

1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NURSING HOMES AND HOSTELS LEGISLATION

AMENDMENT BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister representing the
Minister for Community Services, the Hon B Howe MP)

NURSING HOMES AND HOSTELS LEGISLATION AMENDMENT BILL 1986

OUTLINE

This Bill would implement Budget measures requiring amendments to nursing homes and hostels legislation administered by the Minister for Community Services. The Bill would also deal with some other minor matters. The main measures are outlined below.

Aged or Disabled Persons Homes Act 1954

Under this Act, the Commonwealth makes grants to eligible organisations towards meeting the capital cost of homes for aged or disabled people. The amount of a grant under the Act may not exceed 80% of the capital cost of the home. However, eligible organisations representing disadvantaged groups in the community such as Aborigines and ethnic groups find difficulty in raising the required matching funds. The Act would be amended to enable grants to be an amount up to the full capital cost of the home, where the home is to be used exclusively or almost exclusively for the accommodation of members of financially disadvantaged groups.

Under this Act, the Commonwealth also provides hostel care subsidies, personal care subsidies and respite care bed subsidies to eligible organisations providing hostel type accommodation for aged or disabled people. The Government has decided to increase the rates of these subsidies from 22 October 1986. The hostel care subsidy (payable for all residents of hostels assessed as requiring and who receive hostel care services) would be increased from \$1.80 per day to \$1.95 per day. The personal care subsidy (payable in respect of hostel residents assessed as requiring, and who receive,

assistance in the performance of daily living tasks) would be increased from \$7.80 per day to \$8.40 per day from 22 October 1986, and would be increased again to \$11.00 per day from 6 May 1987.

The respite care bed subsidy encourages the provision of respite care beds in hostels. This subsidy assists families and individuals who care for elderly people in their homes but who require an avenue to enable short breaks from the demands of care at home. It also assists elderly people looking after themselves at home who may require some additional short-term support. The rate of this subsidy would be increased from \$7.00 per day to \$7.50 per day from 22 October 1986.

In addition, the Act would be amended to provide a mechanism for annual automatic increases in the subsidy rates for hostel care, personal care and respite care.

National Health Act 1953 and Nursing Homes Assistance Act 1974

These Acts provide financial assistance in respect of nursing homes. The Government is concerned that in the past, there has been too great an emphasis on nursing home care at the expense of the more appropriate and less costly forms of care available from hostels and community care services.

This Bill would aid the redistribution of resources towards more appropriate forms of care by introducing new growth control arrangements over the approval in principle and approval mechanisms for new nursing homes and new nursing home beds in existing nursing homes.

The Bill would also introduce a new mechanism in these Acts to enable the provision of special needs beds in nursing homes and would strengthen the special purpose provisions in each Act to make it a condition of approval of a nursing home that the operations of the nursing home be carried out in accordance with a special purpose determined in relation to the nursing home.

The Bill would also make some minor amendments to these Acts. These amendments would correct minor drafting defects and substitute a notice mechanism in each Act for some of the regulations under the Acts.

FINANCIAL IMPACT STATEMENT

Amendments to the Aged or Disabled Persons Homes Act 1954:

- . Increase in amount of capital grants where a home is to be used for members of financially disadvantaged groups:

costs \$0.5m in 1986-87; \$2.8m in 1987-88

- . Increases in subsidy levels and introduction of automatic indexation:

costs \$5.6m in 1986-87; \$26.5m in 1987-88

Amendments to the National Health Act 1953 and the Nursing Homes Assistance Act 1974

- . Introduction of growth control arrangements:

savings \$4m in 1986-87; \$27.7m in 1987-88

- . The other amendments would involve no significant costs and several will result in some administrative savings to the Commonwealth. The net financial impact is expected to be neutral.

NURSING HOMES AND HOSTELS LEGISLATION AMENDMENT BILL 1986

PART I - PRELIMINARY

Clause 1: Short title

This clause provides that the amendment Act could be cited as the Nursing Homes and Hostels Legislation Amendment Act 1986.

