territory Governments as prescribed services.

The definition of prescribed services will also incorporate those services which have been previously funded under section 10 of the Principal Act. This will allow the Minister to continue funding services which have failed to the maintain the eligibility standards or satisfy the other necessary preconditions for funding under section 10 of the Act. Consequently, the Minister will not be required to penalise a minor failure to meet these preconditions by defunding the service.

Paragraph 6(c) amends the Principal Act by inserting definitions for the following terms:

- applicable standards,
- eligibility standards,
- employment service,
- enhanced standards,
- minimum standards,
- orders,
- transitional service, and
- transitional strategy.

Clause 7 - Insertion of new sections

New section 9A allows the Minister to approve a prescribed service as a transitional service. A transitional service is a service which has taken significant steps along the transition path towards becoming eligible for financial assistance as an eligible service under section 10 of the Principal Act.

New subsection 9A(1) allows the Minister to approve prescribed services as transitional services if:

- the Minister accepts the transition strategy the State or eligible organisation has submitted to the Minister for the service becoming an eligible service;

- the Minister is satisfied that the State or eligible organisation will implement the strategy;

- the Minister is satisfied that if the strategy is implemented the service will meet the eligibility standards; and

- the Minister is satisfied that the State or eligible organisation is meeting the enhanced standards, determined under the new section 9C, in respect of the prescribed service.

New subsection 9A(2) requires the Minister to ensure that services approved as transitional services under subsection 9A(1) are notified of the approval.

New section 9B allows the Minister to approve employment services which are either funded or provided by State Governments as prescribed services. Without this provision, both the existing and amended subsections 10(3) of the Act would prevent the making of a grant of financial assistance in relation to employment services, transferring to the Commonwealth under the Commonwealth/State Disability Agreement, which are not in a position to further the objects set out in section 3 of the Act, or the principles and objectives formulated under section 5 of the Act.

New subsection 9B(1) allows the Minister to approve an employment service provided by a State or an eligible organisation as a prescribed service if the service:

- is currently receiving funding under a Commonwealth, State or local government program; and

- is provided by a State or eligible organisation for persons in the target group.

New subsection 9B(2) requires the Minister to ensure that services approved as prescribed services under subsection 9B(1) are notified of the approval.

New section 9C enables the Minister to determine service standards. Standards are to be determined at three levels and meeting the applicable standards will be a condition of grant under the new subsections 10(3A), 12A(4), 13(2A), 14(5) and 14(6).

Eligible services, which are funded under the amended section 10, will be required to meet the eligibility standards. The eligibility standards will establish in clear and objective language the requirements for meeting the objects of the Act set out in section 3, and the principles and objectives formulated under section 5 of the Act.

Transitional services, which are funded under either the new section 12A or the new section 14, will be required to meet the enhanced standards.

Prescribed services, which are funded under either the amended section 13 or the new section 14, will be required to meet the minimum standards.

Clause 8 - Financial assistance for eligible services

Paragraph 8(a) makes a technical amendment to paragraph 10(2)(b) of the Principal Act to ensure that grants can be made towards the separate costs of land, buildings and equipment.

Paragraphs 8(b) through to 8(f) extend the existing subsections 10(3)and 10(4) of the Principal Act and insert new subsections 10(3A) and 10(4A) which:

- require the Minister to be satisfied that a service will meet the eligibility standards determined under the new section 9C of the Act before the Minister makes a grant under section 10 of the Act;

- make it a condition of grant that services funded under section 10 of the Act meet the eligibility standards; but which,

- allow the Minister to provide up to twelve months for a "new" service which is funded for the first time under Part II of the Act to meet the eligibility standards.

Paragraph 8(g) makes technical amendments to paragraphs 10(5)(e) and (g) of the Principal Act.

Clause 9 - Repeal of section 11

This clause repeals section 11 in the Principal Act. Revised provisions are in the new section 14K.

Clause 10 - Financial assistance for research and development activities

This clause makes technical amendments to section 12 of the Principal Act.

Clause 11 - Insertion of new heading

This clause amends the heading to Division 3 of Part II in the Principal Act to reflect the creation of funding mechanisms for transitional services under new section 12A and new section 14.

Clause 12 - Insertion of new section

New section 12A provides the funding mechanism for the transitional services approved by the Minister under the new section 9A of the Act.

New subsection 12A(1) allows the Minister to make grants of financial assistance to States and eligible organisations for the provision of a transitional service for people in the target group (as defined in section 8 of the Principal Act). However before making the grant the Minister must be satisfied that:

- the making of the grant would be in the interests of persons included in the target group;

- the State or eligible organisation will take adequate steps towards meeting the objects, principles and objectives;

- the making of the grant would comply with the guidelines formulated under section 5 of the Act;

- the State or eligible organisation is meeting the enhanced standards in respect of the provision of the service; and

- the State or eligible organisation will implement the steps in the transitional strategy of the service - this is the strategy the Minister accepts when he approves services under the new section 9A of Act.

New subsection 12A(2) enables the Minister to make a grant even if it does not further the objects set out in section 3 of the Act, or the principles and objectives formulated under section 5 of the Act. This provision acknowledges that transitional services are at an intermediate step between prescribed service status and eligible service status.

New subsection 12A(3) provides, without limiting the generality of the new subsection 12A(1), a list of matters with respect to which a grant may be made.

New subsection 12A(4) makes it a condition of grant that services funded under section 12A of the Act meet the enhanced standards determined under the new section 9C.

New subsection 12A(5) provides that, where the Minister approves the making of a grant of financial assistance the Minister must, subject to the regulations:

- determine the amounts of financial assistance or the manner in which the amount of financial assistance is paid;

- determine the time or times at which, and the instalments (if any) in which, financial assistance is to be paid; and

- specify any other terms and conditions of the grant (in addition to the condition in the new subsection 12A(4)).

New subsection 12A(6) provides that the terms and conditions of grant specified under paragraph 12A(5)(c) may include certain listed items.

Clause 13 - Financial assistance for prescribed services

Paragraph 13(a) repeals and replaces subsection 13(1) of the Principal Act with new subsections 13(1) and 13(1A) which include the following provisions:

- grants can be made to States in addition to eligible organisations - with the introduction of the Commonwealth/State Disability Agreement, and as a short term arrangement, some State Governments may become funded under the Act for the direct employment services they are providing;

- when the Minister makes a grant, he must be satisfied that the service is meeting the minimum standards determined under the new section 9C of the Act before he or she makes a grant under section 13 of the Act; or, in the case of services which are transferring from State Governments to the Commonwealth under the Commonwealth/State Disability Agreement - he must be satisfied the service will meet the standards before the day determined by the Minister under the new paragraph 13(3)(ba).

