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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NATIONAL HEALTH AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

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

NATIONAL HEALTH AMENDMENT BILL 1992

GENERAL OUTLINE

This Bill amends the National Health Act 1953 and comprises two distinct elements; a fundamental revision of the nursing home benefit payments scheme and a legislative mechanism designed to protect the rights of the Commonwealth and of prospective purchasers of approved nursing homes.

Nursing Home Benefit Payments Scheme

Both the present nursing home funding system and the previous system which existed up until 1986-87 were based to some extent on cost-reimbursement. In such cost-reimbursement systems, the payment of Commonwealth benefit is based on an approved daily accommodation fee determined for each home, a portion of which was contributed by the patient with the balance being met by Commonwealth benefit.

Through the approved fee and its components, benefits were paid in advance to provide for the anticipated costs that would be incurred by the proprietor in delivering nursing home care. Following the end of each financial year, proprietors would submit returns which detailed the costs actually incurred in providing that care. These actual costs were then acquitted against the advance payments based on anticipated costs.

This acquittal process would disclose that there had been either an over-advance or an under-advance of benefit during the year. This amount was then recovered or paid out by a temporary offset or increment to the approved fee (and, by extension, benefit otherwise payable). This process, known as negative or positive "fee loadings", is provided for in the Nursing Homes Financial Arrangements Principles made under subsection 40AA(7) of the Principal Act.

However, while such amounts of over or under-advanced benefits represent monies effectively over or underpaid to proprietors, they are not legally characterised as recoverable debts or entitlements. An idiosyncrasy of the Principal Act means that such amounts can be recovered or paid only by fee loadings and not as debts. This has given rise to certain difficulties in administering the legislation. For example, proprietors who accrue a liability to the Commonwealth for over-advanced funding and then sell their nursing homes cannot be pursued for that over-advanced funding following sale. There is, however, a statutory duty to recover that benefit from the fees of the new proprietor.

This Bill seeks to change the system so that the person who accrues the liability can be pursued for the money, i.e. over-advanced benefit will be legally characterised as a debt recoverable through the Courts.

Several new concepts are introduced to facilitate this change:

- . accounting period - benefits will be paid in respect of discrete periods to be determined by the Secretary and known as accounting periods (these will usually correspond to financial years);
- . provisional benefit - entitlement to benefit will not accrue immediately or simply on the basis of an occupier (as is presently the case). Benefit will be paid monthly in advance, but on a provisional basis, on account of what will become payable;
- . notional fee - within three years of the end of an accounting period, the Secretary must examine the costs actually incurred by the proprietor and, taking those costs into account in accordance with Principles to be made, determine a notional fee for the accounting period. This determination is subject to review by the Minister and by the Administrative Appeals Tribunal;
- . entitlement to benefit - entitlement to benefit crystallises when and only when a notional fee is determined. A recoverable debt or overpayment will exist where the provisional benefit paid in advance exceeds the benefit which, calculated by reference to the notional fee, actually becomes payable;
- . debt recovery - a debt may be recovered other than by fee loading, e.g. by common law debt recovery action or by direct offset to monthly benefit otherwise payable (where an underpayment is identified, the proprietor will similarly have an entitlement to a lump-sum payment); and
- . interim acquittal - after the end of an accounting period but prior to the setting of notional fees, an estimate may be made as to the quantum of any over or underpayment for the period (in practice, and consistent with the present system, the estimate will usually be based on returns submitted by proprietors). This will enable a timely recovery or payment of over or under advanced benefit so that the Commonwealth or the proprietor as the case may be will receive approximately what is owed without having to wait for a notional fee to be determined.

The creation of recoverable debts will enable greater protection of the Commonwealth's rights to money owed and of the rights of purchasers of nursing homes to buy homes unencumbered by liabilities accrued by previous owners.

However, this Bill only changes the system prospectively. Benefits paid prior to the introduction of this change are not subject to its provisions and the existing system of recovery by loading will continue to exist in respect of benefits paid up to 1 July 1993 and until proprietors' claims for funding for those earlier periods are finalised.

Mechanism to Address Sale or Transfer of Nursing Homes

The mechanism provides for a requirement to give notice of a sale of a home, the identification (as far as possible) of outstanding overpayments and fee loadings prior to sale, the disclosure of such financial information to prospective purchasers to enable informed decisions and the recovery of overpayments at the point of sale and from the proceeds of sale.