Clause 2: Commencement

This clause provides for the dates on which various provisions of the amendment Act would come into operation.

Clauses 2(1), (2) and (3) provide that certain provisions would come into operation on particular days.

Clause 2(4) provides that certain provisions would come into operation on a day or days to be fixed by proclamation.

The effect of these clauses is explained in the notes to the relevant clauses.

Clause 2(5) provides that provisions not coming into operation on a specific day or on a day to be fixed by proclamation would come into operation on the day on which the amendment Act received the Royal Assent.

PART II - AMENDMENTS OF THE AGED OR DISABLED
PERSONS HOMES ACT 1954

Clause 3: Principal Act

This clause provides that the Aged or Disabled Persons Homes Act 1954 would be referred to in this Part as the Principal Act.

Clause 4: Amount of grants

Sub-section 9(1) of the Principal Act fixes the maximum amount of grant which the Secretary may make to an eligible organisation as assistance towards meeting the capital cost of an approved home. Under this sub-section, the amount of grant may not exceed 80% of the capital cost of the home or 4 times the amount of the funds of the organisation available for expenditure toward the capital cost, whichever is the less.

Some eligible organisations which represent disadvantaged groups in the community experience difficulty in raising the required matching funds. The "Nursing Homes and Hostels Review" report, tabled in the Senate on 14 April 1986, recommended that there should be flexibility in matching arrangements to allow for up to 100% of Commonwealth funds for special groups, including ethnic communities, Aborigines and other disadvantaged groups (recommendation 18). This clause would implement this recommendation.

Clause 4(a) would omit sub-section 9(1) and substitute a new sub-section which would retain the current maximum amount of grant in the usual case, but provide for a higher maximum in the case of a home intended to be used exclusively or almost exclusively for the accommodation of persons who are financially disadvantaged persons.

New paragraph 9(1)(a) retains the current maximum amount of grant in a case to which paragraph 9(1)(b) does not apply.

New paragraph 9(1)(b) provides that the amount of a grant may not exceed the capital cost of the home in a case where the Secretary is satisfied that the home is intended to be used exclusively or almost exclusively for the accommodation of financially disadvantaged persons.

Clause 4(b) would insert a new sub-section 9(3) defining "financially disadvantaged person" for the purposes of sub-section 9(1) to be an eligible person included in a class of persons that the Secretary determines is a class of financially disadvantaged persons.

Clause 5: Payments to approved organisations

Section 10C of the Principal Act specifies the rates of subsidy payable under Part III of the Principal Act.

The current daily rates are -

- . \$1.80 per day in respect of a person assessed as requiring hostel care services;
- . \$7.80 per day in respect of a person assessed as requiring hostel care services and personal care services; and
- . \$7 per day in respect of a person occupying a "respite care" bed (ie a bed made available on a respite care basis).

Clause 5(1)(a) would restructure paragraphs 10C(1)(a), (b) and (c) to increase each of these rates and also provide for higher rates to be prescribed in regulations. The new rates are -

- . new paragraph 10C(1)(a): \$1.95 per day in respect of a person assessed as requiring hostel care services;

- new paragraph 10C(1)(b): \$8.40 per day in respect of a person assessed as requiring hostel care services and personal care services; and
- new paragraph 10C(1)(c): \$7.50 per day in respect of a person occupying a "respite care" bed.

Clause 5(1)(b) would insert a new sub-section 10C(1A) in the Principal Act to provide that regulations made for the purposes of paragraphs 10C(1)(a), (b) and (c) may prescribe a method of calculating a rate. This will enable an indexation formula to be included in the regulations to provide for annual increases in these rates.

The payment of these subsidies is made in relation to a 28 day period. The new rates will apply in relation to the payment period which commences on 22 October 1986.

Clause 5(2) would provide that the amendments made by clause 5(1) apply in relation to payments in respect of days occurring after 21 October 1986.

By clause 2(2), clauses 5(1) and 5(2) would be deemed to have come into operation on 22 October 1986.