Paragraph 13(b) makes the same technical amendment to paragraph 13(2)(b) of the Principal Act that is being made to paragraphs 10(2)(b) and 12(2)(b).

Paragraph 13(c) provides for a new subsection 13(2A) which makes it a condition of grant that services funded under section 13 meet the minimum standards determined under the new section 9C of the Act. For services which are transferring from State Governments under the Commonwealth/State Disability Agreement and which are being funded under the Act for the first time, it is a condition of grant that they meet the minimum standards from the day determined by the Minister under the new paragraph 13(3)(ba).

Paragraphs 13(d) through to 13(e) make consequential technical amendments to the Principal Act.

Paragraph 13(f) provides a new paragraph 13(3)(ba) which allows the Minister, in respect of a service which is funded under section 13 for the first time, to determine a day by which the State or eligible organisation must be meeting the minimum standards in respect of the provision of the service.

Paragraphs 13(g) and 13(h) make consequential technical amendments to the Act.

Paragraph 13(i) makes technical amendments to paragraphs 13(4)(e) and (g) of the Act.

Paragraph 13(j) repeals subsection 13(5) from the Principal Act (the 30 June 1992 sunset provision). Revised provisions are in new section 14A.

Clause 14 - Repeal of section 14 and insertion of new sections

New section 14 repeals and replaces the existing section 14 and makes the following substantive changes to the existing section 14:

- grants can be made to States in addition to eligible organisations - with the introduction of the Commonwealth/State Disability Agreement, and as a short term arrangement, some State Governments may become funded under the Act for the direct employment services they are providing;

- it extends the provisions of the existing section 14 to cover upgrade funding for transitional services;

- it makes it a condition of grant that: transitional and prescribed services are meeting the applicable standards determined under the new section 9C of the Act; or in the case of prescribed services which have transferred from State Governments to the Commonwealth under the Commonwealth/State Disability Agreement - the Minister must be satisfied the service will meet the standards before the day determined by the Minister under the new paragraph 13(3)(ba);

- it removes the "sunset" clause in subsection 14(6).

New subsection 14A(1) allows the Minister to determine a "sunset" date after which payments to a prescribed service will cease.

New subsection 14A(2) allows the Minister to vary the date determined under subsection 14A(1) to a later date provided that the variation complies with the guidelines formulated under section 5 of the Act. An administrative target date of 30 June 1995 has been established for services to generally complete their transition; however, services will be able to negotiate their own transition timeframe around this date. Administrative target dates will continue the transition momentum.

New subsection 14A(3) requires the Minister to provide a copy of the determination made under new subsection 14A(1) or the variation under under new subsection 14A(2) to the State or eligible organisation.

Clause 15 - Insertion of new Divisions

New Division 3A (new sections 14B - 14F) provides for the establishment, functions, powers and operational parameters of a Disability Standards Review Panel for each State or Territory. The Panels are empowered to review the Minister's decision to impose sanctions under new sections 14G - 14J on services funded under Part II of the Principal Act which fail to meet the applicable standards. The applicable standards are defined in clause 6.

New section 14B requires the Minister to establish a Disability Standards Review Panel for each State or Territory. New subsection 14B(2) provides that one Panel may be established for one or more States and Territories.

New subsection 14C(1) sets out the functions of the Panels. These are:

- to review and report to the Minister on the performance of a service in respect of which the Minister proposes to make a declaration under section 14G;

- to undertake such other functions as the Minister directs. This will allow the Minister to refer a matter to a Panel where there is (for example) disagreement between the Department and a service provider whether a particular service is meeting required standards.

New subsection 14C(2) sets out the situations when a Panel may perform its functions. These are:

- at the Minister's direction; and,

- at the written request of an eligible organisation that is providing a service in relation to which the Minister proposes to make a declaration under section 14G.

New subsection 14C(3) requires the Panel to consider whether the applicable standards were met in respect of the provision of the service. The applicable standards are defined in clause 6.

New subsection 14C(4) provides that the Panel's report is to include its findings, the reasons for those findings, and its consequent recommendations to the Minister.

New section 14C(5) defines the word "service" for the purposes of new section 14C.

New section 14D is a standard provision giving a Panel all the necessary or convenient powers to enable it to perform its functions.

New section 14E provides the following operational parameters for a Disability Standards Review Panel in the performance of its functions:

- to act with as little formality as possible;

- to act as quickly as is appropriate given the requirements of this Part of the Principal Act and the need to properly consider a matter before it;

- to not be bound by the rules of evidence;

- to inform itself on anything relevant to the matter before it in any way it thinks fit;

- to receive information or submissions orally or by written statements; and

- to consult such persons as it thinks fit, in respect of a matter before it.

New section 14F provides that the Minister may make the following orders in relation to the operation of a Panel:

- the process for notifying a service that the Minister proposes to make a declaration under new section 14G;

- the processes and procedures to be followed prior to a Disability Services Review Panel conducting a review under the new section 14C;

- the making of recommendations by the panel to the Minister under new paragraph 14C(4)(b);

- the terms and conditions of appointment and the duties of Panel members;

- any other necessary matter relating to the establishment or the operation of Panels.

Orders will be made under new section 14F after consultation with a wide cross-section of people with a disability, their family and advocates, service providers, and interested others.

New Division 3B (new sections 14G - 14J) sets out the process for imposing sanctions in those situations where a service fails to meet the applicable standards.

It is considered that the application of sanctions is a final measure which would only be used after all reasonable efforts to assist a service have failed. In applying sanctions every effort will be made to ensure that people with a disability are not further disadvantaged.

Before applying sanctions, the Minister is to notify the service that he or she is satisfied the service is not meeting the applicable standards (defined in clause 6) and that he or she proposes to declare the service under new section 14G.

Once a service is notified that the Minister proposes to declare it under new section 14G, the service will have a period of time in which to request a review from the Disability Standards Review Panel in its State or Territory. If a review is requested, the Panel must review the service and report to the Minister on its findings.

