

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**HUMAN SERVICES AND HEALTH LEGISLATION AMENDMENT
BILL (NO. 3) 1995**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Human Services and Health,
the Hon Dr Carmen Lawrence, MP)



HUMAN SERVICES AND HEALTH LEGISLATION AMENDMENT BILL (NO. 3) 1995

GENERAL OUTLINE

The Bill proposes to repeal the *Handicapped Persons Assistance Act 1974*. This Act has become redundant due to a sunset provision that no further payments would be made under the Act after 30 June 1992.

Schedule 1 of this Bill proposes amendments to the *Childcare Rebate Act 1993*, the *Health Insurance Act 1973*, the *Health Insurance Commission Act 1973*, the *National Health Act 1953*, and the *National Health and Medical Research Council Act 1992*.

Schedule 2 of this Bill proposes minor technical amendments to a number of Acts.

The amendments to the *Childcare Rebate Act 1993* are to ensure consistency with the intentions of the Commonwealth Childcare Cash Rebate scheme.

Several amendments provide hardship provisions to assist certain groups of persons who are currently excluded from the rebate scheme but who should be eligible for the rebate. These groups include children over the age of 13 who have a disability or other special need which requires ongoing child care; carers under the age of 18 years who possess certain child care qualifications; or parents who are currently unable to have work-related commitments under section 29 because of extenuating circumstances.

A number of administrative issues and technical errors in the drafting of the Act also require amendments. For example, amendments are needed to make consequential changes to bring the Act into line with other Commonwealth legislation (the *Migration Act 1958*); to allow the delegation of powers by the Managing Director of the Commission; to allow the Minister some discretion over receipting requirements; and to strengthen powers to recover overpayments of the rebate.

The amendments will also allow the suspension of family and carer registrations if cancellation of registrations is being considered. This will avoid unnecessary recoveries by Government while ensuring that individuals maintain their right to appeal against long-term decisions.

Further administrative amendments are proposed to allow the Health Insurance Commission to backdate carer registrations to the day on which they were first eligible to register; to vary a family's registration (without application) where a family member is not included; to cancel family and carer registrations which occurred due to administrative error or where incorrect or misleading information was provided in an application to vary a family registration; to ensure that the rebate is not paid for child care costs which have been, or will be, reimbursed by another agent such as an employer; to clarify that the rebate is payable for child care costs incurred for certain specified absences from care; to clarify the backdating of family registrations; to clarify the eligibility of overseas students to claim the rebate, by amending the way courses of study are described; and to correct technical defects in the original Act.

The amendments to the *Health Insurance Act 1973* correct a number of drafting errors and allow for the appointment as Presidents of the Professional Services Review Tribunals persons who hold or have held judicial office in State and Territory jurisdictions. This corrects an oversight in the *Health Legislation (Professional Services Review) Amendment Act 1994* which, by not defining "judicial office", prevented, by virtue of section 21 of the *Acts Interpretation Act 1901*, the appointment of current and former judicial office holders in jurisdictions other than that of the Commonwealth.

The Bill amends the *Health Insurance Commission Act 1973* to confer upon the Health Insurance Commission the function of providing consultancy and management services and of providing information technology services to the Commonwealth and Commonwealth bodies, to empower the Health Insurance Commission to operate outside Australia and allow it to enter into hedging arrangements. The amendments to the *Health Insurance Commission Act 1973* also enable the Health Insurance Commission to retain evidential material seized pursuant to the execution of a search warrant until the reason for its seizure no longer exists or a decision is made not to use it in evidence.

The Bill also amends the *National Health Act 1953* by removing several redundant provisions relating to review of decisions and adding a "merits review" right for decisions on the amount of Commonwealth benefit that may be advanced to nursing home proprietors under section 51A. The Bill also amends the provisions in the Act relating to "exempt bed status" by providing the Minister with the power to revoke or suspend this status where there is a declaration that a nursing home fails to satisfy the standards determined under section 45D of the Act.

The amendments to the *National Health and Medical Research Council Act 1992* provide that before appointing the Chairperson of the Council, the Chairperson of the Australian Health Ethics Committee (a Principal Committee of the Council), or the member of the Australian Health Ethics Committee classified as a person with knowledge of the ethics of medical research, the Minister is to consult with each State and Territory Health Minister. Currently the Act provides that the Minister is to consult in relation to these appointments with the other members of the Australian Health Ministers Conference. The proposed amendment would specify the Ministers to be consulted instead of identifying them through reference to membership of a Conference.

