

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NATIONAL HEALTH AMENDMENT BILL (NO. 3) 1993

EXPLANATORY MEMORANDUM

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





## NATIONAL HEALTH AMENDMENT BILL (NO. 3) 1993

### GENERAL OUTLINE

This Bill amends the National Health Act 1953 and should be read in conjunction with the Nursing Home Charge (Imposition) Bill 1993. It contains a measure related to those introduced by the National Health Amendment Act 1992 ("the 1992 Amendment Act"), which effected changes to the Commonwealth nursing home benefit payment scheme.

The 1992 Amendment Act changed the payment scheme to facilitate the recovery of unspent benefit and also introduced measures to protect the rights of the Commonwealth and of purchasers when a nursing home changes hands.

These changes were, however, effective only prospectively, applying to overpayments in relation to benefit paid to proprietors after the commencement of the amendments, on 1 July 1993.

The National Health Amendment Bill (No. 3) 1993 amends the National Health Act 1953 to provide for the collection and recovery of "nursing home charge" equal to the amount of any unspent benefit paid in respect of a period prior to 1 July 1993.

The Bill introduces several new terms into the National Health Act:

- nursing home charge - the amount of nursing home charge that a vendor is liable to pay in the amount of any benefit unspent in respect of the nursing home for a period up to 30 June 1993;
- fee-increasing benefit - an amount of Commonwealth benefit that the vendor or an earlier proprietor of the nursing home missed out on receiving. When taken into account in accordance with the principles formulated under subsection 40AA(7) of the Principal Act for the purpose of determining a scale of fees, it will have the effect of increasing the fees;
- fee-reducing benefit - an amount of Commonwealth benefit that the vendor or an earlier proprietor of the nursing home should not have received. When taken into account in accordance with the principles formulated under subsection 40AA(7) for the purpose of determining a scale of fees it will have the effect of reducing the fees; however, where a nursing home is sold such an amount will not usually be reflected in the ongoing nursing home fees, but will instead represent the amount

of nursing home charge payable by the vendor and be recovered at the point of sale;

- charge period - a period beginning on a day currently determined by the Secretary under paragraph 65C(1)(c) or 65F(1)(c) or subsection 65G(3) (as the case may be) and ending on 30 June 1993; and
- assessment - the calculation of the amount of fee-reducing benefit paid in relation to the nursing home in respect of the charge period and therefore the amount of nursing home charge payable.

Fee-reducing benefit received for a period up to 30 June 1993 will, as a result of this Bill, be recoverable as nursing home charge, whilst fee-reducing benefit received for the period from 1 July 1993 will continue to be recovered as an overpayment in accordance with the 1992 amendments. The methods and timing of collection of nursing home charge are the same as those provided for the collection of overpayments.

The 1992 Amendment Act had the effect of creating recoverable debts of amounts of unspent benefit paid in respect of periods from the commencement of those amendments. In introducing a mechanism for the collection of those debts from the vendor at the point of sale and providing that the vendor could, if necessary, be pursued for the debt through the courts, that Act increased the protection for the Commonwealth's rights to money owed and for the rights of purchasers of nursing homes to buy homes unencumbered by liabilities accrued by previous owners.

This Bill provides for the same protection in respect of liabilities accrued prior to the introduction of those amendments.

#### **FINANCIAL IMPACT STATEMENT**

Although technically a "tax" Bill, this Bill has little direct financial impact. It provides a mechanism for the collection and recovery of a "charge" from the vendor on sale of a nursing home, equal to any amount of benefit unspent in respect of the nursing home prior to 1 July 1993. Such amounts would otherwise be recovered by way of an ongoing negative fee loading from the purchaser; in enabling these amounts to be recovered on sale rather than from the purchaser, this Bill creates a more equitable system, complements the protection already afforded purchasers as a result of 1992 amendments to the National Health Act 1953, and enables a more timely recovery of Commonwealth monies.

There will be a small cost to the Commonwealth arising from interest payable on trust monies that are paid to the vendor, however, this should be offset by interest earned on trust monies.