If a review is not requested, the Minister may then declare a service under new section 14G and impose any sanctions provided for in the funding agreement and/or under new section 14J. Where a review is requested, the Minister must under new section 14H consider a Panel's findings before taking any action under new section 14G. Section 14G also requires the Minister to provide a copy of a declaration to the organisation which is the subject of the declaration. New section 14J allows the Minister to publicise information about the declared service.

New section 14G enables the Minister to make a declaration in respect of a service which is receiving a grant under Part II of the Principal Act and where the service is not meeting the applicable standards (as defined in clause 6).

The declaration is to state that the organisation has not complied with the condition of grant that it meet the applicable standards, and it is to specify the action that will be taken as a result of the failure to meet the applicable standards. However, any action specified in the declaration must be provided for in the terms and conditions of financial assistance or under the new section 14J.

New subsection 14H(1) lists preconditions which must be met before the Minister can make a declaration or impose a sanction under the new section 14G. These conditions are:

- A Disability Standards Review Panel must have been established for the State or Territory in which the service operates;

- the requirements set out in the Ministerial orders made under the new section 14F must have been complied with;

- the Minister must have complied with any guidelines in force under section 5 that relate to making such a declaration;

- if the eligible organisation has sought a review by a Disability Services Review Panel, the Minister must have regard for the recommendations made by the Panel under the new paragraph 14C(4)(b).

New subsection 14H(2) provides that in making a declaration under the new section 14G, the Minister is not obliged to give effect to the recommendations made by the Panel if he or she is satisfied that there is a more appropriate course of action.

New section 14J provides that if an eligible organisation is receiving financial assistance under Part II of the Principal Act, and if the Minister has declared the service under new section

14G, then the Minister may make available to the public, in any way the Minister sees fit, any or all of the following information:

- the eligible organisation's name and address;
- the name and address of the service that is the subject of the declaration;
- the terms of the Minister's declaration under the new section 14G
- details of the eligible organisation's failure to comply with the applicable standards;
- the actions taken under new paragraph 14G(1)(d) in respect of the service.

New subsection 14J(3) provides that action under new section 14J may only be taken if it is specified as an action in the declaration made under new paragraph 14G(1)(d).

Clause 16 - Repeal of section 15 and substitution of new sections.

New section 14K replaces existing section 11. The new section, which requires a review of the extent to which organisations have fulfilled the terms and conditions on which they were granted financial assistance no more than five years after the grant was made, extends the review provisions from grants made under section 10 to all grants made in respect of the provision of a service under Part II of the Principal Act. The review provisions are also extended to allow for a review of the compliance of the State or eligible organisation with the applicable standards.

New section 15 subsumes the existing section 15 with similar provisions and allows the Minister to vary agreements (i) with a State or eligible organisation if they consent to the variation, or (ii) without the consent of an eligible organisation if the Minister has made a declaration in respect of the service under the new section 14G and the Minister wishes to take action in respect of the service's failure to meet the applicable standards.

Clause 17 - Agreements may be entered into with transferees of land, etc.

This clause amends section 16 in the Principal Act to clarify that the Minister enters into agreements on the Commonwealth's behalf.

Clause 18 - Interpretation

This clause amends section 17 of the Principal Act by omitting the definition of "rehabilitation allowance" consequent on a repeal in 1991 of the provisions in the Social Security Act 1947 relating to rehabilitation allowances.

Clause 19 - Provision of rehabilitation programs

This clause amends Section 20 of the Principal Act which provides the general conditions of eligibility for provision of rehabilitation programs to persons within the target group defined in Section 18 of the Principal Act.

Paragraph 19(a) amends the Principal Act by substituting a new subsection 20(1) which adds paragraph 20(1)(b) requiring compliance with guidelines (if any) formulated under section 5 of the Principal Act as they relate to this section.

Paragraph 19(b) amends subsection 20(5) of the Principal Act by omitting "medical services" as the rehabilitation programs provided are now vocational/social in nature and medical treatment is no longer provided.

Paragraphs 19(c) and 19(d) provide for consequential technical amendments to the Principal Act.

Paragraph 19(e) amends the Principal Act by repealing subparagraph 20(5)(d)(iii). The reference to any specific item is unnecessary as items may be provided if considered an essential part of a rehabilitation program.

Clause 20 - Insertion of new section

New section 21A in the Principal Act provides for the termination of rehabilitation programs.

New subsection 21A(1) makes it a requirement to discontinue a rehabilitation program if:

- the person requests, in writing, for the program to stop;
- the Secretary of the Department determines that the continued provision of the program would not further increase the person's capacity to obtain or retain paid employment or live independently; or
- the Secretary of the Department determines that the person receiving the program is not making reasonable progress towards having a substantially increased capacity to obtain or retain paid employment or live independently;

New subsection 21A(2) requires the Secretary to comply with Section 5 guidelines (if any) in making a determination under this section, and under new subsection 21A(3) to provide a copy of the determination to the person who is the subject of the determination within 14 days.

Clause 21 - Cost of a rehabilitation program

This clause amends section 22 of the Principal Act which provides for charging for rehabilitation programs and the exemption of pensioners and beneficiaries and certain other classes as determined by the Secretary.

Paragraph 21(a) is a technical amendment only.

Paragraph 21(b) inserts a new subsection 22(1A) in the Principal Act. The purpose of this new subsection is to remove the obligation on the rehabilitation service to pay the Higher Education Contribution (HEC) semester debts for clients who are pensioners or beneficiaries as defined in the new subsection 22(4) of the Principal Act.

Paragraph 21(c) repeals and replaces subsection 22(4) of the Principal Act with a new subsection 22(4) to incorporate definitions of "HEC semester debt" and "institution" from the Higher Education Funding Act 1988, and to redefine the term "Pensioner or beneficiary" to specify a recipient of the following Department of Social Security payments:

- Disability Support Pension
- Wife's Pension
- Carer's Pension
- Sole Parent's Pension
- Widowed Person's Allowance
- Widow's B Pension
- Job Start Allowance
- Newstart Allowance
- Sickness Allowance
- Special Benefit
- Aged Pension

Clause 22 - Training allowance and living away from home allowance

The clause amends subsection 24(1) of the Principal Act to remove the reference to "rehabilitation allowance" which has been abolished as a payment for persons undertaking a rehabilitation program. Clause 18 refers.

Clause 23 - Arrangements for provision of rehabilitation programs

The clause amends section 25 of the Principal Act which enables arrangements to be made for the provision of rehabilitation programs where payment of the cost of the program is made to the Commonwealth.