The amendment will provide that:

- . the proprietor (vendor) must not settle a contract for sale within 90 days of giving notice of the proposed sale to the Secretary. A lesser period may be agreed by the Secretary on written application;
- . purchasers are also required to give notice of their intent to purchase a home;
- . on receiving notice, the Secretary must examine the costs actually incurred by the vendor, and determine
 - the quantum of any over or underpayment in respect of earlier periods;
 - an estimate of the over or underpayment in respect of the current period (up to the proposed day of settlement); and
 - the quantum of any fee loadings that would apply to the home's fees following sale;
- . both vendor and purchaser are then informed of the amounts so determined and the calculations underlying the determinations, so that each party may make appropriate arrangements, particularly with respect to the provisions of the contract;
- . at settlement, the purchaser is required to pay to the Commonwealth, from the purchase price, the amount of the estimated overpayment, if any (the amount is taken as having been paid as consideration for the nursing home);
- . where the amount paid by the purchaser prior to settlement is not sufficient to meet the overpayment, the vendor is required to make up the difference;

- . these amounts paid are held in trust by the Commonwealth pending the determination of the actual over or underpayment;
- . immediately following settlement, the Secretary completes the examination of costs actually incurred up to the day of settlement and determines the total actual over or underpayment;
- . if it is determined that there has been an underpayment, the vendor is paid out in full. If it is determined that there has been an overpayment, any money held in trust is applied to the overpayment to the extent necessary. If the trust money exceeds any actual overpayment, the balance is paid to the vendor. If the actual overpayment exceeds the trust money, the balance is recoverable as a debt and the vendor will be pursued accordingly (although, consistent with the present system, the outstanding balance may be recovered from the purchaser by way of fee loading, which will be refunded if the money is subsequently recovered from the vendor); and
- . the amounts of any over or underpayments and fee loadings, together with information as to how they were calculated, may be disclosed to the purchaser.

This mechanism is also flexible enough to address varying circumstances. Three separate approaches are provided for three different degrees of notice of the sale: more than 90 days, less than 90 days and no notice.

In addition to imposing statutory obligations on both parties to sale (and the Commonwealth), the amendments provide for the imposition of penalties for failing to comply with certain obligations, namely:

- . provision of notice of sale;
- . completion of the sale within 90 days of giving notice (or a lesser period if agreed by the Secretary);
- . provision of an amended notice of sale if details as to the date, time or address for completion change; and
- . payment by the vendor, prior to completion of the sale, of the difference (if any) between the estimated overpayment and any amount paid to the Commonwealth by the purchaser as required.

FINANCIAL IMPACT STATEMENT

This Bill has no direct financial impact. It serves only to change the method by which overpaid benefit is recovered from nursing home proprietors.

NATIONAL HEALTH AMENDMENT BILL 1992

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title etc.

This is a formal provision which specifies that the short title of the Act is the National Health Amendment Act 1992 and that references to the "Principal Act" should be taken to be references to the National Health Act 1953.

Clause 2 - Commencement

This clause provides that, with the exception of the new sections 65, 65A and 65B, this Act commences on 1 July 1993. The new sections 65, 65A and 65B commence on the day on which this Act receives Royal Assent.

PART 2 - AMENDMENTS OF PARTS V AND VA OF THE PRINCIPAL ACT

Clause 3 - Interpretation

Subclauses (a) and (b) are technical amendments to the Principal Act in relation to fees payable in exempt nursing homes.

Subclause (c) inserts a new definition in the Principal Act; that of "notional fee". It is this notional fee, calculated subsequently in respect of an accounting period, by which the ultimate entitlement to Commonwealth benefit is determined.

Clause 4 - Repeal of section

This clause repeals section 42A of the Principal Act. This section was introduced in the Autumn 1992 Sittings of the Parliament as an interim measure and is replaced by new sections introduced by this Act.

Clause 5 - Certain person to give notice on death of proprietor

This clause omits subsections (1) and (1A) from section 43 of the Principal Act. These subsections dealt with notice on change of proprietorship and are replaced by new sections introduced by this Act (subsection (2) deals with notice on death of proprietor).

Clause 6 - Insertion of new heading in Part VA

This clause inserts a new heading before section 46 of the Principal Act.

Clause 7 - Interpretation

This clause amends the Principal Act by making a technical amendment to the definition of "extensive care benefit" in section 46 and by inserting the following definitions:

- . "accounting period";
- . "general care benefit";
- . "investigation to be carried out";
- . "notified day for completion of sale";
- . "notional fee";
- . "notional scale of fees"; and
- . "overpayment".

Clause 8 - Insertion of new sections

This clause inserts new sections 46B, 46C, 46D and 46E in the Principal Act.

The new section 46B defines "overpayment" in relation to Commonwealth benefit.

The new section 46C provides for the determination of accounting periods in respect of nursing homes.

The new subsection 46C(1) provides that the determination of accounting periods does not apply to government nursing homes and nursing homes for disabled people.

The new subsection 46C(2) provides that the Secretary must determine an accounting period in respect of each home.

The new subsection 46C(3) provides that an accounting period must not begin before the commencement of this Act (this is subject to the transitional arrangement provided in the new subsection 46D(9)).

The new subsection 46C(4) provides that the determination must be in writing and must set out the accounting period determined.