Clause 5(3) would increase the rate of personal care subsidy in paragraph 10C(1)(b) of the Principal Act from \$8.40 per day to \$11.00 per day.

Clause 5(4) would provide that the amendment made by clause 5(3) applies in relation to payments in respect of days occurring after 5 May 1987. The new rate will apply in relation to the payment period which commences on 6 May 1987.

By clause 2(3), clauses 5(3) and 5(4) would come into operation on 6 May 1987.

PART III - AMENDMENTS OF THE NATIONAL HEALTH ACT 1953

Clause 6: Principal Act

This clause provides that the National Health Act 1953 would be referred to in this Part as the Principal Act.

Clause 7: Interpretation

This clause would amend section 4 of the Principal Act which provides definitions of terms used in, and rules for the interpretation of the Principal Act.

Clause 7(1) would omit the definition of "Government nursing home" in sub-section 4(1) of the Principal Act and substitute a new definition.

The current definition requires that Government nursing homes be prescribed in regulations and be conducted by or on behalf of Australia or a State. The amendment would simplify the mechanism for approving Government nursing homes by requiring only that they be specified by the Minister by notice in writing.

By virtue of the amendments contained in clauses 21 and 22, Part XII of the Acts Interpretation Act 1901 would apply in relation to such a notice. The notice would be required to be notified in the Gazette and laid before each House of the Parliament and would be subject to disallowance in the same manner as regulations.

By clause 2(4), clause 7(1) would come into operation on a day to be fixed by proclamation.

The definition of "nursing home care" in sub-section 4(1) of the Principal Act provides that "nursing home care" means accommodation and nursing care of a kind provided in a nursing home and includes any prescribed service of a kind provided in a nursing home.

Clause 7(2) would simplify the mechanism contained in the definition for approving services of a kind provided in a nursing home by omitting the requirement that they be prescribed in regulation and require instead that they be specified by the Minister by notice in writing published in the Gazette.

Clause 8: Repeal of section 39 and substitution
of new sections

This clause would repeal section 39 of the Principal Act and substitute new sections 39 and 39AA.

The current section 39 provides definitions of terms used in Part V of the Principal Act.

New section 39 would perform the same role. It would define the terms currently found in section 39 as well as a number of new terms.

The definitions of "authorised" and "Commonwealth benefit" are in substance the same as the definitions in the current section 39, although a minor drafting change is made in the case of the definition of "authorised". The new terms "maximum bed number", "maximum ordinary bed number", "maximum special bed number", "Nursing Homes Act", "relevant period" and "special needs group" are also defined.

New section 39AA would provide a new growth control mechanism in the Act.

Under this mechanism, the Minister would determine the maximum number of nursing home beds which can exist at any time during a financial year, in each State and Territory (the State maximum).

The Minister would also determine a maximum number of ordinary beds for each region within a State or Territory (the regional maximum) and a maximum number of special needs beds for each State and Territory (the special bed maximum). The sum of the regional maximums in a State or Territory and the special bed maximum for that State or Territory would not exceed the relevant State maximum.

The above determinations would be made by notice published in the Gazette and could be revoked or varied by later notices published in the Gazette.

The Minister would be prevented, under this mechanism, from granting an approval in principle, or an approval for a new nursing home, or new nursing home beds, under the Principal Act or the Nursing Homes Assistance Act 1974 (Nursing Homes Act) if the effect of so doing would be that -

- . the number of approved beds in a State or Territory would exceed the relevant State maximum;
- . the number of ordinary approved beds in a region within a State or Territory would exceed the relevant regional maximum; or
- . the number of beds approved in relation to special needs groups in a State or Territory would exceed the relevant special bed maximum.

Elsewhere in the Bill, a new mechanism is introduced to enable nursing home beds to be approved in relation to special needs groups. The growth control mechanism in section 39AA would also prevent such approvals where the effect of so doing would be that any of the 3 maximums referred to above are exceeded.