FINANCIAL IMPACT STATEMENT

The amendments to the *Childcare Rebate Act 1993* are not anticipated to have any significant financial impact.

The amendments may allow more families to claim the rebate, resulting in a slight increase in expenditure on rebate payments, but these families were included in original estimates for the cost of the scheme. The amendments also strengthen powers for the recovery of overpayments.

The amendments to the remainder of the Acts outlined above have no significant financial impact.

HUMAN SERVICES AND HEALTH LEGISLATION AMENDMENT BILL

(NO. 3) 1995

NOTES ON CLAUSES

Clause 1 - Short title

This is a formal provision that specifies the short title of the Act as the *Human Services and Health Legislation Amendment Act (No. 3) 1995*.

Clause 2 - Commencement

This clause provides that, with the exception of the matters dealt with in subclauses (2) and (3), the provisions of the Act will commence on the day on which it receives Royal Assent, with the remainder taking effect as outlined in subclauses (2) and (3).

Clause 3 - Schedules

This is a formal provision that specifies that the Acts and other items in the Schedules are amended or have effect as set out in the Schedules.

Clause 4 - Repeal

This clause repeals the *Handicapped Persons Assistance Act 1974*. A number of the provisions in this Act were repealed following the commencement of the *Disability Services Act 1986*. The remaining provisions were subject to a sunset clause which prevented any further payments being made under the Act after 30 June 1992.

SCHEDULE 1

Childcare Rebate Act 1993 ('the Act')

Item 1 - Section 3 - Outline of the Act

This item amends subsection 3(5) to add the recovery of overpayments to the contents of Part 5.

Items 2 and 3 - Section 4 - Definitions

These items add notes to the definitions of "registered carer" and "registered family" to confirm that sections 52A and 24A, respectively, can have the effect of backdating the date of effect of these registrations.

Item 4

This item provides a definition for the term "fee relief ceiling", formerly in the body of the Act.

Item 5 - New section 4A - Provision of child care continues when child absent

This item inserts a new section, 4A.

Subsection 4A(1) provides that child care is taken to have been provided, for the purposes of the rebate, in circumstances determined by the Minister where a child who would normally have received child care from a registered carer on a particular day did not receive the care and an amount has been paid or is payable.

Subsections 4A(2) and (3) have been inserted to empower the Minister to make such a determination. The Minister's determinations are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Item 6 - Section 11 - Definition of dependent child

This item amends subsection 11(2) to allow a child who has turned 13 but is aged under 17 to be a dependent child for the purposes of the rebate if they are covered by circumstances determined by the Minister.

Two new subsections, 11(3) and (4), are also inserted to empower the Minister to make such a determination. The Minister's determinations are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Item 7 - Section 14 - Australian residents

This item is consequential to the *Migration Reform Act 1992*. It replaces paragraphs 14(1)(b) and (c) with a new paragraph, 14(1)(b), which defines how residency status is determined for Australian residents who are not Australian citizens. This brings the legislation into line with the changes under the *Migration Act 1958*, which took effect from 1 September 1994.

Items 8, 9 and 10 - Section 15 - Certain overseas students are to be treated as Australian residents

Item 8 amends paragraph 15(1)(a) to include other courses of study in Australia of a kind specified in a determination by the Minister.

Items 9 and 10 have the effect of inserting a new subsection, 15(1A), and amending subsection 15(3), to empower the Minister to make such a determination. The Minister's determinations are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

These amendments are to ensure that some overseas students who are undertaking courses not directly affiliated with educational institutions may also be taken to be Australian residents for the purposes of the rebate.

Items 11, 12 and 13 - Section 19 - Registration by the Commission

Item 11 inserts a new subsection, 19(2A), to allow the registration of a family to be taken to have had effect from the date the family was first eligible to be registered.

Item 12 amends paragraph 19(3)(b) to require the Commission, if it registers a family, to notify them of the date on which the registration takes effect.

Item 13 amends the note following section 19 to state that decisions about the date on which the registration is taken to have had effect are reviewable.