New subsection 25(1A) enables the Secretary of the Department to enter into an arrangement with the Secretary of another Department to provide a rehabilitation program. New subsection 25(1B) defines "Department" and "Secretary" by reference to their definitions in the Public Service Act 1922.

Clause 24 - Principles, etc., to be tabled in Parliament and disallowable

This clause provides that the service standards determined under the new section 9C and the orders made under the new section 14F for the operation of the Disability Standards Review Panel are disallowable instruments subject to Parliamentary scrutiny.

Clause 25 - Principles, etc., to be in writing

This clause provides that any determinations made under: new sections 9C and 21A, and new paragraphs 10(4)(ba) and 13(3)(ba); any orders made under the new section 14F; and any declarations made under the new section 14G, must be in writing.

Clause 26 - Delegation by Minister

This clause provides that the Minister cannot delegate his or her power to determine standards under the new section 9C or to make orders under the new section 14F of the Act.

Clause 27 - Transitional

This clause provides that agreements under section 15 or 16 that were in force immediately before the commencement of this part of the Health, Housing and Community Services Amendment Bill 1992, continue to have effect but, the Commonwealth is substituted in place of the Minister as the party to the agreement.

PART 3 - AMENDMENTS OF THE FIRST HOME OWNERS ACT 1983

Clause 28 - Principal Act

This clause provides that, in this Part of the Act, the First Home Owners Act 1983 is referred to as the Principal Act.

Clause 29 - Provision of Tax File Numbers

This clause provides that section 17B of the Principal Act, which deals with the provision of tax file numbers, is to be subject to the provisions of new section 17C which would deal with the late provision of tax file numbers.

Clause 30 - Late Provision of Tax File Numbers

This clause inserts a new section 17C in the Principal Act to enable the reinstatement of payment of instalments of assistance to applicants who supply a tax file number outside the 60 day period prescribed in section 17B of the Principal Act. At present section 17B mandates the termination of all payments of assistance if an applicant returns a tax file number outside the 60 day period.

New subsection 17C(1) provides for the reinstatement of payments of assistance for and after the month in which an applicant returns their tax file number ,despite the return being outside the 60 day period prescribed in section 17B.

New subsection 17C(2) provides that nothing in the new subsection 17C(1) would affect section 17B operating to terminate payments of assistance prior to the month in which the tax file number is provided.

PART 4 - AMENDMENTS TO THE HEALTH INSURANCE ACT 1973

Clause 31 - Principal Act

Clause 31 is a formal provision which identifies the Health Insurance Act 1973 as the Principal Act referred to in this part of the Bill.

Clause 32 - Interpretation

Clause 32 introduces a definition of "excessive diagnostic imaging service" and "Pathology Services Table Committee" into the interpretation section of the Principal Act.

Clause 33 - Increased fee in complex cases

Clause 33 amends subsection 11(2) of the Principal Act which presently ensures that the Health Insurance Commission can, in response to a claim, fix an increased fee for a professional service of unusual length or complexity where this can be done in accordance with certain principles, or in any other case refer the question of an increased fee to the Medicare Benefits Advisory Committee for consideration.

The amendment inserts new subsection 11(2A), a parallel provision for pathology services which are the subject of a claim for an increased fee but in the event that the Health Insurance Commission is unable to fix a fee it is to refer the question of an increased fee to the Pathology Services Table Committee.

There are consequential amendments to subsection 11(2) of the Act to exclude pathology services from the application of that subsection and to subsection 11(3) of the Act, which provides for the Health Insurance Commission to fix a fee after receiving a recommendation from the Medicare Benefits Advisory Committee, to enable the Commission to fix a fee after receipt of a recommendation from the Pathology Services Table Committee.

Clause 34 - Appeal from decisions on increased fee

Clause 34 makes consequential amendments to section 12 of the Principal Act, which sets out the procedure to be followed for an appeal to the Minister against a decision by the Health Insurance Commission on an increased fee, to substitute for references to the Medicare Benefits Advisory Committee the term "applicable committees" which is defined to refer to both the Medicare Benefits Advisory Committee and the Pathology Services Table Committee.

Clause 35 - Offence where approval of premises as accredited pathology laboratory has been revoked

Clause 35 amends section 19DB of the Principal Act by substituting a new paragraph 19DB(c) which will have the effect of requiring the proprietor of a pathology laboratory for which the approval has been revoked, to inform a treating practitioner prior to the rendering of a pathology service that medicare benefits will not be payable for a pathology service rendered in the laboratory for the practitioner's patient.

Clause 36 - Accredited pathology laboratories

Clause 36 amends section 23DN of the Principal Act to enable, and not require, the Minister to publish a revocation notice, when the Minister revokes the approval of a pathology laboratory.

Clause 37 - Insertion of New Division

Clause 37 inserts a new Division 4 (new sections 23DZK - 23DZN) into Part 11B of the Principal Act to cover the initiation of excessive diagnostic imaging services by a practitioner, as a parallel to similar provisions in the Principal Act for pathology services.

Notice by Minister concerning excessive diagnostic imaging services

New subsection 23DZK(1) provides that a written notice must be given to a person where the Minister has reasonable grounds to believe that a person who is, or was, a practitioner has initiated or, either as a person acting on his or her own behalf or as an officer of a body corporate, has caused or permitted a practitioner to initiate, excessive diagnostic imaging services. The notice must set out the particulars of the grounds for such a belief and invite the person to make submissions showing cause why the Minister should not take further action.

New subsection 23DZK(2) defines "officer" in relation to a body corporate and "practitioner" to include a chiropractor, a physiotherapist and a podiatrist (who may refer persons for certain diagnostic imaging services).

Submissions by person notified

New subsection 23DZL(1) provides for a period of 28 days from the date of the notice for a person to whom the notice is given, to make submissions to the Minister showing cause why the Minister should not take further action, and new subsection 23DZL(2) requires the Minister to have regard to any such submissions in determining whether any further action should be taken.

Decision on referral of matter to Medical Services Committee of Inquiry

New subsection 23DZM(1) provides that if the person to whom a notice has been given has not made any submissions within the 28 day period, then the Minister must refer the matter, by written notice, to the Medical Services Committee of Inquiry in the respective State.

New subsection 23DZM(2) provides that if the person makes submissions to the Minister within the 28 day period and the Minister is satisfied that there are no reasonable grounds for believing that the person has initiated excessive diagnostic imaging services or caused or permitted such excessive services t be initiated, as referred to in the notice under new section 23DZK, the Minister must decide that no further action be taken against that person in relation to the notice.