**NATIONAL HEALTH AMENDMENT BILL (NO. 3) 1993**

**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 (No. 3) 1993 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 this Act commences when it receives Royal Assent, with the exception of sections 8, 9, 10 and 15, which are taken to have commenced on 1 July 1993.

**Clause 3 - Object of Part**

This clause amends section 63 of the Principal Act which describes the object of Part VD of the Principal Act, by including in the object the collection and recovery of nursing home charge imposed by the Nursing Home Charge (Imposition) Act 1993.

**Clause 4 - Application and operation of Part**

This clause amends section 64 of the Principal Act by omitting the table in paragraph 4(b) and substituting a new table illustrating the operation of the amended Part VD.

**Clause 5 - Interpretation**

This clause omits the definition of "fee-determining benefit" from subsection 65(1) of the Principal Act and inserts the following new definitions:

- . "assessment";
- . "chargepayer";
- . "fee-increasing benefit";
- . "fee-reducing benefit";

- . "late-payment penalty";
- . "nursing home charge";
- . "remainder of the purchase price"; and
- . "vendor advance".

**Clause 6 - Vendor must give notice of sale of an approved nursing home**

This clause amends section 65A of the Principal Act to include the purchase price in the details of sale of a nursing home which must be notified to the Department by a vendor.

**Clause 7 - Purchaser to give notice of prospective purchase of approved nursing home**

This clause amends section 65B to include the purchase price in the details of sale of a nursing home to be notified to the Department by a purchaser.

**Clause 8 - Investigation of accounts etc., of approved nursing homes**

This clause amends section 65C of the Principal Act by inserting a new subsection (3) which provides that an investigation under paragraph 65C(1)(d) must be completed within 90 days of completion of the sale.

**Clause 9 - Proprietor gives less than 90 days notice on settlement of contract of sale or settles in less than 90 days**

This clause amends section 65F of the Principal Act by inserting a new subsection (2A) which provides that an investigation must be completed within 90 days of completion of the sale.

**Clause 10 - If no notice of sale given or vendor sells before notified date**

This clause amends section 65G of the Principal Act by inserting a new subsection (3A) which provides that an investigation must be completed within 90 days of the day on which the Secretary becomes aware that the nursing home has been sold.

**Clause 11 - Division 2A - Nursing home charge**

This clause inserts a new Division in Part VD of the Principal Act, incorporating three new subdivisions.

## **Subdivision 1 - Assessment**

The first subdivision contains a number of new subsections concerned with the assessment of nursing home charge payable by the vendor of an approved nursing home which is to be sold.

### **Notice of fee-reducing benefit**

The new section 65GA provides that the Secretary must give notice of any nursing home charge payable.

Depending on the amount of notice given to the Minister of a sale, an investigation of nursing home accounts must be carried out under either paragraphs 65C(1)(c) (more than 90 days notice), 65F(1)(c) (less than 90 days) or subsection 65G(3) (no notice) of the Principal Act.

The new subsection 65GA(1) provides that where such an investigation is completed after the commencement of the new section and the investigation reveals that a fee-reducing benefit has been paid to a proprietor of the home for the period being investigated, the Secretary is to work out whether any of that benefit was received in respect of the "charge period" i.e., prior to 1 July 1993. (Part VD already addresses the recovery on sale of overpayments made in respect of that period from 1 July 1993 onwards.)

The new subsection 65GA(2) provides that if a fee-reducing benefit was received in respect of the charge period the Secretary may give notice of the amount to the vendor.

### **Liability to pay nursing home charge**

The new subsection 65GB(1) provides that if a notice is given to the vendor under section 65GA, nursing home charge is payable in respect of the nursing home.

The new subsection 65GB(2) provides that the vendor is liable for the nursing home charge.

### **Amount of nursing home charge**

The new section 65GC specifies that the amount of nursing home charge payable is the amount of the fee-determining benefit notified to the vendor under section 65GA.

### **Notice of liability to pay nursing home charge**

The new section 65GD provides that once notice has been given under section 65GA, the Secretary must give the vendor notice in writing that the vendor is liable to pay nursing home charge, the amount of that charge and the day on which it is payable.