Item 14 - Section 21 - Variation of registration without application

This item inserts a new subsection 21(2) to require the Commission to add a person's name to a family's registration if it is satisfied that the person is or has become a member of that family. For example, if the Commission is satisfied that a registered sole parent should be varied to be a registered parent with a partner, the Commission would be required to vary the registration accordingly.

Item 15 - Section 22 - Cancellation of registration

This item amends paragraph 22(2)(b) to allow the Commission to cancel a family's registration if it is satisfied that the family was not eligible to be registered at the time the registration took place.

Item 16 - Section 22 - Cancellation of registration

This item amends subsection 22(3) to empower the Commission to cancel a registration where incorrect or misleading information is provided at the time of application to vary an existing registration. This is in addition to the existing power to cancel a registration if incorrect information was provided at the time of application for registration.

The provision of incorrect or misleading information at either the application for registration or the application for variation stage will not necessarily attract the penal provisions in the Principal Act, which require, inter alia, that the person knows that the information is false or misleading in material particular.

Item 17 - Section 23 - Procedure for variation or cancellation

This item amends section 23 to require the Commission to provide additional information in a written notice to a family before varying or cancelling the family's registration.

Two new paragraphs, 23(1)(ba) and (bb), are inserted to provide that the written notice must also contain a summary of the evidence and other material on which the grounds to vary or cancel the registration are based, and the effect of the notice (including the review process) on the family's entitlement to the rebate.

Item 18 - Section 24 - Automatic variation or cancellation of registration as children turn 13

This item amends subsection 24(1) to take account of the changes to the definition of dependent child in subsection 11(2). It will allow the Commission to automatically vary or cancel a family's registration if a member of the family ceases to be a dependent child under the amended subsection 11(2). Previously subsection 24(1) only applied to dependent children who turned 13.

Item 19

This item inserts a new subsection, 24(A), which provides for the backdating of a family's registration if the family was eligible to be registered at the time.

Item 20 - Section 26 - Child care requirements for the rebate

This item amends paragraph 26(a) to remove the reference to children who "received child care" and replace it with children who were "provided with child care". This is to ensure that the Act uses consistent terminology when describing the child care requirements for the rebate.

Item 21

A new paragraph, 26(ba), is also inserted to provide that the rebate is not payable unless the family was a registered family at the time the child care was provided.

Item 22

This item inserts a note which states that sections 24A and 52A may affect whether a family and/or a carer should be taken to be registered at the time the child care was provided.

Item 23 - Section 28 - Work, training or study commitments for the rebate

This item inserts a new paragraph, 28(d), to exempt from the work, training or study requirements for the rebate any person covered by a Ministerial determination to this effect.

Two new subsections, 28(2) and (3), are also inserted to empower the Minister to make such a determination. The Minister's determinations are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Item 24 - Section 29 - Recognised work or work related commitments

These items amend subsection 29(1) to provide that a person is taken to have recognised work or work related commitments if they are covered by a determination made by the Minister under subsection 29(1A).

Item 25

Two new subsections, 29(1A) and (1B), are also inserted to empower the Minister to make such a determination. The Minister's determinations are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Item 26 - Section 32 - Claims for payment of the rebate

This item inserts a new subsection 32(5) which provides that the validity of a claim for the rebate is not affected by the lack of registration where a family was not registered at the time the care was provided if:

- . the family later becomes registered; and
- . the family is taken to have been registered at the time the care was provided.

A new subsection 32(6) is also inserted and provides that a claim may only be lodged after the decision is made to register a carer if:

- . the carer was not registered at the time the care was provided; and
- . the carer later registered and is taken to have been registered at the time the care was provided.

A new subsection 32(7) is also inserted and provides that the validity of a claim for the rebate is not affected by the cancellation where a family was not registered at the time the claim was lodged if:

- . the family is taken to have been registered at the time the care was provided; and
- . the registration was subsequently cancelled.

A new subsection 32(8) is also inserted and provides that the validity of a claim for the rebate is not affected by the cancellation where a carer was not registered at the time the claim was lodged if:

- . the carer is taken to have been registered at the time the care was provided; and
- . the registration was subsequently cancelled.

Item 27 - Section 33 - Information etc. to be provided in claims

This item inserts a new subsection, 33(1A), which provides that where the Commission has not yet issued a Family Registration Number to a family, this number does not have to be specified in the claim.