New subsection 23DZM(3) provides that where the Minister, after receiving the submissions within the specified period of 28 days, is satisfied that there are reasonable grounds (being grounds specified in the notice) for believing that the person has initiated or caused or permitted excessive diagnostic imaging services to be initiated then the Minister must, in writing, refe the matter to the Medical Services Committee of Inquiry in the respective State.

New subsection 23DZM(4) provides that if a matter is referred to Medical Services Committee of Inquiry the notice by the Minister must include the grounds referred to in new paragraph 23DZK(1)(d)

Notice of decision

This clause inserts new section 23DZN which requires the Minister to advise the person in writing of any decision made under new section 23DZM.

Clause 38 - Interpretation

Clause 38 inserts into the existing section 79 of the Principal Act, which is the Interpretation section for the Medical Services Committees of Inquiry provisions, that the definition of "practitioner" is to include, in relation to a diagnostic imaging sevice, a chiropractor, a physiotherapist and a podiatrist.

Clause 39 - Functions of Committee

Clause 39 amends existing section 82 of the Principal Act to extend the functions of Medical Services Committees of Inquiry to cover the initiation of excessive diagnostic imaging services by a practitioner.

Clause 40 - Hearing by Committee

Clause 40 amends existing section 94 of the Principal Act to give Medical Services Committees of Inquiry the authority to conduct hearings of matters where a practitioner has initiated excessive diagnostic imaging services.

Clause 41 - Report by Committee

Clause 41 amends existing section 104 of the Principal Act to enable Medical Services Committees of Inquiry, after the completion of a hearing, to report to the Minister on matters covering initiation of diagnostic imaging services by a practitioner.

Clause 42 - Recommendation by Committee

Clause 42 amends existing section 105 of the Principal Act to enable Medical Services Committees of Inquiry to recommend in reports to the Minister that certain action be taken against a practitioner where in the opinion of the Committee that practitioner initiated excessive diagnostic imaging services.

Clause 43 - Penalty

Clause 43 amends existing section 106AB of the Principal Act by including the initiation of excessive diagnostic services as an offence.

Clause 44 - Further amendments to the Principal Act

Subclause 44(1) amends the Health Insurance Act 1973 as set out in Schedule 2 of the Bill in respect of the repeal of the provisions relating to the prescribed GP services.

Subclause 44(2) preserves the intention of the Principal Act as amended by the Health Insurance Amendment Act No. 171 of 1991, despite the amendments in Schedule 2, for prescribed GP services rendered during the period for which the reduction in the medicare benefits, the co-payment and the additional fee were in force, that is, from 1 December 1991 until 29 February 1992.

Subclause 44(3) preserves the transitional arrangements from the Health Insurance Amendment Act No. 171 of 1991 for medicare safety-net entitlements as they affect the assignment of medicare benefits, the payment of additional fees, the adjustment of medicare benefits and the refund of co-payments, the retrospective payment of benefit increases, and provides for these increases in Commonwealth payments to be paid out of the Consolidated Revenue Fund.

Subclause 44(4) amends the Community Services and Health Legislation Amendment Act (No.2) 1990, the Aged or Disabled Persons Care Act 1954 and the Health Insurance Act 1973 in the manner set out in Schedule 1. These amendments are only of a technical nature.

PART 5 - AMENDMENTS TO THE HEARING SERVICES ACT 1991

Clause 45 - Principal Act

Clause 45 is a formal provision which identifies the Hearing Services Act 1991 as the Principal Act referred to in Part 5 of the Bill.

Clause 46 - Guarantee of Borrowings by the Authority

This clause omits from the Principal Act subsection 56(5) which requires the Treasurer to table in Parliament notice of any Commonwealth guarantee for borrowings by the Authority.

Clause 47 - Person not to use protected names

Implementing an undertaking from the Minister to the Senate Standing Committee for the Scrutiny of Bills, the amendment omits from the Principal Act paragraph 66(5)(c) which extends the protection of the section to any other prescribed names, thus limiting the protection of section 66 to the name "National Acoustic Laboratories" and the acronym "NAL".

PART 6 - AMENDMENTS OF PART VII OF THE NATIONAL HEALTH ACT 1953

Clause 48 - Principal Act

Clause 48 is a formal provision which identifies the National Health Act 1953 as the Principal Act referred to in Part 6 of the Bill.

Clause 49 - Interpretation

Paragraph 49(a) amends the definition of "record form" in subsection 84(1) of the Principal Act by including the out-patient medication prescription record form which is to be used to record supplies of out-patient medication.

Paragraph 49(b) adds new definitions of "applicable amount", "out-patient medication", "public hospital" and "public hospital authority" to subsection 84(1) of the Principal Act.

"Applicable amount" means the amount taken to have been paid to a public hospital for a supply of out-patient medication under a Ministerial determination made pursuant to new section 84BA.

"Out-patient medication" means a drug or medicinal preparation supplied through the out-patient department of a public hospital.

"Public Hospital" means a recognised hospital (within the meaning of the Health Insurance Act 1973) or a hospital operated by the Repatriation Commission

"Public hospital authority" means, in relation to a recognised hospital, the governing body of the hospital; and in relation to a hospital operated by the Repatriation Commission, the Repatriation Commission.

Clause 50 - Supplies of out-patient medication

Clause 50 adds a new section 84BA to the Principal Act to enable payments made by a person to a public hospital authority for supplies of out-patient medication to be taken into account for the purpose of qualifying for the issue of a concession card or an entitlement card.

New subsection 84BA(2) requires the Minister to determine each year the amount which will be taken to have been paid to a public hospital authority for each supply of out-patient medication and under subsection 84BA(3) the Minister will be able to determine different amounts according to the eligibility status of the patient and the State or Territory where the hospital making the supply is located.

Clause 51 - Eligibility for concession and entitlement cards

Clause 51 makes a number of amendments to section 84C of the Principal Act to ensure that payments made to public hospitals authorities for supplies of out-patient medication are counted towards the threshold for the issue of a concession card or an entitlement card. A supply of out-patient medication to the holder of an entitlement card is not to be taken into account under section 84C.

This clause also omits subsections 84C(1A) and (1B), which were transitional provisions relating to the entitlement period which commenced on 1 November 1990 for pensioners and 1 January 1991 for other concessional beneficiaries. These provisions are now redundant.