### **Assessment**

The new section 65GE provides that the working out by the Secretary of any amount of fee-reducing benefit received during the charge period is taken to be an assessment of the nursing home charge payable and that a notice under section 65GA of that amount is taken to be a notice of assessment.

### **Amendment of assessments**

The new subsection 65GF(1) provides that the Secretary has a discretion to amend an assessment of nursing home charge payable.

The new subsection 65GF(2) provides that such an amendment must be made within 3 years from the day nursing home charge becomes payable.

The new subsection 65GF(3) provides that where a chargepayer applies within 3 years from the day the charge is payable for an amendment of an assessment and makes all necessary information available to the Secretary, the Secretary may amend the assessment even if the period of 3 years has elapsed.

The new subsection 65GF(4) provides that the Secretary may amend an assessment whether or not nursing home charge in relation to that assessment has been paid.

The new subsection 65GF(5) provides that the Secretary must give the chargepayer notice of any amended assessment.

The new subsection 65GF(6) provides that if, as the result of an amended assessment, the amount of nursing home charge payable increases, the Secretary's notice must specify the extra amount payable and the day on which it is payable.

The new subsection 65GF(7) provides that nothing in section 65GF prevents the amendment of an assessment as a result of a review, appeal or an objection in relation to a particular.



### **Refund of overpaid amounts**

The new subsection 65GG(1) provides that where an amended assessment results in a reduction of charge payable, the amount of that reduction is taken never to have been payable. It further provides that the Secretary must either refund any overpaid amount or apply that overpaid amount against any liability established by an investigation of nursing home accounts under paragraphs 65C(1)(c), 65F(1)(c) or subsection 65G(3) of the Principal Act. If the overpaid amount is applied against a liability, any remainder is to be refunded to the chargepayer by the Secretary.

The new subsection 65GG(2) provides that an overpaid amount includes any late-payment penalty imposed under the new section 65GM.

### **Amended assessment to be an assessment**

The new section 65GH provides that in applying any provision of Part VD of the Principal Act to an amended assessment, that amended assessment is taken to be an assessment.

### **Objections**

This section provides for Ministerial consideration of an objection to the Secretary's assessment of a person's liability to pay nursing home charge.

The new subsection 65GI(1) provides that a person assessed as liable to pay a nursing home charge and who is not satisfied with the assessment, may object in writing within 42 days of being notified of the assessment, setting out the reasons for the objection.

The new subsection 65GI(2) provides that the Minister must consider an objection and reject it or allow it in full or in part.

The new subsection 65GI(3) provides that the Minister must give the person written notice of the decision in relation to the objection.

The new subsection 65GI(4) provides that the right to object to an assessment that has been amended in any particular is limited to matters relating to that particular.

### **Validity of assessment**

The new section 65GJ provides that failure to comply with any provision of the Principal Act as amended does not affect the validity of an assessment.

**Evidentiary effect of notice of assessment etc.**

The new subsection 65GK(1) provides that a notice of assessment or a copy of such a notice is to be taken to be evidence that the assessment was made and that the particulars in the assessment are correct.

The new subsection 65GK(2) provides that certification by the Secretary that an amount is payable by a chargepayer is evidence of the matters certified by the Secretary.

The new subsection 65GK(3) provides that the evidentiary effect created by virtue of section 65GK does not apply in proceedings under the Administrative Appeals Tribunal Act 1975 and the Administrative Decisions (Judicial Review) Act 1977 on a review or an appeal relating to an assessment.

**Subdivision 2 - Collection and recovery**

The second new subdivision sets out the administrative arrangements for the collection of nursing home charge.

**Secretary may extend time for payment**

The new section 65GL provides that the Secretary may extend the time for payment of nursing home charge (including late payment penalty).

**Penalty for late payment**

The new subsection 65GM(1) provides that if charge payable by a chargepayer has not been paid by the due date, the chargepayer is liable to pay a penalty of 16% of the unpaid amount per year.

The new subsection 65GM(2) specifies that the penalty is to be calculated on the unpaid amount from the due date for payment.

The new subsection 65GM(3) provides that where a judgement has been entered or given in a court for the payment of charge, this will not alter the fact that the charge has remained unpaid from the original due date.