The new subsection 46C(5) provides that a copy of the determination is to be given to the proprietor.

The new subsection 46C(6) provides that the Secretary may vary the accounting period at any time.

The new subsection 46C(7) provides that, prior to completion of the sale, where the Secretary receives notice or is informed that a home is to be sold, the accounting period is to be varied within 14 days.

The new subsection 46C(8) provides that, where the Secretary did not receive notice or was not informed that a home was to be sold or the home was sold prior to the notified day for completion of the sale, the accounting period is to be varied within 14 days of the sale becoming known.

The new subsection 46C(9) provides that the accounting period determined under subsections (7) or (8) must end on the day before the day of completion of the sale.

The new subsection 46C(10) provides that an accounting period must not be varied so as to begin on a day prior to the last day of the previous accounting period.

The new subsection 46C(11) provides that, if the Secretary varies the accounting period, the proprietor must be notified within 7 days of the variation.

The new subsection 46C(12) provides that, where a proprietor is given notice of a varied accounting period, the notice is to be in writing and must set out the new accounting period.

The new section 46D provides for the setting of notional fees.

The new subsection 46D(1) provides that notional fees are to be determined within three years of the end of an accounting period.

The new subsection 46D(2) provides that notional fees are to be determined only in respect of general care benefit and not other specialised forms of benefit, such as nasogastric feeding or isolated nursing home benefit.

The new subsections 46D(3) and (4) provides that the Secretary must take into account the nursing home's actual expenditure on nursing home care.

The new subsection 46D(5) provides that the Secretary must, when determining notional fees, take into account the Principles made under subsection 40AA(7) of the Principal Act.

The new subsections 46D(6), (7) and (8) provide that a proprietor may request, by application in writing within 28 days of receiving notice of the determination, that the Minister review the Secretary's determination of the notional fee.

The new subsections 46D(9) and (10) provide that the day of commencement of the first accounting period for a home may be fixed by the Secretary and may be a day prior to the commencement of this Act. This is a transitional arrangement designed to take into account the earlier funding system.

The new section 46E provides for interim recovery and payment of advances before the notional fee is determined.

The new subsection 46E(1) provides that the Secretary may determine an estimate of the under or overpayment in relation to an accounting period prior to determining the notional fee.

The new subsection 46E(2) provides that the amount estimated may be paid to or recovered from the proprietor as provided for in the principles made under subsection 40AA(7) of the Principal Act.

The new subsection 46E(3) provides that the proprietor must be notified of any such decision to pay or recover money.

The new subsections 46E(4) and (5) provide that where an interim payment or recovery has been made under subsection 46E(2), the amount is to be taken into account when determining the actual over or underpayment for the accounting period following the determination of the notional fee.

The new subsection 46E(6) defines underpayment of general care benefit.

Clause 9 - Insertion of new heading in Part VA

This clause inserts a new heading before section 47 of the Principal Act.

Clause 10 - Benefits for patients in other approved nursing homes

This clause amends section 47A of the Principal Act.

Subclause (a) inserts a new subsection 47A(1) which defines the types of homes to which benefit will be paid pursuant to section 47A.

Subclause (b) is a consequential technical amendment.

Subclauses (c), (d) and (e) are technical amendments which provide that the amount of benefit payable is determined by reference to the notional fee.

Clause 11 - Repeal of Section

This clause repeals section 48 of the Principal Act. This section is replaced by the new section 49B, inserted by clause 14.

Clause 12 - Benefit for nursing home care in transferred homes and adjusted fee government nursing homes

This clause makes a number of technical amendments to section 48A of the Principal Act which provide that the amount of benefit payable is determined by reference to the notional fee.

Clause 13 - Insertion of new section

This clause inserts a new section 48AB in the Principal Act, which provides that general care benefit becomes payable on the 30th day after the notional scale of fees has been determined.

Clause 14 - Insertion of new section

This clause inserts a new section 49B in the Principal Act. This replaces the previous section 48, repealed by Clause 11 of this Act.

The new section 49B provides that:

- . where a proprietor charges a patient the full approved fee without deducting the Commonwealth benefit payable in respect of that patient, the Secretary may direct that benefit be paid to the patient rather than the proprietor; and
- . where a proprietor has been paid Commonwealth benefit in respect of a patient but has charged the full approved fee to the patient without deducting that amount of Commonwealth benefit, the proprietor is required to repay that amount of Commonwealth benefit to the Commonwealth and the Commonwealth is required to pay that amount to the patient.

Clause 15 - Insertion of new heading in Part VA

This clause inserts a new heading after section 49AA of the Principal Act.

Clause 16 - Claims for benefit

This is a technical amendment to section 51 of the Principal Act.

Clause 17 - Repeal and substitution of new sections

This clause repeals the existing sections 51A and 51B of the Principal Act and substitutes new sections 51A, 51B and 51C.