Item 28

This item omits and replaces subsection 33(3) and inserts a new subsection, 33(4), to add other types of reimbursements for child care costs which are to be excluded from claims for the rebate.

Previously subsection 33(3) only excluded amounts of fee relief which had not yet been deducted, but this amendment will also exclude child care costs which have been or will be paid or reimbursed by an employer, a person acting on the employer's behalf, or by any person covered by a determination made by the Minister.

The Minister's determinations are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Item 29 - Section 34 - Receipts

This item inserts two new subsections, 34(2A) and (2B), to allow the Minister to determine special circumstances in which receipts do not have to be signed by the registered carer or a person authorised by that carer. The Minister's determinations are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Item 30

This item inserts a new subsection, 34(3A), which removes the requirement for the carer to include the Child Care Provider Number in a receipt where such a number has not been issued by the Commission.

Item 31 - Section 36 - Claims in respect of which the rebate is not payable

This item inserts a new paragraph, 36(g), that will provide that the rebate is not payable if the claim related to child care provided when the family or carer was not eligible to be registered. (Note: Sections 24A and 52A, respectively, can have the effect of backdating the time from which a family is taken to be a registered family and a person is taken to be a registered carer.)

Item 32

Item 32 inserts two new sections, 36A and 36B.

New section 36A - Suspension of payments if cancellation of a family's registration is being considered

This new section provides for the suspension of rebate payments if the Commission has issued a notice under subsection 23(1) that it is considering cancelling the registration of the family concerned.

New subsection 36A(1) sets out the conditions under which the suspension of payments applies. The suspension only applies to care provided after the issue of the notice or during periods which are relevant to the proposed cancellation which occurred prior to the issue of the notice.

New subsection 36A(2) provides for the reinstatement of rebate payments if the family's registration is not cancelled, or is restored after reconsideration of the decision to cancel. New subsection 36A(3) provides that subsection (1) does not apply if registration is cancelled but the family is subsequently re-registered and the claim relates to care provided after the family becomes eligible for re-registration.

New section 36B - Suspension of payments if cancellation of a carer's registration is being considered

This new section provides for the suspension of rebate payments if the Commission has issued a notice under subsection 52(1) that it is considering cancelling the registration of the registered carer concerned.

New subsection 36B(1) sets out the conditions under which the suspension of payments applies. The suspension only applies to care provided after the issue of the notice or during periods which are relevant to the proposed cancellation which occurred prior to the issue of the notice.

New subsection 36B(2) provides for the reinstatement of rebate payments if the carer's registration is not cancelled, or is restored after reconsideration of the decision to cancel.

New subsection 36B(3) provides that subsection (1) does not apply if registration is cancelled but the carer is subsequently re-registered and the claim relates to care provided after the carer becomes eligible for re-registration.

Item 33 - Section 43 - The minimum weekly threshold

This item is a technical amendment to subsection 43(2) to clarify the description of "minimum weekly threshold" which is used in calculating the amount of rebate which is payable.

Item 34 - Section 44 - The maximum claimable amounts

This item deletes subsection 44(4), which contains the definition of "fee relief ceiling". This definition is moved to section 4.

The note which follows subsection 44(4) is to be retained.

Item 35 - Section 49 - Registration of carers

This item inserts a new subsection, 49(3A), to allow the Commission to backdate the registration of a carer to the day on which the carer was first eligible to be registered, or 2 years prior to the date of application for registration, whichever occurs later.

Another new subsection, 49(3B), is also inserted to allow the Commission to specify periods during which the registration is not taken to have had effect, because the carer was not eligible to be registered at the time.

Item 36

This item amends paragraph 49(4)(b) to require the Commission, if it registers a carer, to notify that carer of the day on which the registration is taken to have had effect, and (if applicable) any periods during which the registration is not taken to have had effect.

Item 37

This item amends the note following section 49 to state that decisions about the effective registration date of carers are also reviewable.

Item 38 - Section 50 - Eligibility for registration

This item amends paragraph 50(1)(c) to allow a carer who has not turned 18 to be eligible for registration if they possess qualifications of a kind determined by the Minister, provided they meet all other eligibility requirements under section 50.

Item 39

This item inserts two new subsections, 50(1A) and (1B), to empower the Minister to make the determination referred to in paragraph 50(1)(c). The Minister's determinations are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Item 40 - Section 51 - Cancellation of registration

This item corrects a spelling error affecting the word "Commission" in subsection 51(2).