The new subsection 65GM(4) provides that if the judgement debt includes interest, the penalty will be reduced by a proportion of the interest as follows:

interest on judgement debt X charge component of judgement debt  
judgement debt

The new subsection 65GM(5) provides that the Secretary will be able to remit some, or all, of the penalty for unpaid tax if satisfied that the circumstances warrant it. These circumstances are:

- (a) where the person has taken steps to mitigate the cause of any delay for which they were not responsible; or
- (b) . where the person has taken steps to mitigate the cause of any delay they were responsible for; and
  - . where the reasons for the delay are such that it would be fair and reasonable to cancel all or part of the penalty; or
- (c) where there are special circumstances that warrant cancellation of all or part of the penalty.

#### **Recovery of unpaid nursing home charge**

The new section 65GN provides that unpaid nursing home charge (including any late payment penalty) is recoverable as a debt through court proceedings.

#### **Recovery of nursing home charge from persons with joint liability**

This section provides a specific avenue of redress for persons who pay nursing home charge for which another person or persons are jointly liable.

The new subsection 65GO(1) provides that where the chargepayer (vendor) comprises a group of persons jointly liable to pay nursing home charge (including any late payment penalty), each of the persons is liable for the whole of the charge.

The new subsection 65GO(2) provides that a person who has paid nursing home charge may recover, from any other person jointly liable to pay, so much of the charge paid as is commensurate with the person's interest in the nursing home.

The new subsection 65GO(3) provides that such money may be recovered as a debt through court proceedings or deducted from any monies held by the person who paid the charge, that is due to the other person.

**Recovery of nursing home charge from trustee of deceased chargepayer**

This section enables nursing home charge to be recovered from the estate of a deceased vendor where the vendor dies prior to completion of the sale.

The new subsection 65GP(1) provides that the new section 65GP applies where the vendor dies before completion of the sale of a nursing home and either had not been assessed for a liability at the time of death or nursing home charge payable (including any late payment penalty) has not been paid at the time of death.

The new subsection 65GP(2) provides that any notice of assessment that would have been given to the deceased chargepayer is to be given to the trustee of the estate.

The new subsection 65GP(3) provides that nursing home charge for which a deceased chargepayer is or would have been liable, is recoverable from the trustee of the chargepayer's estate.

The new subsection 65GP(4) provides that the trustee of a chargepayer's estate is subject to the same statutory duties and penalties as the chargepayer would have been.

The new subsection 65GP(5) provides that a trustee has the same rights of objection as provided for the chargepayer in the new section 65GI.

The new subsection 65GP(6) provides that references to nursing home charge in this section include any late payment penalty.

**Recovery of nursing home charge from unadministered deceased estate**

The new subsection 65GQ(1) provides that the new section 65GQ enables nursing home charge to be recovered from a deceased chargepayer's estate where administration of the estate does not begin within 6 months after the chargepayer's death.

The new subsection 65GQ(2) enables the Secretary to assess the nursing home charge that would have been payable by the deceased.

The new subsection 65GQ(3) provides that there is a duty on the Secretary to publish twice in the daily press in the State or Territory in which the chargepayer lived at the time of death, notice of any assessment. This provides an opportunity for any persons with an interest in the estate to be aware of the assessment.

The new subsection 65GQ(4) provides that a person who has an interest in a deceased chargepayer's estate and who is not satisfied with the Secretary's assessment, has the same rights of objection as provided for the chargepayer in the new section 65GI.

The new subsection 65GQ(5) provides that a person legally entitled to administer a chargepayer's estate, and who is not satisfied with the Secretary's assessment, has the same rights of objection as provided for the chargepayer in the new section 65GI.

The new subsection 65GQ(6) defines the time when administration of a chargepayer's estate is taken to begin and provides that in the new section 65GQ "nursing home charge" includes any late payment penalty.

### **Subdivision 3 - Advance payments**

#### **Overview of subdivision**

The new subsection 65GR(1) broadly describes the purpose of this Subdivision, which is to provide a mechanism for the collection of nursing home charge before the sale of a nursing home, either from the vendor, the purchaser, or both. This mechanism is effectively the same as that provided in the Principal Act for the recovery of overpayments. Where money is collected from the purchaser, that money is taken to be paid in settlement or part settlement of the purchase price and therefore recovery is effectively from the vendor.