The new section 39AA also provides the method of calculating -

- . the number of approved beds in a State or Territory, or in a region;
- . the number of beds approved in relation to special needs groups in a State or Territory, or in a region; and
- . the number of ordinary approved beds in a region within a State or Territory.

The new section 39AA also contains rules to prevent double counting of beds and rules for the interpretation of section 39AA.

New sub-sections 39AA(1), (2) and (3) would enable the Minister to specify various numbers by notice in writing published in the Gazette.

New sub-section 39AA(1) would enable the Minister to specify a maximum bed number for a State or Territory (the State maximum).

New sub-section 39AA(2) would enable the Minister to specify a maximum ordinary bed number for a particular region within a State or Territory (the regional maximum).

New sub-section 39AA(3) would enable the Minister to specify a maximum special bed number for a State or Territory (the special bed maximum).

Under each of these sub-sections, the maximum number is required to be specified in relation to a relevant period. The term "relevant period" would be defined in the new section 39 to mean the period 1 December 1986 to 30 June 1987, the year commencing on 1 July 1987, or a succeeding year.

New sub-section 39AA(4) would prevent the sum of the regional maximums within a State or Territory specified under sub-section 39AA(2) together with the special bed maximum for that State or Territory specified under sub-section 39AA(3) exceeding the relevant State maximum specified under sub-section 39AA(1).

New sub-section 39AA(5) would introduce the new growth control measures. This sub-section would prevent the Minister from doing any of the actions described in paragraphs 39AA(5)(a), (b), (c), (d) or (e) if the effect of doing so would be that -

- . the number of approved beds in a State or Territory would exceed the relevant State maximum (paragraph 39AA(5)(f));
- . the number of ordinary approved beds in a region would exceed the relevant regional maximum (paragraph 39AA(5)(g)); or
- . the number of beds approved in relation to special needs groups (special needs beds) in a State or Territory would exceed the relevant special bed maximum (paragraph 39AA(5)(h)).

Each of the actions of the Minister controlled under paragraphs 39AA(5)(a), (b), (c), (d) and (e) are explained below.

Under sub-section 39A(2) of the Principal Act or sub-section 3A(2) of the Nursing Homes Act, the Minister may grant a certificate giving an approval in principle for a nursing home containing the number of beds specified in the certificate.

Under sub-section 39A(3) of the Principal Act or sub-section 3A(3) of the Nursing Homes Act, the Minister may grant a certificate approving an alteration to a nursing home and approving in principle a change in the number of beds in the nursing home to the number specified in the certificate.

Under sub-section 39A(4) of the Principal Act or sub-section 3A(4) of the Nursing Homes Act, the Minister may vary a certificate in force under sub-section (2) or (3) of those sections to substitute a different number of beds.

New paragraph 39AA(5)(a) would prevent the Minister granting or varying a certificate under these provisions if it would have any of the effects described in paragraphs 39AA(5)(f), (g) or (h).

This Bill would insert new sub-sections 39A(4A) and (4B) in the Principal Act and new sub-sections 3A(4A) and (4B) in the Nursing Homes Act. Under the new sub-sections 39A(4A) and 3A(4A), the Minister may determine that a specific number of the number of beds specified in a certificate granted under sub-section (2) or (3) of those sections are approved in relation to a special needs group or groups.

Under the new sub-sections 39A(4B) and 3A(4B), the Minister may revoke or vary such a determination.

New paragraph 39AA(5)(b) would prevent the Minister making, varying or revoking a determination under these provisions if it would have any of the effects described in paragraphs 39AA(5)(f), (g) or (h).

Under paragraph 40AA(6)(a) of the Principal Act or paragraph 4(6)(a) of the Nursing Homes Act the Minister may determine the approved number of beds in relation to a nursing home.

Under sub-section 40AD(1) of the Principal Act or sub-section 9(1) of the Nursing Homes Act, the Minister may determine a different number of beds to be substituted for the number of beds determined under paragraphs 40AA(6)(a) or 4(6)(a) respectively.