Item 41

This item amends paragraph 51(2)(b) to remove the requirement that the Commission must have received information since the carer was registered before it can be satisfied that the carer was not eligible for registration. This is consistent with the amendment to paragraph 22(2)(b) affecting registration of families.

Item 42 - Section 52 - Procedure for cancellation

This item amends section 52 to require the Commission to provide additional information in a written notice to a carer before cancelling the carer's registration.

Two new paragraphs, 52(1)(ba) and (bb), are inserted to provide that the written notice must also contain a summary of the evidence and other material on which the grounds to cancel the registration are based, and the effect of the notice (including the review process) on a family's entitlement to the rebate in respect of child care provided by that carer.

Item 43 - Section 52A - Subsequent registration of carers

This item inserts a new section, 52(A), which provides for backdating of a carer's registration if the carer was eligible to be registered at the time.

Items 44 and 45 - Section 53 - Decisions that may be subject to reconsideration by the Commission

Items 44 and 45 insert three new paragraphs, 53(ba), (ha) and (hb), which provide that decisions by the Commission about the date of effect of a family's or carer's registration, or about periods during which a carer's registration is taken not to have had effect, are subject to reconsideration by the Commission.

Section 54 - Deadline for reaching decisions

Items 46, 47 and 48 amend section 54 to reduce the time in which the Commission must make a reviewable decision in specified circumstances, and to specify the outcome where a decision is not made within the allowed time.

Item 46

This item amends subsection 54(1) to provide that the Commission must make the decision within "the decision-making period", which is defined in subsection 54(3).

Item 47

This item amends subsection 54(2) and inserts two new subsections, 54(2A) and (2B).

Subsections 54(2), (2A) and (2B) will provide that, if the Commission has not informed the applicant of its decision before the end of the decision-making period, the Commission

is taken to have refused the application, unless the decision relates to the cancellation of a family's or carer's registration, in which case the Commission is taken to have decided not to cancel the registration.

Item 48

This item amends subsection 54(3) to insert definitions of "decision-making period" and "working day".

- . The "decision-making period" is the period of 28 days from receipt of the application by the Commission. However, if within that 28 days the Commission has requested further information from the applicant and if the decision relates to the possible cancellation of a family or carer's registration, the decision-making period is reduced to 10 working days.
- . The definition of "working day" excludes Saturday, Sunday, and any day which is a public holiday in any State or Territory.

Item 49 - Section 60 - Knowingly making false or misleading statements

This item inserts a new heading, "Division 5 - Recovery of overpayments", after section 60 and before section 61.

Item 50 - Section 61 - Recovery of amounts paid [because of false statements]

This item enables the recovery of overpayments where there have been no "false or misleading statements", by removing references to such statements in subsection 61(1) and in the heading to section 61.

Items 51 and 52

These items amend subsections 61(2) and (3) to link recoveries more closely to the person who received the overpayment.

Item 53 - New section 62A - Reimbursement etc. of child care expenses by employers etc.

This item inserts a new section, 62A, which provides that the amount of rebate that should have been paid, is taken to be the amount that would have been payable, if amounts paid or reimbursed by employers or by persons included in a Ministerial determination under paragraph 33(3)(c), had been taken into account.

The effect of this provision is to allow recoveries of overpayments of the rebate which occurred because such amounts were not deducted from the claims for the rebate.

Item 54 - New section 62B - Effect of this Division on other rights of recovery

This item inserts a new section, 62B, which provides that the Commonwealth's general rights of recovery are not affected by the provisions in Division 5 of Part 5 of the Act.

Item 55 - New section 63A - Delegation

This item inserts a new section, 63A, which provides that the Managing Director of the Commission may delegate any of his/her powers under this Act to an officer of the Commission.

Health Insurance Act 1973**Item 56 - Subsection 23D(1)**

This item corrects a drafting error in the current Act.

Item 57 - Section 107 (paragraph (a) of the definition of "determination")

This item corrects a drafting error in the current Act.

Items 58 and 59 - After subsection 108(3) and at end of section 108

This item inserts four new subsections in section 108.

New subsection 108(3A) provides that, for the purposes of appointing a President of a Professional Services Review Tribunal (who must be a person who holds or has held judicial office), the Minister may enter into an arrangement with the appropriate Minister of a State or Territory to secure the services of a particular judicial office holder.