The new section 51A provides that the Minister may authorise the payment of advances on account of benefit which may become payable.

The new subsection 51B(1) provides that proprietors are liable to repay any overpayment of benefit (defined by the new section 46B).

The new subsection 51B(2) provides that, where Commonwealth benefit has been underpaid, the proprietor may elect to be paid the amount owing in a manner specified in the Principles made under section 40AA(7) of the Principal Act.

The new section 51C provides for recovery of overpayments.

The new subsection 51C(1) provides that overpayments of Commonwealth benefit made to a proprietor may be recovered:

- . by offset to Commonwealth benefit or advances of Commonwealth benefit otherwise payable;
- . as a debt to the Commonwealth; or
- . from that proprietor, or from a later proprietor, in a manner specified in the Principles made under section 40AA(7) of the Principal Act.

The new subsection 51C(2) provides that, where an overpayment of Commonwealth benefit has been made to a proprietor who then sells the home, part or all of that overpayment is recovered from the purchaser and then part or all of that overpayment is later recovered from the former proprietor, that amount recovered from the former proprietor is to be repaid to the purchaser (to the extent that the amount has already been recovered from the purchaser).

The new subsection 51C(3) provides that a proprietor may elect that any amount which may become payable under subsection 51C(2) may be paid in a manner specified in the Principles made under section 40AA(7) of the Principal Act.

The new subsection 51C(4) is a consequential technical amendment.

Clause 18 - Heading to Part VC

This clause amends the heading to Part VC of the Principal Act.

Clause 19 - Insertion of new Part

This clause inserts a new Part VD after Part VC in the Principal Act.

The new section 63 describes the object of Part VD.

The new section 64 describes how Part VD applies.

The new subsection 64(1) provides that Part VD applies in respect of sales of approved nursing homes other than Government nursing homes or nursing homes for disabled people.

The new subsection 64(2) provides that if the vendor is selling the nursing home business to different purchasers, Part VD applies to each sale as though it was the sale of the business as a whole.

The new subsection 64(3) provides that Part VD does not apply where the contract for sale of a nursing home was entered into before the commencement of Part VD.

The new subsection 64(4) describes which sections of Part VD apply in various circumstances.

The new section 65 is an interpretation section and provides for a number of new definitions.

The new subsection 65(1) provides the following definitions:

- . "business or undertaking";
- . "Commonwealth benefit";
- . "fee-determining benefit";
- . "first investigation";
- . "first investigation period";
- . "investigation to be carried out";
- . "missed out on receiving";
- . "notified day for completion of sale";
- . "notional scale of fees";
- . "overpayment";
- . "overpayment outstanding";
- . "purchase of an approved nursing home";
- . "purchaser payment";
- . "purchase price";
- . "sale of an approved nursing home";

- . "second investigation";
- . "second investigation period";
- . "vendor"; and
- . "vendor payment".

The new subsection 65(2) defines the purchase of a nursing home.

The new subsection 65(3) defines the sale of a nursing home.

The new subsection 65(4) defines the term "missed out on receiving". The term refers to the situation where a proprietor has been paid Commonwealth benefit for a period prior to the commencement of this Act, an acquittal of that Commonwealth benefit against the proprietor's actual expenditure on nursing home care for that period discloses that the proprietor spent more on nursing home care than the amount of Commonwealth benefit paid and an amount would, therefore, be payable to the proprietor as a fee loading in accordance with the Principles made under subsection 40AA(7) of the Principal Act. In this situation, the proprietor is said to have "missed out on receiving" that amount which would be taken into account as a loading.

The new subsection 65(5) defines the term "investigation to be carried out".

The new section 65A provides that the vendor of a nursing home must give notice of sale.

The new subsection 65A(1) provides that a vendor must give notice of a sale prior to completion of the sale, specifies the details to be included on the notice and specifies a penalty for non-compliance.

The new subsection 65A(2) provides that a vendor must not complete a sale within 90 days of giving notice (or such lesser period as the Secretary may determine) and specifies penalty for non-compliance.

The new subsection 65A(3) provides that if the Secretary determines a period of less than 90 days under subsection (2), the vendor must be notified in writing.

The new subsection 65A(4) provides that, if a vendor has given notice pursuant to subsection (1) and the details in relation to the proposed day, time or address for completion of the sale change, the vendor is to give an amended notice to the Secretary.

The new subsection 65A(5) provides that an amended notice given pursuant to subsection (4) must be given at least 14 days before completion of the sale and specifies a penalty for non-compliance.

The new subsection 65A(6) provides that, if a vendor purports to give notice pursuant to subsection (1) but in doing so does not provide details of the proposed date and time for completion of the sale, the notice is taken not to have been given.

The new subsection 65A(7) provides that, if the vendor has given notice pursuant to subsection (1) and the proposed date, time or address for completion of the sale change but no amended notice is given pursuant to subsection (4), notice is taken not to have been given.