New paragraph 39AA(5)(c) would prevent the Minister making a determination under these provisions if it would have any of the effects described in paragraphs 39AA(5)(f), (g) or (h).

This Bill would insert new sub-sections 40AA(6AAB) and (6AAC) in the Principal Act and new sub-sections 4(6AB) and (6AC) in the Nursing Homes Act.

Under the new sub-sections 40AA(6AAB) and 4(6AB), the Minister may determine that a number of the number of beds specified in a determination made under paragraph (6)(a) of those sections are approved in relation to a special needs group or groups.

Under the new sub-sections 40AA(6AAC) and 4(6AC), the Minister may revoke or vary such a determination.

New paragraph 39AA(5)(d) would prevent the Minister making, varying or revoking a determination under these provisions if it would have any of the effects described in paragraphs 39AA(5)(f), (g) and (h).

This Bill would insert new sub-sections 40AD(1AC) and (1AD) in the Principal Act and new sub-sections 9(1AB) and (1AC) in the Nursing Homes Act.

Under the new sub-sections 40AD(1AC) and 9(1AB), the Minister may determine that a specific number of the number of beds specified in a determination under sub-section (1) or (1A) of those sections are approved in relation to a special needs group or groups.

Under the new sub-sections 40AD(1AD) and 9(1AC), the Minister may revoke or vary such a determination.

New paragraph 39AA(5)(e) would prevent the Minister making, varying or revoking a determination under these provisions if it would have any of the effects described in paragraphs 39AA(5)(f), (g) and (h).

New sub-section 39AA(6) provides the method of calculating the number of approved beds in a State or Territory for the purpose of paragraph 39AA(5)(f) and the number of approved beds in a region for the purpose of paragraph 39AA(5)(g). The number of approved beds in a State, Territory or region at a particular time is the number equal to the sum of -

- . the number of beds approved in principle under sub-sections 39A(2) and (3) of the Principal Act (new paragraph 39AA(6)(a));
- . the number of beds determined as the approved number of beds in relation to nursing homes under paragraph 40AA(6)(a) of the Principal Act (new paragraph 39AA(6)(b)) - by virtue of new paragraph 39AA(12)(a) this would include a determination affected by a further determination or determinations of the number of beds under sub-section 40AD(1) or (1A) of the Principal Act;
- . the number of beds approved in principle under sub-sections 3A(2) and (3) of the Nursing Homes Act (new paragraph 39AA(6)(c)); and
- . the number of beds determined as the approved number of beds in relation to nursing homes under paragraph 4(6)(a) of the Nursing Homes Act (new paragraph 39AA(6)(d)) - by virtue of new paragraph 39AA(12)(b) this would include a determination affected by a further determination or determinations under sub-section 9(1) or (1A) of the Nursing Homes Act.

New sub-section 39AA(7) provides the method of calculating the number of beds approved in relation to special needs groups in a State or Territory for the purpose of paragraph 39AA(5)(h) and in a region for the purpose of paragraph 39AA(5)(g).

This Bill would insert a number of new provisions in the Principal Act and the Nursing Homes Act which would enable the Minister, where he or she has approved in principle or approved a number of beds, or varied the number of beds, to determine that a specified number of those beds are approved in relation to a special needs group or groups.

This clause would count the number of beds specified in those determinations.

New sub-section 39AA(8) provides the method of calculating the number of ordinary approved beds in a region for the purpose of paragraph 39AA(5)(g). The number equals the number of approved beds in the region (calculated under paragraph 39AA(6)) minus the number of beds approved in relation to special needs groups in a region (calculated under paragraph 39AA(7)).

New sub-sections 39AA(9), (10) and (11) would prevent the double counting of beds when calculating the numbers of beds under sub-sections 39AA(6), (7) and (8).

New sub-section 39AA(9) would provide that where an approval in principle is granted for a new nursing home under the Principal Act or the Nursing Homes Act and the nursing home is subsequently approved, the certificate of approval in principle (which specifies a number of beds), and any determination in relation to the certificate (which specifies that a number of those beds are special needs beds) are disregarded from the time of approval.

