

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NATIONAL HEALTH AMENDMENT BILL 1991

EXPLANATORY MEMORANDUM

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



## NATIONAL HEALTH AMENDMENT BILL 1991

### OUTLINE

This Bill enables changes to be made to the National Health Act 1953 concerning funding and regulation of nursing homes and the administration of the Domiciliary Nursing Care Benefit.

The Bill enables a new category of "adjusted fee government nursing homes" to be established and specifies which nursing homes will be in this category. New arrangements for determining Commonwealth benefits for homes in this new category are also given effect by this Bill.

Other amendments to the National Health Act enable certain monies to be paid directly to nursing homes, rather than in fee variations, and change the conditions applicable to exempt nursing homes.

The Bill strengthens the powers of the Commonwealth to take action against nursing homes which do not provide an adequate standard of care, and clarifies the role of the Community Visitor. Amendments to the National Health Act will also broaden the categories of people to whom the Secretary of the Department of Community Services and Health can delegate the authority to approve or reject applications for Domiciliary Nursing Care Benefit.

### FINANCIAL IMPACT STATEMENT

The introduction of the new category of "adjusted fee government nursing homes" with changed benefit arrangements is estimated to cost \$295,000 in 1990-91.

This will be fully offset by a reduction in the number of State Government nursing home beds.

The full year cost for 1991-92 is estimated to be \$850,000. This will be offset to a large extent by a reduction in State Government nursing home beds, which will provide savings estimated to be \$575,000. The net cost to the Commonwealth for 1991-92 is estimated to be \$275,000.

The only long term financial impact will be through routine indexation of funding which is part of the existing arrangements for non-government nursing homes.

The amendment relating to exempt beds in nursing homes will have no cost until 1993-94, when its cost is estimated to be about \$0.9 million. Its cost will then decrease and be negligible by 1999-2000. These costs will be offset elsewhere in the program.

The amendment allowing certain direct payments to nursing homes rather than having to vary the fee and benefit will have minor initial cost to amend the automated payments system, followed by minor but on-going improvements in administrative efficiency.

Other amendments will have no financial impact.

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NOTES ON CLAUSES

**Clause 1 - Short Title**

Sub-clause (1) provides for the Act proposed in this Bill to be cited as the "National Health Amendment Act 1991".

Sub-clause (2) enables the "National Health Act 1953" to be referred to in this Act as the "Principal Act".

**Clause 2 - Commencement**

Sub-clause (1) provides that, except for the sections listed in Sub-clause (2), this Act commences on the day it receives Royal Assent.

Sub-clause (2) ensures that homes in the Schedule to the Principal Act inserted by clause 23 of this Bill will be treated as if they had been adjusted fee government nursing homes from 1 January 1991. This is to comply with a commitment given by the Government, and ensures that these homes do not lose the benefit of the higher funding due to the time taken to amend the legislation.

**Clause 3 - Application**

This clause limits the changes contained in clauses 6,7(2),8,10 and 13(b) of this Bill to nursing homes given exempt status after this Act receives Royal Assent.

**Clause 4 - Interpretation**

This clause inserts in section 4 of the Principal Act a new subsection (1) which defines the new category of nursing home introduced by clause 5 of this Bill as those homes listed in a schedule or prescribed for this purpose.

**Clause 5 - Adjusted fee government nursing homes**

This clause inserts a new section 4AAA in the Principal Act. This section classifies as adjusted fee government nursing homes those homes listed in a Schedule 3 of the Principal Act and those that the Government may later prescribe for this purpose. The section also allows homes to be removed from the Schedule by regulations. This is necessary in case any home wishes to cease to be an adjusted fee government Nursing Home.

### **Clause 6 - Interpretation**

Paragraph (a) is a technical amendment consequential to clause 8 of this Bill.

Paragraphs (b) and (c) are technical amendments recognising the need to have two scales of fees for homes with exempt beds - one to be paid by the exempt residents and one by the residents who have chosen not to become exempt.