Clause 52 - Modification of amounts paid

Clause 52 makes amendments to section 84CA of the Principal Act consequential on the omission of subsections 84C(1A) and (1B) by clause 51.

Clause 53 - Pharmaceutical benefits prescription record forms etc.

Clause 53 amends section 84D of the Principal Act to provide that a public hospital authority may, and upon application the Secretary must, issue an out-patient medication prescription record form to a person. It further provides in new subsections 84D(10), (11) and (12) that where the form is presented at the time of supply of out-patient medication and the supply is not excluded from being taken into account under subsection 84C(4B), specified details of the supply are to be entered on the form by the medical practitioner or pharmacist by whom or under whose supervision the medication is dispensed or by a person employed at the hospital who is authorised in writing by the hospital authority to enter these details.

Clause 54 - Issue of safety net concession card

Clause 54 amends section 84DA of the Principal Act to enable a public hospital authority to issue a concession card to a person who has qualified for the card, and extends to public hospital authorities the requirement to lodge the relevant documentation when a concession card has been issued.

Clause 55 - Issue of pharmaceutical benefits entitlement card

Clause 55 amends section 84E of the Principal Act to enable a public hospital authority to issue an entitlement card to a person who has qualified for the card, and extends to public hospital authorities the requirement to lodge the relevant documentation when an entitlement card has been issued.

Clause 56 - Offences

Clause 56 extends the offence provisions of section 84L of the Principal Act to cover public hospital authorities that knowingly issue a concession card or entitlement card to a person not eligible to be issued with the card, or knowingly include as a family member on such a card the name of a person who is not a member of the family.

Clause 57 - Limited charges for pharmaceutical benefits

Clause 57 amends section 87 of the Principal Act by omitting subparagraphs (2)(b)(i) and (2)(c)(i) and paragraph (2)(d). The charges for prescriptions referred to in these provisions are covered by the charge for a concession card prescription specified in paragraph 87(2)(a).

Clause 58 - Entitlement to refund in certain circumstances

Clause 58 amends section 87A of the Principal Act. The amendment ensures that a person who at the time of supply is eligible to be issued with a concession or entitlement card, but who has not been issued with the card, is entitled to a refund for any expenditure incurred on pharmaceutical benefits before the card is issued that would not have been payable if the card had been issued, if the Secretary is satisfied that the failure to issue the card was not caused by some wilful action of that person.

Clause 59 - Establishment of Pharmaceutical Benefits Remuneration Tribunal

Clause 59 amends section 98A of the Principal Act to require the Chairperson of the Pharmaceutical Benefits Remuneration Tribunal to be either a Senior Deputy President or a Deputy President of the Australian Industrial Relations Commission.

Clause 60 - Tribunal to give effect to certain agreements

Clause 60 amends section 98BAA of the Principal Act to make it clear that the Minister, in making an agreement under this section, is acting on behalf of the Commonwealth. Subclause 22(2) has the effect of substituting the Commonwealth for the Minister as party to the agreement in force immediately prior to the commencement of this amendment to section 98BAA.

Clause 61 - Terms and conditions of appointment

Clause 61 makes amendments to sections 99A and 99B of the Principal Act consequential on the amendment made by clause 59 to section 98A in relation to the Chairperson of the Pharmaceutical Benefits Remuneration Tribunal.

Clause 62 - Remuneration and allowances

Clause 62 makes amendments to sections 99A and 99B of the Principal Act consequential on the amendment made by clause 59 to section 98A in relation to the Chairperson of the Pharmaceutical Benefits Remuneration Tribunal.

Clause 63 - Acting Chairperson

Clause 63 amends section 99D of the Principal Act so that an acting Chairperson of the Pharmaceutical Benefits Remuneration Tribunal is also required to be either a Senior Deputy President or a Deputy President of the Australian Industrial Relations Commission.

Clause 64 - Interpretation

Clause 64 amends section 99F of the Principal Act consequential or the omission of paragraph 87(2)(d) by clause 57.

Clause 65 - Financial assistance - amalgamation of pharmacies

Clause 65 amends section 99ZC of the Principal Act to provide that, in the case of an amalgamation agreement, only the pharmacist whose pharmacy is to close may apply for, and thus receive, the grant of financial assistance.

Clause 66 - Offences

Clause 66 amends section 103 of the Principal Act by extending the offence of making a false statement to a public hospital authority in connection with an application for a concession card or entitlement card. The clause also extends the offence of obtaining an entitlement card to which a person is not entitled so that it applies also to the obtaining of a concession card.

PART 7 - OTHER AMENDMENTS TO THE NATIONAL HEALTH ACT 1953

Clause 67 - Principal Act

This clause is a formal provision which identifies the National Health Act 1953 as the Principal Act for the purposes of Part 7 of the Bill.

Clause 68 - Interpretation

This clause defines " official appointee" and provides that, in addition to those persons specified in the definition, it includes persons within a class of persons determined by the Secretary of the Department.

The clause also defines a "temporary operator" as being an "official appointee" who is also approved under section 39BA of the Principal Act as an approved operator of nursing homes. Clause 78 amends section 135A of the Principal Act to enable certain information to be divulged to a "temporary operator".

Clause 69 - Recognised days of absence of qualified nursing home patients etc.

Clause 69 will insert a new subsection 4AA(6A) in the Principal Act. The new subsection 4AA(6A) provides that where a resident takes leave under section 46B, that is prior to their physical admission to a nursing home, this leave shall be counted as part of their 28 day annual leave entitlement for non-hospital leave. This sub-section provides that this pre-admission leave, taken under section 46B, will also count as part of a resident's 28 day annual leave entitlement if the resident is a patient in a hospital while they are taking the leave.

Clause 70 - Approval in principle of transfer of nursing home beds

Subclause 70(1) inserts four new subsections in section 39B of the Principal Act.

The new subsection 39B(5A) provides that an approval-in-principle for a transfer of nursing home beds is subject to a condition that, in the period leading up to the transfer, the nursing home yielding the beds must continue to comply with the nursing home conditions of approval set out in subsection 40AA(6) of the Principal Act.

The new subsection 39B(5B) provides that the above condition is to be reflected in a certificate of approval-in-principle for a transfer of nursing home beds.

The new subsections 39B(6A) and (6B) provide, respectively, that in making a decision in relation to an application for an approval-in-principle the Minister must comply with any principles in force, and that the Minister may formulate such principles to be complied with.