New sub-section 39AA(10) would provide that where a determination of the number of beds is made in relation to an approved nursing home under the Principal Act or the Nursing Homes Act and a certificate is granted approving in principle an alteration to the nursing home, the determination of the number of beds and any determination in force specifying that a number of these beds are special needs beds are disregarded while the certificate is in force.

By virtue of new sub-section 39AA(12), the determination of the number of beds in relation to the nursing home would include any later determination or determinations varying the number of beds.

New sub-section 39AA(11) would provide that where a certificate is granted approving in principle an alteration to a nursing home under the Principal Act or the Nursing Homes Act and a determination is made varying the number of beds determined in relation to the nursing home to give effect to the certificate, the certificate of approval in principle (which specifies a number of beds) and any determination in relation to the certificate (which specifies that a number of those beds are special needs beds) are disregarded from the time of the making of the determination varying the number of beds.

New sub-section 39AA(12) would provide 2 rules of interpretation which affect new sub-sections 39AA(6) and (10).

New sub-section 39AA(13) provides that in new section 39AA, "nursing home" includes a nursing home within the meaning of the Nursing Homes Act.

Clause 9: Approval in principle of nursing home, & c.

Section 39A of the Principal Act provides the mechanism for the approval in principle of new nursing homes and new nursing home beds.

Under sub-section 39A(1), the Minister may invite interested persons to apply for a certificate of approval in principle only where a person applies to the Minister to invite persons to so apply. This is a cumbersome mechanism which effectively prevents the Minister from planning the allocation of resources on the basis of need.

Clause 9(a) would omit sub-section 39A(1).

Sub-sections 39A(2) and (3) require applications for an approval in principle to be in accordance with an authorised form and in response to an invitation under sub-section 39A(1).

Clauses 9(b) and (c) would omit these requirements and substitute a requirement that an application be in writing to streamline administration.

Sub-section 39A(4) requires an application to vary an approval in principle certificate to be in accordance with an authorised form.

Clause 9(d) would omit this requirement and substitute a requirement that an application be in writing.

Clause 9(e) would insert new sub-sections 39A(4A) and (4B) in the Principal Act.

The new sub-sections, together with new sub-sections 40AA(6AAB) and (6AAC) to be inserted by clause 10(g), and new sub-sections 40AD(1AB) and (1AC) to be inserted by clause 13(a) provide a mechanism for the Minister to approve beds in relation to a particular special needs group or particular special needs groups.

"Special needs group" is defined in the new definition inserted in section 39 of the Principal Act to mean a class of persons determined by the Minister, in writing, to be a special needs group for the purposes of the definition.

New sub-section 39A(4A) provides that where the Minister specifies a number of beds in a certificate granting an approval in principle under sub-section 39A(2) or (3), the Minister may make a determination specifying that a number of those beds are approved in relation to a special needs group or groups (special needs beds).

New sub-section 39A(4B) provides that the Minister may, at any time, revoke or vary a determination made under new sub-section 39A(4A) in relation to a certificate. This would cover a number of situations.

For example, under paragraph 39A(4)(b), the Minister may vary the number of beds specified in a certificate under sub-section 39A(2) or (3). In such a case, it would also be necessary to vary the number of special needs beds.

Other cases may arise where a proprietor may seek to have the special needs group changed, or the determination revoked altogether. The Minister would have the power to perform these actions under sub-section 39A(4B).

However, under the new paragraph 39AA(5)(b), the Minister could not make, vary or revoke a determination under the new sub-section 39A(4A) if the effect would be that the State maximum, the regional maximum or the special bed maximum would be exceeded (paragraphs 39AA(5)(f), (g) and (h) respectively).

Sub-section 39A(5) of the Principal Act provides that in exercising his or her powers under certain sub-sections, the Minister will comply with any relevant principles in force under sub-section 39A(6).

Sub-section 39A(6) enables the Minister to formulate principles with respect to any of the powers under those sub-sections.