### **Clause 7 - Applications for exempt bed status**

#### **Sub-clause 7(1)**

This clause prevents adjusted fee government nursing homes from having their beds classified as exempt beds under section 39AB of the Principal Act. Exempt beds are intended for people who wish to pay an additional contribution to obtain better accommodation or services. As the adjusted fee government nursing homes would, if it were not for this Bill, be government homes, it is not appropriate to restrict access to these homes to those who can pay the additional contribution.

#### **Sub-clause 7(2)**

This clause allows the Minister to make the approval of exempt status to nursing home beds subject to conditions. Where a home promises in its application for exempt status to provide certain facilities or services its approval will be made conditional on these being provided.

The clause also enables the Minister to formulate principles. These principles are to govern decision making in regard to attaching conditions to an approval for exempt status.

### **Clause 8 - Insertion of new sections**

This clause inserts two new sections, 39AC and 39AD, in the Principal Act.

#### **Variation of conditions subject to which exempt status bed granted**

Section 39AC is primarily intended to allow proprietors to correct genuine mistakes made in their applications for exempt status, such as where the number of single rooms is incorrectly stated. This will be done by allowing the Minister to vary the conditions of the approval of the home's beds as exempt beds, on application from the proprietor.

### **Extension of exempt bed status for further period**

Under the current legislation, if a home's approval to have its beds classified as exempt expires and is not renewed, people resident in the home at that time are no longer able to pay the additional exempt bed contribution to receive additional services or facilities. As these people will have chosen to enter this home specifically in order to be able to do this, new section 39AD is being introduced to allow those individuals to continue to do so, if the proprietor so requests. People entering the home at a later time will do so in the knowledge that they are not being admitted to exempt beds, and will pay the same minimum resident contribution paid by all nursing home residents.

### **Clause 9 - Approval of nursing home**

The purpose of this clause of the Bill is to amend section 40AA of the Principal Act which stipulates the conditions of approval of premises as an approved nursing home.

The proposed amendment will remove the current requirement of the Principal Act (40AA (6) (cg)) that a nursing home proprietor allow a Community Visitor in relation to the nursing home to enter the home at any reasonable time for the purpose of observing the nursing home care provided.

The proposed amendment will, therefore, limit nursing home proprietors to being required to allow a Community Visitor in relation to the nursing home to enter the nursing home at any reasonable time for the purpose of meeting with patients and to providing the Community Visitor with all reasonable facilities and assistance to achieve this purpose.

Paragraph (b) makes it a condition of approval of a nursing home that it satisfies the standards determined by the Minister under section 45D of the Principal Act. These are the standards to be observed in the provision of nursing home care in approved nursing homes.

### **Clause 10 - Existing patients in nursing homes containing exempt beds**

This clause amends section 40ADB of the Principal Act to allow people resident in a home when its beds are granted exempt status to remain there permanently without paying any additional contribution, if they so choose.

Currently the individual resident's choice as to whether to become an exempt resident and so pay the additional exempt bed resident contribution must be made within 6 months of the beds being granted exempt status. This clause allows people to again exercise this choice after the home's beds have been exempt for 2 years.

### **Clause 11 - Standard fee for classified patients**

This clause determines how the standard fee is to be calculated for adjusted fee government nursing homes. The funding for adjusted fee government nursing homes differs from that for other non-government homes only in the level of funding provided for infrastructure costs (SAM), a category that includes, for example, food, fuel, and the salaries of the administrator and gardener.

### **Clause 12 - Standard infrastructure allowance and special infrastructure allowance**

This clause sets the minimum value of the funding for infrastructure costs (SAM) for each home in this category, and allows the Minister to set a different level of infrastructure funding for each home, if this is necessary.

This clause also makes this new funding level for SAM retrospective to 1 January 1991 in regard to those nursing homes in the Schedule to this Bill.

### **Clause 13 - Revocation of exempt bed status**

The existing legislation allows the Minister to withdraw exempt bed status if, inter alia, a person acting on behalf of a proprietor puts pressure on a resident to elect to become an exempt resident. However, this applies only where the proprietor is not a body corporate. Clause 13 extends this to where the proprietor is a body corporate.

The clause allows the Minister to withdraw exempt bed status where a home does not meet the conditions under which it was given that status. This would apply where the home, in its application for exempt status, promises to provide a specific service and then clearly fails to provide it.