The new subsection 65GR(2) provides that the circumstances in which the Commonwealth may collect such money are where there is a likelihood that an assessment will reveal a vendor's liability to pay nursing home charge, or where an assessment has revealed such a liability.

**If paragraph 65C(1)(c) investigation done - direction to purchaser to pay amount to the Commonwealth**

Where the Secretary receives 90 days or more notice of the sale of a nursing home, the Secretary must order certain investigations, including, under paragraph 65C(1)(c) of the Principal Act, an investigation in respect of the period beginning on a day determined by the Secretary and ending on the last 30 June.

(Note: nursing home charge may only be imposed in relation to fee-reducing benefit received prior to 1 July 1993 {the "charge period"}; other investigations will reveal whether any overpayments have resulted from fee-reducing benefit received after 1 July 1993. These overpayments are recovered under existing provisions in a manner identical to the way in which the charge will be collected.)

The new subsection 65GS(1) provides that where an investigation of nursing home accounts has been completed under paragraph 65C(1)(c) of the Principal Act and reveals that the vendor is liable to pay nursing home charge, the Secretary may direct the purchaser to pay to the Commonwealth, prior to completion of the sale, money from the purchase price. The Secretary may direct the purchaser to pay as much of the purchase price as equals the nursing home charge due or, if the charge exceeds the purchase price, the whole of the purchase price.

The new subsection 65GS(2) provides that any money paid to the Commonwealth by the purchaser as a result of a direction from the Secretary, is taken to be paid in settlement of nursing home charge.

The new subsection 65GS(3) provides that any money paid to the Commonwealth by the purchaser is taken to be paid as consideration under the contract of sale. This effectively enables the collection of nursing home charge indirectly from the vendor, via the purchaser without disadvantaging the latter.

**If paragraph 65F(1)(c) investigation has been ordered - vendor's and purchaser's liability to pay advance**

Where the Secretary receives less than 90 days notice of the sale of a nursing home, the Secretary must order an investigation of nursing home accounts under paragraph 65F(1)(c) of the Principal Act, in respect of the period beginning on a day determined by the Secretary and ending on the day immediately before the contract of sale is to be completed.

**(Note: nursing home charge may only be imposed in relation to fee-reducing benefit received prior to 1 July 1993 {the "charge period"}; other investigations will reveal whether any overpayments have resulted from fee-reducing benefit received after 1 July 1993. These overpayments are recovered under existing provisions in a manner identical to the way in which the charge will be collected.)**

The new subsection 65GT(1) provides that the new section 65GT applies where the Secretary determines, as a result of the investigation into the nursing home accounts, the estimated amount of any fee-reducing benefit that in the opinion of the Secretary, was received in respect of the nursing home during the investigation period.

The new subsection 65GT(2) provides that the Secretary must determine if any of that fee-reducing benefit (unspent benefit) was received in respect of a period prior to 1 July 1993 (the charge period); if so, the vendor is liable to pay nursing home charge equal to that amount.

The new subsection 65GT(3) provides that where charge is payable, the Secretary may direct the purchaser to pay to the Commonwealth, prior to completion of the sale, money from the purchase price.

The new subsection 65GT(4) provides that if the purchaser has not been directed under the new subsection 65GT(3) to pay money to the Commonwealth from the purchase price, or if the purchaser has been so directed but the charge payable exceeds the purchase price, the Secretary may direct the vendor to pay the outstanding charge directly to the Commonwealth.

The new subsection 65GT(5) provides that the vendor must comply with the direction and provides a penalty of 500 penalty units for not complying. As this section is complementary to the similar subsection 65K(1) in the Principal Act, the penalty is set at the same level as in that subsection.

The new subsection 65GT(6) provides that an amount paid by the vendor or the purchaser in answer to a direction by the Secretary is held in trust by the Commonwealth until the investigation into the vendor's liability is completed, when the two amounts will be acquitted.

The new subsection 65GT(7) provides that any money paid by the purchaser and held in trust by the Commonwealth for the benefit of the vendor is taken to have been paid in consideration under the contract of sale.