New subsection 108(3B) provides that the arrangement to secure the services of the judicial officer may provide for the Commonwealth to reimburse a State or Territory for the services of that person.

New subsection 108(3C) provides that appointment of a judicial office holder as a Tribunal President or service by that person as President does not affect his or her tenure as the holder of judicial office. For all purposes, the person's service is taken to be service as the holder of judicial office and the rank, title, status, precedence, salary, allowances or other rights or privileges as holder of judicial office are not affected.

New subsection 108(7) defines the term "judicial office". It provides that the Tribunal President must hold or have held the office of judge or an office with the same status as a judge. The new subsection also allows the appointment of current and former judicial office holders in jurisdictions other than the Commonwealth.

Item 60 - Paragraph 114(2)(c)

This item reduces from 30 days to 28 days the time allowed for a practitioner affected by an adverse determination (related to having engaged in inappropriate practice under Medicare) to request a review of the determination by the Professional Services Review Tribunal. The amendment is necessary because under section 106V of the *Health Insurance Act 1973* a final determination (which imposes a penalty) takes effect 28 days after a copy of the determination is given to the practitioner to whom it relates.

Item 61 - Subsection 119(2)

This item corrects a drafting error in the current Act.

Health Insurance Commission Act 1973**Items 62 and 63 - Subsection 3(1) (definition of "recognised class of functions")**

The items amend section 3 of the *Health Insurance Commission Act 1973* to insert in the definition of "recognised class of functions" in subsection 3(1) of that Act a new paragraph (e) referring to the consultancy functions of the Commission. A new paragraph 3(2)(bb) is proposed to be inserted so as to define references to the consultancy functions of the Commission as references to the functions conferred by section 8BB of the Principal Act as amended by the Bill. These amendments ensure the application in relation to the new consultancy and management services function of the financial provisions of the Principal Act.

Item 64 inserts two new Parts: New Part IIAB which will confer upon the Commission the function of providing consultancy and management services; and new Part IIAC which will confer on the Commission the function of providing information technology services to the Commonwealth and to bodies established by the laws of the Commonwealth.

New Part IIAB - Consultancy and Management Services

Under subsection (1) of proposed section 8BB, the Commission is to be given the function of providing consultancy and management services relating to any of the expertise it has acquired in performing its other functions. The agreements for the provision of such services may be entered into with other persons, including the Governments of other countries.

Proposed subsection 8BB(2) ensures that the Commission may perform its new function only within the limits of Commonwealth constitutional power.

New Part IIAC - Information Technology Services

Paragraph (1)(a) of proposed new section 8BC will give the Commission the new function of providing information technology services to the Commonwealth or to bodies established by laws of the Commonwealth. The information technology services provided

will relate to the expertise acquired by the Commission in performing its functions.

Paragraph (1)(b) of proposed new section 8BC will give the Commission the new function of providing to the Commonwealth, or to bodies established by laws of the Commonwealth, equipment for use in the provision of information technology functions.

Subsection (2) of proposed new section 8BC provides that the Commission may perform its new information technology functions only to the extent that they are not in excess of functions that may be conferred on the Commission by virtue of the legislative powers of the Parliament.

In particular, new subsection (2) provides that the Commission may perform its new information technology functions for the following purposes:

- (a) purposes related to money appropriated for the purposes of the Commonwealth; and
- (b) purposes related to the executive power of the Commonwealth; and
- (c) purposes related to insurance (other than State insurance not extending beyond the limits of the State concerned); and
- (d) purposes related to the provision of pharmaceutical, sickness and hospital benefits and medical and dental services; and
- (e) purposes related to external affairs; and
- (f) purposes related to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

Item 65 - Commission may operate outside Australia

Under this proposed section 8HA, the Commission will be empowered to perform its functions and exercise its powers outside Australia.

Item 66 - Subsection 8ZM(1)

This amendment provides for the omission and substitution of subsection 8ZM(1).

As amended, the subsection provides that the Health Insurance Commission may retain evidential material seized under a search warrant once the reason for its seizure no longer exists or a decision is made not to use it in evidence.