Clauses 5(f) and (g) would omit the list of sub-sections from sub-sections 39A(5) and (6) and substitute a new list. The new list includes the existing list, with the exception of sub-section 39A(1) which would be omitted as a consequence of the amendment made by clause 9(a), and also includes the new sub-sections 39A(4A) and (4B).

Sub-section 39A(9) of the Principal Act requires an application under sub-section 39A(2), (3) or (4) to be accompanied by such information and documents as are prescribed in regulations.

Clause 9(h) would omit the requirement that the information and documents be prescribed in regulations and substitute a requirement that they be specified by the Minister in writing. This would simplify administration by enabling the Minister to specify in a particular case that further information is required.

Clause 9(j) would omit sub-sections 39A(13) and (14) of the Principal Act and substitute new restructured sub-sections 39A(13) and (14). Sub-section 39A(13) of the Principal Act provides that where the Minister makes a decision under certain provisions, he or she shall publish a Gazette notice setting out such particulars in relation to the decision as he or she considers to be appropriate and include a statement that a person affected by a decision may seek a reconsideration under sub-section 105AAB(2A).

New sub-section 39A(13) would reflect the changes to section 39A made by clause 9 by omitting the reference to sub-section 39A(1) and including references to the new sub-sections 39A(4A) and (4B). It would also reflect the repeal of sub-section 105AAB(2A) (see clause 19(c)).

Sub-section 39A(14) of the Principal Act provides that where the Minister makes a decision under certain provisions not in accordance with an application, the Minister shall caused to be served on the applicant a notice setting out the decision and giving the reasons for that decision.

New sub-section 39A(14) would reflect the changes to section 39A made by clause 9 by omitting the reference to sub-section 39A(1) and including references to the new sub-sections 39A(4A) and (4B). It would also remove the requirement that the reasons be given for a decision, to reflect the removal of section 39A from the jurisdiction of the Administrative Appeals Tribunal (see clause 19).

Clause 10: Approval of nursing home

This clause would amend section 40AA of the Principal Act, which contains the mechanism for approving premises as a nursing home under the Principal Act.

Clause 10(a) would omit paragraph 40AA(3)(a) of the Principal Act, which is a spent provision.

Clause 10(b) would omit the requirement in paragraph 40AA(3)(b) that the Minister consult with the relevant State authority before forming an opinion as to whether nursing homes in a locality to which an application relates make adequate provision for nursing home care in that locality. This requirement is made unnecessary by the introduction of the growth control mechanism in new section 39AA (clause 8).

Sub-section 40AA(6) of the Principal Act provides that the approval of a nursing home is, except in the case of a Government nursing home, subject to certain conditions.

Clause 10(c) would make Government nursing homes subject to those same conditions. This would bring these nursing homes within the growth control mechanism in new section 39AA.

Clause 10(d) would insert a new paragraph 40AA(6)(aa) imposing a new condition on the approval of nursing homes. The new condition would enable the enforcement of a special purpose of a nursing home.

Under paragraphs 39A(2)(c) and (3)(c) of the Principal Act, the Minister may grant a certificate of approval in principle stating that if an approval is granted, the admission of persons to the nursing home will be in accordance with a special purpose of the nursing home specified in the certificate.

Under sub-section 40AB(4AA) of the Principal Act, the Minister may refuse to approve an application for the admission of a person to a nursing home if the admission would be inconsistent with a special purpose specified in a certificate under section 39A that was in force at a certain time.

There are administrative difficulties with using this provision to enforce a special purpose. By making the special purpose a condition of approval, the special purpose may be enforced under paragraph 44(2)(b) of the Act by varying the nature of the approval or revoking or suspending the approval. A decision to vary the nature of an approval or to revoke or suspend an approval would continue to be subject to review by the AAT (see new sub-section 105AAB(1) of the Principal Act substituted by clause 19(a)).

The new condition would provide that where the Minister determines that the admission of persons to the nursing home is to be in accordance with a special purpose, the operations of the nursing home are to be carried out in a manner consistent with the determination.