The new subsection 65GT(8) defines "investigation period" as the period applying under paragraph 65F(1)(c) of the Principal Act (a period beginning on a day determined by the Secretary and ending on the day before the day of completion of the sale).

#### **Treatment of money paid in advance under section 65GT**

The new subsection 65GU(1) provides that the new subsections 65GU(2), (3) and (4) set out the way in which money held in trust is to be treated.

The new subsection 65GU(2) provides that if the investigation finds that the vendor is not liable to pay nursing home charge, money held in trust is to be held until the vendor's liability to repay any overpayment is determined.

The new subsection 65GU(3) provides that if it is determined that the vendor is liable to repay an overpayment, the trust money is to be applied by the Secretary against the liability and any balance repaid to the vendor.

The new subsection 65GU(4) provides that where the investigation finds that the vendor is liable to pay nursing home charge, the money held in trust is applied against the charge liability. If any trust money remains, it is to be applied by the Secretary against any liability for an overpayment established by an investigation under paragraph 65F(1)(c) or (d) of the Principal Act. If there is still an excess of trust money it is repaid to the vendor.

#### **Directions to be in writing**

The new subsection 65GV(1) provides that a direction to a purchaser under the new section 65GS or 65GT requiring money to be paid to the Commonwealth must be in writing and set out the amount of the purchase price payable and the day on which it is payable.

The new subsection 65GV(2) provides that a direction to a vendor, requiring money to be paid to the Commonwealth under section 65GT must be in writing and set out the details of any direction given to the purchaser and the day on which any amount payable by the vendor is due.

The new subsection 65GV(3) provides that a direction must not specify a day for payment that is later than the notified day for completion of sale.

#### **Scale of fees may take account of nursing home charge**

The new subsection 65GW(1) provides that the principles formulated under subsection 40AA(7) of the Principal Act may provide that the Secretary, in determining a scale of fees or a notional scale of fees, can take into account any unpaid nursing home charge and reduce the fees that the proprietor may charge accordingly.

The new subsection 65GW(2) provides that if the outstanding charge is paid to the Commonwealth after the scale of fees or notional scale of fees is determined, the Secretary must determine a new scale of fees.

The new subsection 65GW(3) provides that any new scale of fees determined after the charge is paid to the Commonwealth must reflect the fact that there is no outstanding charge.

At the foot of the new section 65GW a Note is inserted which provides that in determining a notional scale of fees, the Secretary will determine whether the proprietor received the correct amount of general care benefit during the accounting period. In doing so, the Secretary will take into account the fact that the nursing home fees were reduced as a result of



outstanding nursing home charge. The Note further provides that if the proprietor should have received a higher level of general care benefit, the notional fees will be adjusted to reflect that the proprietor was underpaid.

**Clause 12 - If paragraphs 65C(1)(c) and (d) investigations done - direction to purchaser to pay amount to the Commonwealth**

This clause amends section 65H of the Principal Act by omitting subsection (1) and substituting two new subsections.

The new subsection 65H(1) applies if investigations under paragraphs 65C(1)(c) and (d) have been ordered and the purchaser has not been directed under the new section 65GS to pay an amount to the Commonwealth from the purchase price. It provides that the Secretary may direct the purchaser to pay an amount prior to completion of the sale. The amount that is the subject of the direction will be equal to the sum of any overpayment established by the first investigation and the estimated amount of any overpayment in respect of the second investigation period (or, if this sum exceeds the purchase price, the whole of the purchase price). (Note: the first investigation period begins on a day determined by the Secretary and ends on the last preceding 30 June. The second investigation period begins on the immediately preceding 1 July and ends on the day before completion of the sale.)

The new subsection 65H(1A) applies if investigations of nursing home accounts under paragraphs 65C(1)(c) and (d) have been ordered and the purchaser has been directed under the new section 65GS to pay an amount to the Commonwealth from the purchase price. It provides that the Secretary may direct the purchaser to pay so much of the remainder of the purchase price as equals the sum of any overpayment established by the first investigation and the estimated amount of any overpayment in respect of the second investigation period (or, if this sum exceeds the remainder of the purchase price, the remainder of the purchase price). (Note: the first investigation period begins on a day determined by the Secretary and ends on the last preceding 30 June. The second investigation period begins on the immediately preceding 1 July and ends on the day before completion of the sale.)