New subsection 8ZM(1A) provides that evidential material obtained under search warrant does not have to be returned if it is forfeited or forfeitable to the Commonwealth or if it is the subject of a dispute as to ownership. Like amended subsection 8ZM(1), new subsection 8ZM(1A) is modelled on similar provisions in the *Crimes (Search Warrants and Powers of Arrest) Amendment Act 1994*.

Item 67 - Hedging

The proposed section 36AA is inserted to avoid doubt as to the Commission's ability to prudently hedge investments made under its existing powers of investment, particularly Medibank Private investments.

Subsection 36AA(1) lists the types of contracts to which the proposed new section applies. These include forward exchange rates contracts, currency future and financial future contracts, interest rates contracts, currency swaps, interest rates swaps, options and other types of contracts approved in writing by the Minister.

Proposed subsection 36AA(2) lists the types of arrangements which may be hedged through the types of contracts referred to in proposed subsection 36AA(1). Those arrangements include borrowings, investments and foreign currency transactions.

Under proposed subsection 36AA(3), the Minister is empowered to determine written guidelines for the exercise by the Commission of its hedging powers and is to give the Commission a copy of any determination. Such guidelines may prohibit the Commission from entering into or dealing with contracts of a particular kind or limit such dealings to specific circumstances (proposed subsection 36AA(4)). The Commission may not operate contrary to the guidelines determined by the Minister (proposed subsection 36AA(5)).

Proposed subsection 36AA(6) specifies the purposes that are hedging purposes within the meaning of proposed section 36AA. A hedging purpose is management of risk of variations in costs in relation to borrowings or proposed borrowings, the revenue obtainable from investments, foreign currency transactions and the maintenance of the value of the Commission's investments.

Item 68 - Sunset clause

This item provides that the above amendments to section 8ZM cease to apply from 1 July 1995. The sunset clause conforms with a similar clause in the *Health Legislation (Powers of Investigation) Amendment Act 1994* which conferred investigation powers on the Health Insurance Commission.

National Health Act 1953

Item 69

This item is a technical amendment to the *National Health Act 1953* (the Principal Act) in relation to the review of decisions concerning the level of Commonwealth benefit that is paid to nursing home proprietors. Previous changes to the Principal Act introduced by the *National Health Amendment Act 1992* (Act No. 200 of 1992) resulted in the entitlement to Commonwealth benefit being calculated by reference to the "notional scale of fees" under section 46D of the Principal Act. Proposed changes (scheduled to commence on 1 July 1995) to the Nursing Homes Financial Arrangements Principles (formulated under subsection 40AA(7) of the Principal Act) will result in the amount of the advance of

Commonwealth benefit under section 51A becoming tied to this "notional scale of fees". This will replace the emphasis on the "scale of fees" determined under section 40AA(6)(c)(i) as the method of calculating the advance of Commonwealth benefit.

Item 70

This item omits a provision of the Principal Act which became redundant after the completion of the validation of expenditure for of all nursing homes for the 1987-88 financial year.

Item 71

This item is a consequential amendment to the Principal Act caused by the omission of subsection 40AD(1B).

Item 72

This item omits the current provision in subsection 40AE(1) of the Principal Act, which provided as right of "internal review" of decisions relating to the "scale of fees" determined under section 40AA(6)(c)(i), and replaces it with a right of "internal review" of decisions relating to advances of Commonwealth benefit under section 51A.

Item 73

This item adds a sanction to be imposed on nursing homes (containing approved beds which have "exempt bed status" under section 39AB of the Act) which fail to satisfy the standards determined by the Minister under section 45D of the Principal Act. The granting of "exempt bed status" under section 39AB enables a nursing home proprietor to charge additional fees to nursing home patients (see section 40AAA). The criteria for granting "exempt bed status" includes that the nursing home provides a higher level of accommodation and services than are normally available at a nursing home. Current provisions of the Act do not enable the "exempt bed status" of a nursing home to be revoked or suspended solely due to non-compliance with the section 45D standards.

New subsection 45E(4A) will enable the Minister to suspend or revoke the "exempt bed status" of a nursing home where there is a declaration in force, under subsection 45E(1), that nursing home does not satisfy the standards determined by the Minister under section 45D of the Act. The Minister is provided with a discretion to decide whether it is appropriate to impose this additional sanction, however it would be incongruous for a nursing home to be able to charge additional amounts for accommodation and services when the level of nursing and personal care does not meet the basic standards which have been determined by the Minister. This additional sanction can be used on nursing homes which have a subsection 45E(1) declaration in force at the time this amendment comes into operation.