The new section 65B provides that the purchaser of a nursing home must give notice of sale.

The new subsection 65B(1) provides that a purchaser must give notice of a sale and specifies the details to be included on the notice.

The new subsection 65B(2) provides that a purchaser must give at least 42 days notice of completion of the sale.

The new subsection 65B(3) provides that, if a purchaser has given notice pursuant to subsection (1) and the details in relation to the proposed day, time or address for completion of the sale change, the purchaser is to give an amended notice to the Secretary.

The new subsection 65B(4) provides that, if a purchaser purports to give notice pursuant to subsection (1) but in doing so does not provide details of the proposed date and time for completion of the sale, the notice is taken not to have been given.

The new section 65C provides for the investigation of the accounts of a nursing home and the determination of various amounts, where the Secretary has been informed of the sale 90 days or more before the proposed day for completion.

The new subsection 65C(1) provides that, where the Secretary has been informed of a sale 90 days or more before the proposed day for completion, the Secretary must order an investigation into the nursing home's accounts in respect of two distinct periods:

- the first investigation period, which begins on a day determined by the Secretary and ends on the immediately preceding 30 June; and

- . the second investigation period, which begins on the last preceding 1 July and ends on the day before the sale is completed.

The new subsection 65C(2) describes the purpose of each investigation, which is to:

- . determine the amount (if any) of any overpayment in respect of the period; and
- . determine whether any amount should be taken into account as a fee loading in respect of the period in accordance with the Principles made under subsection 40AA(7) of the Principal Act.

The new section 65D provides for the estimation, prior to completion of the sale (and the end of the period in question), of the amount of the overpayment in respect of the second investigation period.

The new subsection 65D(1) provides that, prior to the end of the second investigation period, the Secretary may determine an estimate of the overpayment in respect of that period.

The new subsection 65D(2) provides that, in making such a determination, the Secretary must comply with any principles in force under subsection 65D(3).

The new subsection 65D(3) provides that the Minister may make principles to be complied with by the Secretary in making determinations under subsection 65D(1).

The new section 65E provides that, where the Secretary has been informed of a sale 90 days or more before the proposed day for completion, certain information may be given to the vendor and purchaser prior to completion of the sale, namely:

- . the amount of any overpayment in respect of the first investigation period and the means by which it was calculated;
- . the amount that will be taken into account as a fee loading in respect of the accounting period and the means by which it was calculated;
- . the amount determined as the estimated overpayment in respect of the second investigation period and the means by which it was calculated;
- . the amount of any grant of Commonwealth benefit paid in respect of the nursing home; and

- . any other information about the home's fees or notional fees that the Secretary considers the vendor should have.

The new section 65F applies where the Secretary is informed of a sale less than 90 days before completion of the sale.

The new subsection 65F(1) provides that, when the Secretary is informed of a sale less than 90 days prior to the proposed date of completion of the sale, the Secretary must:

- . order an investigation of the nursing home's accounts in respect of the period beginning on a day determined by the Secretary and ending on the day before completion of the sale;
- . determine an estimate of the overpayment that will be outstanding at the day before completion of sale; and
- . determine an estimate of any outstanding amount which would be taken into account as a fee loading in respect of the period in accordance with the Principles made under subsection 40AA(7) of the Principal Act.

The new subsection 65F(2) describes the purpose of the investigation, namely to:

- . determine the amount of any overpayment in respect of the period which remains unrecovered at the point of sale; and
- . determine the outstanding amount which would be taken into account as a fee loading in respect of the period in accordance with the Principles made under subsection 40AA(7) of the Principal Act.

The new subsection 65F(3) provides that the determinations of estimates of outstanding overpayments and amounts to be taken into account as fee loadings must be in writing and must set out the underlying calculations.

The new subsection 65F(4) provides that a copy of the determinations may be provided to both vendor and purchaser prior to completion of the sale.

The new subsection 65F(5) provides that in determining an estimate of the outstanding overpayment prior to completion of the sale, the Secretary is to comply with any principles in force under subsection (6).

The new subsection 65F(6) provides that the Minister may make principles to be complied with by the Secretary in making determinations of the estimated debt prior to sale under subsection 65F(1).

The new section 65G applies when no notice of a sale is given or where the vendor sells before the notified date for completion of the sale.

The new subsection 65G(1) provides that section 65G applies when no notice of a sale is given or where the vendor sells before the notified date for completion of the sale.

The new subsection 65G(2) provides that any obligations imposed by sections 65C, 65D, 65E or 65F cease to operate.

The new subsection 65G(3) provides that the Secretary must order an investigation into the accounts of the nursing home in respect of a period beginning on a day determined by the Secretary and ending on the day prior to completion of the sale. The purpose of the investigation is to determine the extent of any overpayment in respect of the period remaining unrecovered at the time of sale and any amount to be taken into account as a fee loading in respect of the period in accordance with the Principles made under subsection 40AA(7) of the Principal Act.