Subclause 70(2) inserts a transitional provision in the Principal Act which provides that, until the Minister formulates principles under subsection 39B(6B), the principles in force under subsection 39A(6) are to apply to decisions under subsection 39B(5) to grant or refuse an approval-in-principle.

Clause 71 - Approved operators in relation to approved nursing homes

This clause is a technical amendment in recognition of the potential appointment of persons who may become "temporary operators" under the new definition in subsection 4(1) of the Principal Act.

Clause 72 - Revocation of approval

This clause is a technical amendment in recognition of the potential appointment of persons who may become "temporary operators" of nursing homes under the new definition in subsection 4(1) of the Principal Act.

Clause 73 - Approval of nursing home

This clause amends subsections 40AA (3) and (3A)(b) of the Principal Act so that the Minister may refuse approval of new premises where any condition to which a certificate of approval-in-principle for a transfer of nursing home beds relates is not complied with. Previously only non-compliance with a condition relating to the new premises (among other matters) could be considered as grounds for refusal of approval.

Clause 74 - Disclosure of information to prospective purchasers

Clause 74 inserts a new section 42A into the Principal Act.

New subsection 42A(1) provides that the new section applies to all approved nursing homes except for Government nursing homes or nursing homes for disabled people.

New subsection 42A(2) describes the purpose of the new section, which is to protect a prospective purchaser of an approved nursing home.

New subsection 42A(3) provides that, where the Secretary believes a person to be a prospective purchaser of an approved nursing home, the Secretary may give to that person such information concerning the funding of the nursing home that the Secretary believes that person should know before he or she contracts to buy the home.

New subsection 42A(4) provides that the information disclosed by the Secretary under new sub-section 42A(3) must not enable an individual resident of the nursing home to be identified.

New subsection 42A(5) provides that, before the Secretary discloses the information, the proprietor of the nursing home to which it relates must have at least seven days in which to consider the information and make submissions to the Secretary.

New subsection 42A(6) provides that the Secretary is to alter the information to be disclosed if he or she believes, after considering the proprietor's submission, that it should be altered.

New subsection 42A(7) provides that the Secretary need not allow the proprietor seven days to consider the information and make submissions if he or she believes there is an urgent need to disclose the information to protect the interests of a prospective purchaser.

Clause 75 - Approved nursing home patient

This is a technical amendment to allow the new pre-admission leave provisions proposed in clause 76 to be taken into account in the definition of an approved nursing home patient.

Clause 76 - Benefit payable for up to 2 days prior to admission

Clause 76 will insert a new section 46B into the Principal Act. The new section 46B will provide that, where a prospective resident has been notified that there is a suitable vacancy in a nursing home, but actually enters the nursing home on a later day, he or she is deemed to be an approved nursing home patient for up to two days immediately preceding their physical admission to the nursing home. Status as an approved nursing home patient is necessary to enable a nursing home to receive benefits for days when the resident is absent from the nursing home on approved leave.

Clause 77 - Records to be kept by former proprietors for 12 months

Clause 77 inserts a new section 61AA into the Principal Act.

The new subsection 61AA(1) provides that this section will only apply in regard to sales of nursing homes that occur after the commencement of this provision.

The new subsection 61AA(2) provides a minimum statutory retention period for former proprietors to maintain their records. Former proprietors must keep for a period of twelve months all those records that they were, as proprietors, required by the Principal Act to keep. A penalty of $3,000 is provided for non-compliance with this requirement.

The new subsection 61AA(3) provides that those records which the former proprietor must retain are to be kept at a place which is approved, in writing, by the Secretary. A penalty of $3,000 is provided for non-compliance with this requirement.

The new subsection 61AA(4) provides that, when the Secretary approves a location for those records to be kept, the Secretary must give a copy of the approval to the former proprietor within seven days.

Clause 78 - Officers to observe secrecy

This clause amends section 135A of the Principal Act by enabling the divulging of certain specified information, necessary to the operation of a nursing home, to a person who is a "temporary operator" under the new definition in subsection 4(1).

Clause 79 - Certain instruments subject to disallowance

This clause amends section 139B of the Principal Act by adding two additional instruments to the list of instruments that are subject to disallowance. One is a determination by the Secretary of a class of persons under the definition of "official appointee" described in Clause 68. The other is the set of principles which the Minister may make under the new subsection 39B(6B), described in Clause 70, pertaining to the transfer of nursing home beds.

Clause 80 - Futher Amendments to the Principal Act

This clause provides for the making of a number of technical amendments to the Principal Act including the repeal of a number of redundant provisions relating to medical and hospital benefits funds which have been replaced by registered health benefits organisations.

PART 8 - AMENDMENTS OF THE THERAPEUTIC GOODS ACT 1989

Clause 81 - Principal Act

This clause provides that throughout this Part references to "Principal Act" are references to the Therapeutic Goods Act 1989.

Clause 82 - Interpretation

This clause amends the definition of "therapeutic device" to bring it in line with the definition used by countries in the European Community.

Paragraph (1)(a) amends subsection 3(1) of the Principal Act to clarify that the definition of therapeutic device excludes a product that achieves its principal intended action either by chemical means, (as provided for in the current definition), or by pharmacological, metabolic or immunological means. However therapeutic goods would still qualify as devices if they were assisted in their functions by chemical, pharmacological, immunological or metabolic means.

Paragraph (1)(b) adds to the present definition of "therapeutic use" to include influencing or controlling conception in persons, such as IVF programs, and goods used for the replacement or modification of parts of the anatomy in persons or animals.

Subclause 82(2) provides that any declaration already made by the Secretary for the purposes of the definition of "therapeutic devices" under subsection 3(1) of the Act will be deemed to have been made under the new amended definition.

Clause 83 - Deemed refusal of application

In line with **Recommendation 40** of Professor Baume's "Report on the Future of Drug Evaluation in Australia", adopted by the Government in July 1991, clause 83 inserts new section 24E in the Principal Act to give an applicant the option of treating a failure by the Secretary to complete, within the prescribed time limit, an evaluation of the applicant's application to register drugs in the Australian Register of Therapeutic Goods ("the Register") as a decision by the Minister confirming the decision of the Secretary to refuse registration. The deemed refusal by the Minister enables the applicant to by-pass the internal review process and appeal directly to the Administrative Appeals Tribunal.