The exercise of this new power will only occur where there are serious breaches of the section 45D standards. The decision to suspend the "exempt bed status" of a nursing home will be made where there is some prospect of the standards being reached within a

short period of time and where both the nursing home proprietor and management show a commitment to taking remedial action. The decision to revoke the "exempt bed status" of a nursing home will be made where the nursing home proprietor and management show a commitment to taking remedial action. The decision to revoke the "exempt bed status" of a nursing home will be made where the nursing home proprietor or management fail to show a commitment to taking appropriate action within a reasonable timeframe. Where there is little prospect of the standards being reached within a reasonable period of time, then the current power, in section 44 of the Act, will be used to revoke the approval of the nursing home altogether.

New subsection 45E(4B) makes it clear that, while the "exempt bed status" of a nursing home is "suspended", the nursing home proprietor is not able to charge the increased fees that would otherwise apply, and that the other modified conditions mentioned in section 40AAA do not apply during the period of suspension.

New subsection 45E(4C) makes it clear that, if the "exempt bed status" of a nursing home is "revoked", a nursing home proprietor is not able to charge the increased fees and will need to re-apply under section 39AB for a new grant of "exempt bed status". One of the criteria in the principles established by the Minister under subsection 39AB(4) of the Principal Act, for considering applications made under section 39AB, is "the extent to which the nursing home meets the standards of care determined by the Minister under section 45D.". Accordingly, it will be likely that a considerable amount of time will need to pass after a nursing home has met all of the section 45D standards, before an application for "exempt bed status" under section 39AB will be approved for a nursing home where the "exempt bed status" has been revoked.

Item 74

This item amends subsection 45E(5) of the Principal Act so that it is clear that the new sanction, under new subsection 45E(4A), is both additional, and alternative, to the existing sanctions contained in subsections 45E(2) and (3) of the Act.

Item 75

This item amends subsection 45E(7) of the Principal Act so that the period of any "suspension" of "exempt bed status" expires on the same date as the cessation of the subsection 45E(1) declaration of failure to satisfy standards.

Item 76

This item amends section 51A of the Principal Act so as to make the original decision-maker the Secretary to the Department in place of the Minister. This is a procedural change which is consistent with the amendments proposed to section 40AE of the Act. This amendment makes the decision making process clear. The Secretary (or delegate) will make the decision on the amount of Commonwealth benefit advanced under section 51A. This amount is tied to the amount of benefit "that is or may become payable to the proprietor.". The amount that may become payable is stated in section 48AB of the Act by reference to the "notional scale of fees determined under section 46D.". The

"notional scale of fees" in subsection 46D(5) is to be calculated in compliance with the Nursing Homes Financial Arrangements Principles determined under subsection 40AA(7). An aggrieved nursing home proprietor will be able to apply to the Minister under new subsection 40AE(1) to have a review of decisions of the Secretary made under new section 51A.

Item 77

This item amends subsection 105AAB(1) of the Principal Act by adding new subsection 45E(4A) (i.e. the decision to suspend or revoke the "exempt bed status" of a nursing home where there is a subsection 45E(1) declaration of non-compliance with standards in force) to the list of decisions which are reviewable by the Administrative Appeals Tribunal. This will ensure that the exercise of the new discretion is subject to "merits review".

Item 78

This is a procedural clause which makes it clear that the effect of the changes on the review of decisions does not have retrospective operation and that current review rights, that may have accrued, are preserved.

National Health and Medical Research Council Act 1992

Items 79, 80 and 81

Item 79 inserts into section 4 of the Act a definition of Health Minister. Items 80 and 81 substitute in paragraphs 21(2)(a), 36(4)(a) and 36(5)(a) "the Health Minister of each State and Territory" for "the other members of the Australian Health Ministers Conference." Paragraphs 21(2)(a), 36(4)(a) and 36(5)(a) relate respectively to the appointment of the Chairperson of Council, the Chairperson of the Australian Health Ethics Committee and the Member of the Australian Health Ethics Committee referred to above.

SCHEDULE 2

The amendments set out in this schedule are amendments of a minor technical nature and are mainly tidying-up provisions to the Acts as set out in the schedule.