The new subsection 65G(4) requires the Secretary to determine the amount that the vendor or an earlier proprietor has received as an overpayment and to determine any amount to be taken into account as a fee loading in respect of the period in accordance with the Principles made under subsection 40AA(7) of the Principal Act.

The new subsection 65G(5) provides that determinations under subsection (4) must be in writing and state the amount determined and the means by which it was determined.

The new subsection 65G(6) provides that, in making a determination of the overpayment remaining unrecovered at the point of sale under subsection (4), the Secretary must comply with any principles in force under subsection (7).

The new subsection 65G(7) provides that the Minister may make principles to be complied with by the Secretary in making determinations of the overpayment under subsection (4).

The new section 65H applies where 90 days or more notice of the sale has been given and provides for the purchaser of the nursing home to pay certain amounts to the Commonwealth.

The new subsection 65H(1) provides that, on or before the completion of the sale, the purchaser is to pay to the Commonwealth so much of the purchase price as is equal to the sum of the overpayment in relation to the first investigation period and the sum of the estimated overpayment in relation to the second investigation period.

The new subsection 65H(2) provides that, where the amount paid by the purchaser exceeds the overpayment in relation to the first investigation period, the portion that equals the overpayment is taken in settlement of the debt and the balance of the amount is held in trust by the Commonwealth pending the completion of the second investigation.

The new subsection 65H(3) provides that, where the amount paid by the purchaser is equal to or less than the overpayment in relation to the first investigation period, the amount paid is taken in full or partial settlement of the debt.

The new subsection 65H(4) provides that, when the second investigation is completed:

- . where the amount held in trust by the Commonwealth exceeds the amount of the overpayment in relation to the second investigation period, a portion of the amount held in trust equal to the overpayment is taken in settlement of the debt and the balance is paid to the vendor; or
- . where the amount held in trust by the Commonwealth is equal to or less than the overpayment in relation to the second investigation period, the amount held in trust is taken in full or part settlement of the debt.

The new subsection 65H(5) provides that money paid to the Commonwealth by the purchaser is taken to have been paid to the vendor as consideration for the sale of the nursing home.

The new section 65J applies where the Secretary is informed of a sale less than 90 days before completion of the sale.

The new subsection 65J(1) provides that, prior to completion of the sale, the purchaser is required to pay to the Commonwealth so much of the purchase price as is equal to the amount determined pursuant to subsection 65F(1) as the estimate of the overpayment in relation to the period.

The new subsection 65J(2) provides that the amount paid by the purchaser pursuant to subsection (1) is held in trust by the Commonwealth pending the completion of the investigation.

The new subsection 65J(3) provides that, when the investigation is completed:

- . where the amount held in trust by the Commonwealth exceeds the amount of the overpayment, a portion of the amount held in trust equal to the overpayment is taken in settlement of the debt and the balance is paid to the vendor; or

where the amount held in trust by the Commonwealth is equal to or less than the overpayment, the amount held in trust is taken in full or part settlement of the debt.

The new subsection 65J(4) provides that money paid to the Commonwealth by the purchaser is taken to have been paid to the vendor as consideration for the sale of the nursing home.

The new section 65K provides for certain amounts to be paid by the vendor.

The new subsection 65K(1) provides that the vendor must, on or before completion of the sale, pay to the Commonwealth an amount equal to the "overpayment outstanding", which is defined in subsections (2) to (6) inclusive.

The new subsection 65K(2) provides that, where the Secretary received no notice of the sale or where the sale was completed prior to the notified day for completion, the overpayment outstanding is defined as the sum of all advances of Commonwealth benefit paid to the vendor in respect of any accounting period for which a notional fee has not been determined.

The new subsection 65K(3) provides that, where the Secretary is informed of a sale less than 90 days before completion of the sale and informs the purchaser of the estimated overpayment for the period but the purchaser pays no money to the Commonwealth prior to completion, the overpayment outstanding is defined as the total estimated overpayment for the period.

The new subsection 65K(4) provides that, where the Secretary is informed of a sale less than 90 days before completion of the sale and informs the purchaser of the estimated overpayment for the period and the purchaser pays some money to the Commonwealth prior to completion, the overpayment outstanding is defined as the total estimated overpayment for the period less the amount paid by the purchaser.

The new subsection 65K(5) provides that, where the Secretary is informed of a sale 90 days or more before completion of the sale and informs the purchaser of the amount required to be paid to the Commonwealth prior to completion (i.e. the overpayment for the first investigation period plus the estimate of the overpayment for the second investigation period) but the purchaser makes no payment to the Commonwealth, the overpayment outstanding is defined as the sum of the overpayment for the first investigation period and the estimate of the overpayment for the second investigation period.