**Clause 13 - If amount determined under paragraph 65F(1)(e) - direction to purchaser to pay amount to the Commonwealth**

This clause amends section 65J of the Principal Act by omitting subsection (1) and inserting two new subsections.

Where the Secretary receives less than 90 days notice of a sale, he or she must, under paragraph 65F(1)(c) of the Principal Act, order an investigation of nursing home accounts to be carried out

in respect of a period beginning on a day determined by the Secretary and ending on the day before completion of sale.

The new subsection 65J(1) applies where, as a result of such an investigation, the Secretary determines under paragraph 65F(1)(c) that there has been an overpayment and the purchaser has not been directed under the new section 65GT to pay an amount to the Commonwealth from the purchase price. It provides that the Secretary may direct the purchaser to do so prior to completion of the sale. The amount that is the subject of the direction will be equal to the amount of overpayment determined under paragraph 65F(1)(e) (or, if the overpayment exceeds the purchase price, the whole of the purchase price).

The new subsection 65J(1A) applies where, as a result of the investigation, the Secretary determines under paragraph 65F(1)(e) that there has been an overpayment and the purchaser has been directed under the new section 65GT to pay an amount to the Commonwealth from the purchase price. It provides that the Secretary may direct the purchaser to pay from the remainder of the purchase price an amount equal to the overpayment (or, if the overpayment exceeds the remainder, the whole of the remainder).

#### **Clause 14 - Application for review by Tribunal**

This clause amends subsection 105AB(1AA) of the Principal Act which deals with applications for review by the Administrative Appeals Tribunal. It provides that application may be made to the Tribunal for review of the Minister's decision on consideration of an objection made under the new section 65GI.

#### **Clause 15 - Division 4 - Miscellaneous**

This clause inserts a new Division in Part VD of the Principal Act.

#### **Division 4 - Miscellaneous**

##### **Interest payable on repayments to vendors made under Division 3**

The new subsection 65SA(1) provides that if the Commonwealth is liable to repay an amount to the vendor under the new section 65H, 65J, 65M, 65N, 65P, 65Q or 65S from money held in trust, it must also pay interest on the amount at commercial rates.

The new subsection 65SA(2) provides that if an amount of purchaser payment is repayable to the vendor under section 65H or 65J of the Principal Act, the interest is payable for the period from the day of completion of the sale to the day on which the money is repaid.

The new subsection 65SA(3) provides that if an amount of vendor payment is repayable under section 65M of the Principal Act, the interest is payable for the period from the day on which the vendor paid the overpayment outstanding to the Commonwealth under subsection 65K(2) of the Principal Act and ending on the day on which the money is repaid.

The new subsection 65SA(4) provides that if an amount of vendor payment is repayable to the vendor under section 65N, 65P, 65Q or 65S of the Principal Act, the interest is payable for the period from the day on which the vendor paid the money to the Commonwealth to the day on which the money is repaid.

**Clause 16 - Interest payable and repayments to vendors made under Division 2A**

The new subsection 65SB(1) provides that if, under the new section 65GU, the Commonwealth is liable to repay an amount to the vendor from monies held in trust, it is also liable to pay interest on that amount for the periods set out in the new subsections 65SB(2) and (3).

The new subsection 65SB(2) provides that if only the purchaser has made a payment in answer to a direction under the new section 65GT, the interest is payable for the period from the day of completion of the sale to the day on which the money is repaid.

The new subsection 65SB(3) provides that if both the purchaser and the vendor have made payments in answer to a direction under the new section 65GT, the interest is payable for the period from the day on which the vendor advance was paid to the day on which the money is repaid.

**Clause 17 - Further amendments to Part VD**

This clause amends Part VD of the Principal Act as set out in Schedule 1 of the Bill. All references to "fee-determining benefit" are omitted and replaced by appropriate references to "fee-reducing benefit" and "fee-increasing benefit". (Clause 5 amends the definitions in subsection 65(1) accordingly).