The clause allows the Minister to withdraw exempt bed status where a home discharges, against his/her will, a resident who has chosen not to become exempt, to free up the bed for someone who is willing to pay the additional exempt bed resident contribution.

### **Clause 14 - Repeal of section 45C**

This is a technical amendment to enable the provisions of s45C of the Principal Act relating to disallowable instruments to be consolidated in s139B of the Principal Act. Clause 22 of this Bill re-inserts the provisions of s45C of the Principal Act in s139B.

### **Clause 15 - Declaration of non-compliance with standards**

This clause amends section 45E of the Principal Act to make it clear that irrespective of any action the Minister may take under section 45E of the Principal Act in regard to a nursing home that does not satisfy standards, the Minister may still proceed to take action under section 44 of the Principal Act against a home which may be in breach of the conditions of its approval.

### **Clause 16 - Benefit for Nursing Home Care in transferred homes and adjusted fee government nursing homes.**

This clause allows the benefits for adjusted fee government nursing homes to be determined in the same way as for transferred nursing homes. The effect of this is that the resident pays the minimum resident contribution specified in subparagraph 47(2)(b)(iii) of the Principal Act and the Commonwealth pays the rest of the fee.

### **Clause 17 - Top-up Benefit**

This clause inserts a new section 48B in the Principal Act. It introduces a separate payment system which can be used to provide additional funding to assist homes to employ registered nurses at all times, or to assist some homes to retain financial viability, and allows the Minister to introduce Principles covering the funding formula, eligibility issues and related details. Both funding mechanisms are currently available under the Principles formulated under subsection 40AA(7), and it is intended to reproduce in the section 48B Principles the provisions now in the subsection 40AA(7) Principles. The purpose of the amendment is to allow the funding to be provided without requiring the nursing homes' approved fees to be amended every month, as occurs under the existing funding arrangements. This will substantially reduce the administrative workload for both the nursing homes and the Departmental administration.

### **Clause 18 - Recovery of overpayments**

This clause clarifies the Government's power to recover over-payments from a home's future entitlements.

The nursing home funding system involves advances of funding based on expected entitlement, followed by acquittals of these advances against the actual entitlements when these become known. In addition there is a range of causes which result in nursing homes being under-funded or over-funded for a period. Accordingly, where a home has been over-funded the amount of over-funding is recovered by reducing the future payments to which the home would otherwise be entitled over a period of some months. Similarly where it has been under-funded this amount is added to the home's future payments.

### **Clause 19 - Approval of person as approved person in relation to a patient**

This clause amends section 58E of the Principal Act. This section deals with the Domiciliary Nursing Care Benefit (DNCB). The proposed amendment will extend the Secretary of the Department's power of delegation under sub-section 58E(8) to approve an application for the DNCB. Delegation is currently restricted to Departmental Medical Officers.

This clause enables delegation to be extended to all medical practitioners and registered nurses.

### **Clause 20 - Offences**

This clause extends the offences and penalties provision in section 62 of the Principal Act relating to the provision of false or misleading information. Applications for exempt bed status will become subject to these provisions.

### **Clause 21 - Applications for review by Tribunal of certain decisions under Part V**

This clause makes certain decisions reviewable by the Minister and the Administrative Appeals Tribunal. These are the decision to revoke exempt bed status and the decision to refuse to vary the conditions subject to which exempt status was granted.

### **Clause 22 - Certain instruments subject to disallowance**

This clause consolidates in s139B of the Principal Act certain provisions that were originally in s45C of the Principal Act and are being repealed by clause 14.

This clause also makes disallowable:-

- the principles to be formulated governing decisions on attaching conditions to an approval for exempt bed status (clause 7 of this Bill)
- the principles identifying matters for reference in relation to a decision to vary a condition subject to which exempt bed status has been granted (clause 8 of the Bill).
- the principles relating to the direct payment of Commonwealth benefits to nursing home proprietors. (Clause 17)

### **Clause 23 - New Schedule**

This clause inserts as Schedule 3 in the Principal Act the list of adjusted fee government nursing homes set out in the Schedule to this Bill.

### **Clause 24 - Transitional - designated Community Visitors**

This clause enables previously designated community visitors to continue to be so designated under the amended Act.