The new subsection 65K(6) provides that, where the Secretary is informed of a sale 90 days or more before completion of the sale and informs the purchaser of the amount required to be paid to the Commonwealth prior to completion (i.e. the overpayment for the first investigation period plus the estimate of the overpayment for the second investigation period) and the purchaser makes some payment to the Commonwealth, the overpayment outstanding is defined as the sum of the overpayment for the first investigation period and the estimate of the overpayment for the second investigation period less the amount paid by the purchaser.

The new section 65L describes how to deal with any amount paid by the vendor prior to completion, once the investigation has been finalised.

The new section 65M describes how to deal with any amount paid by the vendor prior to completion, once the investigation has been finalised, where the Secretary received no notice of the sale or where the sale was completed prior to the notified day for completion.

The new subsection 65M(1) provides that the section applies where the overpayment outstanding has been determined under subsection 65K(2).

The new subsection 65M(2) provides that the amount paid by the vendor is held in trust pending the completion of the investigation.

The new subsection 65M(3) provides that, if the investigation discloses that no overpayment was made to the vendor, the amount held in trust is paid to the vendor.

The new subsection 65M(4) provides that, if the investigation discloses that an overpayment was made to the vendor:

- . if the amount held in trust is equal to or less than the overpayment, the amount is taken in full or part settlement of the debt; or
- . if the amount held in trust exceeds the overpayment, a portion of the amount equal to the overpayment is taken in settlement of the debt and the balance is paid to the vendor.

The new section 65N describes how to deal with any amount paid by the vendor prior to completion, once the investigation has been finalised, where the Secretary received less than 90 days notice of the sale and the purchaser has paid no money to the Commonwealth prior to completion.

The new subsection 65N(1) provides that the section applies where the overpayment outstanding has been determined under subsection 65K(3).

The new subsection 65N(2) provides that the amount paid by the vendor is held in trust pending the completion of the investigation.

The new subsection 65N(3) provides that, if the investigation discloses that no overpayment was made to the vendor, the amount held in trust is paid to the vendor.

The new subsection 65N(4) provides that, if the investigation discloses that an overpayment was made to the vendor:

- . if the amount held in trust is equal to or less than the overpayment, the amount is taken in full or part settlement of the debt; or
- . if the amount held in trust exceeds the overpayment, a portion of the amount equal to the overpayment is taken in settlement of the debt and the balance is paid to the vendor.

The new section 65P describes how to deal with any amount paid by the vendor prior to completion, once the investigation has been finalised, where the Secretary received less than 90 days notice of the sale and the purchaser has paid some money to the Commonwealth prior to completion.

The new subsection 65P(1) provides that the section applies where the overpayment outstanding has been determined under subsection 65K(4).

The new subsection 65P(2) provides that the amount paid by the vendor is held in trust pending the completion of the investigation.

The new subsection 65P(3) provides that, if the investigation discloses that no overpayment was made to the vendor, the amount held in trust is paid to the vendor.

The new subsection 65P(4) provides that, if the investigation discloses that an overpayment was made to the vendor and the Commonwealth holds in trust an amount paid by the purchaser which is higher than the overpayment, the amount held in trust which was paid by the vendor is repaid to the vendor.

The new subsection 65P(5) provides that, if the investigation discloses that an overpayment was made to the vendor and the Commonwealth holds in trust an amount paid by the purchaser which is less than the overpayment (i.e. there is an outstanding debt), then:

- . if the amount held in trust which was paid by the vendor is equal to or less than the outstanding debt, the amount is taken in full or part settlement of the outstanding debt; or
- . if the amount held in trust which was paid by the vendor exceeds the outstanding debt, a portion of the amount equal to the overpayment is taken in settlement of the outstanding debt and the balance is paid to the vendor.

The new section 65Q describes how to deal with any amount paid by the vendor prior to completion, once the investigation has been finalised, where the Secretary received 90 days or more notice of the sale and the purchaser has paid no money to the Commonwealth prior to completion.

The new subsection 65Q(1) provides that the section applies where the overpayment outstanding has been determined under subsection 65K(5).

The new subsection 65Q(2) provides that, where the first investigation discloses that an overpayment was made to the vendor for the first investigation period:

- . so much of the amount held in trust by the Commonwealth as is equal to the overpayment is taken in settlement or part settlement of the debt; and
- . the balance (if any) of the amount is held in trust until the investigation of the second investigation period is completed.

The new subsection 65Q(3) provides that, if the second investigation discloses that no overpayment was made to the vendor for the second investigation period, the remaining amount held in trust is paid to the vendor.

The new subsection 65Q(4) provides that, if the second investigation discloses that an overpayment was made to the vendor for the second investigation period, then:

- . if the remaining amount held in trust is equal to or less than the outstanding debt, the amount is taken in full or part settlement of the outstanding debt; or
- . if the remaining amount held in trust exceeds the outstanding debt, a portion of the amount equal to the overpayment is taken in settlement of the outstanding debt and the balance is paid to the vendor.