Clause 84 - Notification of adverse effects

This clause inserts 2 new subsections that will require sponsors of goods registered in the Register, as well as applicants seeking to register goods in the Register, to notify the Secretary of any adverse effects relating to their goods of which the sponsors or applicants may become aware. These new provisions have been included in line with **Recommendations 34 and 35** of the Baume Report.

New section 29A has been, as recommended by Professor Baume, drafted along the lines of section 22 of the Agricultural and Veterinary Chemicals Act 1988. Failure by a sponsor to inform the Secretary of any of the matters described in new subsection 29A(2) relating to that sponsor's registered therapeutic goods, of which the sponsor becomes aware, would render the sponsor liable to a penalty of $40,000 if the sponsor is an individual, or $200,000 where the sponsor is a corporation.

New section 29B gives effect to **Recommendation 35** of the Baume Report and is designed to address situations where persons applying to register goods in the Register become aware of adverse safety data relating to those goods, and seek to avoid notifying regulatory authorities of such information by withdrawing their applications or allowing their applications to lapse. Any adverse safety data should be provided to the Secretary to enable the Secretary to properly evaluate other such goods included in the applications of other sponsors.

Subsection 29B(1) provides the Secretary with the discretion to require an applicant to provide information relating to adverse safety data of which the applicant may be aware where an application for registration of goods is withdrawn or lapses.

Subsection 29B(2) specifies the time within which the Secretary may make such a request.

Subsection 29B(3) provides a penalty of $40,000 for an individual, consistent with the penalty set out under new subsection 29A(1) above, or $200,000 for a corporation.

Subsection 29B(4) provides for an additional penalty, at levels consistent with those under new section 29A and new subsection 29B(3), for a person who knowingly or recklessly gives information that is false or misleading in a material particular.

Clause 85 - Cancellation of registration or listing

This clause amends section 30 of the Principal Act to extend the circumstances in which the registration of theraeputic goods may be cancelled under that section. Where a person is in breach of new subsection 29A(1) and fails to inform the Secretary of any adverse safety effects relating to the sponsor's registered goods, of which the sponsor is aware, then such goods may be liable to cancellation from the Register.

Clause 86 - Delegation

This clause amends subsection 57(1) of the Principal Act to enable the Secretary and Minister to delegate any of their powers under the Act to a person who is not an officer under the Public Services Act 1922. Under amended subsection 57(1) regulations may be made to allow, for example, a person appointed under contract or otherwise to the Department, or a Committee, to implement the Therapeutic Goods Act 1989 and Regulations as a delegate of the Secretary or the Minister. Paragraphs 86(b), (c) and (d) are consequential amendments.

Clause 87 - Release of Information

Recommendation 81 of the Baume Report advocates greater dissemination of the outcome of deliberations of the Australian Drug Evaluation Committee and its subcommittees. An amendment has therefore been made to section 61 of the Act which, inter alia, will allow regulations to be made to authorise the Secretary to publish the deliberations of ADEC. Through the operation of subsection 61(9) this will be able to be done without attracting any civil proceedings for the release of such information, if done in good faith.

SCHEDULES TO THE HEALTH, HOUSING AND COMMUNITY SERVICES LEGISLATION AMENDMENT BILL 1992

SCHEDULE 1 - AMENDMENTS TO VARIOUS ACTS

Refer to notes for clauses 3 and 44 of the Bill.

SCHEDULE 2 - FURTHER AMENDMENTS TO THE HEALTH INSURANCE ACT 1973

Subsection 8(1A) of the Health Insurance Act 1973 is amended by omitting definitions required in respect of the benefits reduction, the co-payment and the additional fee. With the reversal of the 1 December 1991 changes they are redundant.

Subsection 8(1A) of the Act is also amended by substituting a new definition of "patient contribution" which excludes the co-payment amount from the patient contribution since general practitioners are not permitted to charge a co-payment on services to which an assignment of benefit applies (that is, bulk billed services) from 1 March 1992.

Paragraph 10(2)(b) of the Act is amended as a consequence of the repeal of paragraph 10(2)(c).

Paragraph 10(2)(c) of the Act, which provides for the medicare benefit reduction to apply to prescribed GP services for persons other than concessional beneficiaries, is repealed since the medicare benefit reduction has not applied from 1 March 1992. A consequential amendment is made to subsection 10(3) of the Act omitting a reference to this paragraph.

Subsection 10(4) of the Act is amended by omitting a reference to the 'greatest permissible gap' since rounding of this amount is provided for in section 10A (indexation).

Subsection 10AA(1) of the Act is amended by substituting a reference to section 10AE for the reference to section 10AK because sections 10AF to 10AK are to be repealed.

Subsections 10AC(7) and 10AD(5) of the Act are repealed as they no longer apply because co-payments are excluded from bulk billed services and therefore no longer contribute to the individual or family safety nets as from 1 March 1992.

Subsection 10AE(1) of the Act is amended by substituting the words "the person who registered the family" for "that person".

A new subsection 10AE(2) substitutes for the existing subsection 10AE(2) of the Act, retaining the requirement for confirmation of the composition of the family for safety-net purposes, and omitting the reference to the safety-net concession card which is redundant as there is no longer a benefit reduction or co-payment.

Sections 10AF to 10AK inclusive in the Act (which provide for eligibility for, and coverage of safety-net concession cards, the need for additional and replacement safety-net concession cards, appeal rights with respect to issuing of additional or replacement cards, their period of effect and the return of concession cards) are repealed as the provisions are redundant.

Subsections 10A(1) and 10A(2) of the Act are amended to omit paragraphs providing for the indexation of the benefit reduction, the co-payment and the additional fee which no longer apply from 1 March 1992.

Paragraph 20A(1)(b) of the Act is amended as a consequence of the repeal of subsection 20A(1A).

Subsections 20A(1A), (1B), (1C), (1D) and (1E) of the Act are repealed as they provide for a practitioner to charge a patient up to the maximum co-payment amount for a prescribed GP service which is bulk billed, and for the production of evidence of concessional beneficiary or safety-net status to general practitioners, and penalties for contravention, and are redundant.

Section 20C of the Act, which provides for the payment of the transaction fee, is repealed as it is redundant.

Section 20D of the Act, which ensures the adjustment of benefits and the refund of the co-payment to practitioners who unknowingly charge a co-payment to a person who is exempt from the co-payment, is repealed as it is redundant.

SCHEDULE 3 - FURTHER AMENDMENTS TO THE NATIONAL HEALTH ACT 1953

Refer to notes on clause 80 of the Bill.