The new sections 65R and 65S describe how to deal with any amount paid by the vendor prior to completion, once the investigation has been finalised, where the Secretary received 90 days or more notice of the sale and the purchaser has paid some money to the Commonwealth prior to completion. Section 65R addresses the first investigation period and section 65S addresses the second investigation period.

The new subsection 65R(1) provides that section 65R applies where the overpayment outstanding has been determined under subsection 65K(6) and describes how to address the first investigation period.

The new subsection 65R(2) provides that, if the investigation discloses that an overpayment was made to the vendor for the first investigation period and the Commonwealth holds in trust an amount paid by the purchaser which is less than the overpayment (i.e. there is an outstanding debt), then:

- . the amount held in trust which was paid by the vendor is taken in full or part settlement of the outstanding debt; and
- . the balance of the amount paid by the vendor is held in trust until the second investigation is completed.

The new subsection 65R(3) provides that, if the amount held in trust by the Commonwealth which was paid by the purchaser equals or exceeds the overpayment for the first investigation period, the amount held in trust which was paid by the vendor is held in trust until the second investigation is completed.

The new subsection 65S(1) provides that section 65S applies where the overpayment outstanding has been determined under subsection 65K(6) and describes how to address the second investigation period.

The new subsection 65S(2) provides that, if the second investigation discloses that no overpayment was paid to the vendor for the second investigation period, the remaining amount in trust which was paid by the vendor is repaid to the vendor.

The new subsection 65S(3) provides that, if the second investigation discloses that an overpayment was paid to the vendor for the second investigation period and the Commonwealth holds in trust an amount which was paid by the purchaser which is equal to or exceeds the overpayment, any remaining amount held in trust which was paid by the vendor is repaid to the vendor.

The new subsection 65S(4) provides that, if the second investigation discloses that an overpayment was paid to the vendor for the second investigation period and the Commonwealth holds in trust an amount which was paid by the purchaser which is less than the overpayment (i.e. there is an outstanding overpayment), then:

- . if the remaining amount held in trust which was paid by the vendor is equal to or less than the outstanding overpayment, the amount is taken in settlement or part settlement of the debt; or
- . if the remaining amount held in trust which was paid by the vendor exceeds the outstanding overpayment, so much of the amount as is equal to the outstanding overpayment is taken in settlement of the debt and the balance is repaid to the vendor.

The new subsection 65S(5) provides that, if the second investigation discloses that an overpayment was paid to the vendor for the second investigation period and the Commonwealth holds no amount in trust which was paid by the purchaser, then:

- . if the remaining amount held in trust which was paid by the vendor is equal to or less than the outstanding overpayment, the amount is taken in settlement or part settlement of the debt; or
- . if the remaining amount held in trust which was paid by the vendor exceeds the outstanding overpayment, so much of the amount as is equal to the outstanding overpayment is taken in settlement of the debt and the balance is repaid to the vendor.

The new section 65T sets out how the principles that may be made under the new subsections 65D(3), 65F(6) and 65G(7) take effect.

The new subsection 65T(1) provides that such principles are to be tabled in both Houses of the Parliament within 15 sitting days of being formulated and take effect only as set out in section 65T.

The new subsection 65T(2) provides that notice of a motion to amend the principles may be given within 15 days of tabling and that, if such notice is given, the principles take effect when they are approved in the same form by both Houses.

The new subsection 65T(3) provides that, if no notice of a motion to amend the principles is given within 15 days of tabling, the principles take effect after the 15th day.

The new section 65U provides that certain information may be given to the vendor and purchaser of a nursing home.

The new subsection 65U(1) applies where the Secretary has been given 90 days or more notice of the sale and provides that, if the second investigation discloses that an overpayment was paid to the vendor in relation to the second investigation period, the Secretary may inform the vendor and the purchaser of the amount of the overpayment.

The new subsection 65U(2) applies where the Secretary has been given less than 90 days notice of the sale (or no notice) or where the vendor has completed the sale prior to the notified date for completion and provides that, if an amount has been determined which is an overpayment for the period or that would be taken into account as a fee loading in respect of the period, the Secretary may inform the vendor and purchaser of those amounts.

The new subsection 65U(3) provides that, following the sale of a nursing home, the Secretary may give to the purchaser any information about a scale of fees or a notional scale of fees that the Secretary considers the purchaser should have.

The new Secretary 65U(4) provides that the Secretary may inform the purchaser about any grant of Commonwealth benefit made in relation to the home.

Clause 20 - Application for review by Tribunal

This clause inserts a new subsection 105AB(1AA) into the Principal Act.

The new subsection 105AB(1AA) provides that a decision of the Minister in reviewing the Secretary's determination of a notional fee may be appealed to the Administrative Appeals Tribunal.

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