Paragraphs 40AA(6)(c) and (ca) of the Principal Act impose conditions on the approval of a nursing home relating to the fees charged to patients.

Clauses 10(e) and (f) would ensure that Government nursing homes are not made subject to such conditions by clause 10(c).

Clause 10(g) would insert new sub-sections 40AA(6AAA), (6AAB) and (6AAC) in the Principal Act.

New sub-section 40AA(6AAA) would ensure that the Minister in determining a special purpose under the new paragraph 40AA(6)(aa) would not act in a manner inconsistent with any certificate that was in force under sub-section 39A(2) immediately before the date on which application was made for the approval of the nursing home.

New sub-section 40AA(6AAB) provides a method for the Minister to determine that a number of the beds determined under paragraph 40AA(6)(a) as the approved number of beds in relation to a nursing home are special needs beds.

New sub-section 40AA(6AAC) provides that the Minister may revoke or vary a determination made under new sub-section 40AA(6AAB).

Clause 11: Approval of admission as qualified
nursing home patient

This clause would amend sub-section 40AB(4AA) of the Principal Act to enable the Minister to refuse an application for the admission of a person to a nursing home if the admission would be inconsistent with a determination by the Minister of a special purpose in relation to a nursing home under the new paragraph 40AA(6)(aa). This amendment is consequent to the insertion of that new paragraph in the Principal Act (clause 10(d)).

Clause 12: Approval of admission as short-term
respite care patient

This clause would amend sub-section 40ABA(5) of the Principal Act to enable the Minister to refuse an application for the admission of a person to a nursing home as a short term respite care patient if the admission would be inconsistent with a determination by the Minister of a special purpose in relation to a nursing home under the new paragraph 40AA(6)(aa). This amendment is consequent to the insertion of that new paragraph in the Principal Act (clause 10(d)).

Clause 13: Alteration of conditions applicable
to a nursing home

Clause 13(a) would insert new sub-sections 40AD(1AB), (1AC) and (1AD) in the Principal Act.

New sub-section 40AD(1AB) provides a method of altering the special purpose condition under the new paragraph 40AA(6)(aa). Under the new sub-section, the Minister may determine conditions for the purposes of new paragraph 40AA(6)(aa) or revoke or vary any such conditions previously determined.

Under sub-sections 40AD(1) and (1A) of the Principal Act, the Minister may alter the conditions applicable to a nursing home by substituting a number determined by the Minister for the number of beds determined in relation to the nursing home under paragraph 40AA(6)(a).

New sub-section 40AD(1AC) provides that where the Minister determines, or has at any time determined, a number of beds under sub-section 40AD(1) or (1A), the Minister may determine that a number of those beds are special needs beds.

New sub-section 40AD(1AD) provides that the Minister may revoke or vary a determination made under new sub-section 40AD(1AC).

Clause 13(b) would insert a new sub-section 40AD(1CB) in the Principal Act. The new sub-section would ensure that the Minister, in determining, revoking or varying a special purpose condition under the new sub-section 40AD(1AB), would not act in a manner inconsistent with a certificate in force under sub-section 39A(3) of the Principal Act.

Clause 14: Certificate of approval

This clause would amend sub-section 41(1) of the Principal Act to require the Minister to issue a certificate specifying the conditions of approval to the proprietor of a Government nursing home upon the approval of the nursing home. This amendment is consequent to the amendment to sub-section 40AA(6) made by clause 10(c).

Clause 15: Furnishing of audited accounts of proprietors of certain approved nursing homes

This clause would include the substance of regulation 28B of the National Health Regulations in sub-section 43A(3) of the Principal Act.

Clause 16: Basic benefit payable in respect of nursing home care

Sub-section 47(1) of the Principal Act provides the different amounts of Commonwealth benefit payable in respect of approved nursing homes situated in each State and Territory.

In each of the paragraphs of sub-section 47(1) the amount of Commonwealth benefit is expressed in relation to a State or Territory as a specified amount, or such higher amount as is prescribed in regulations.

Clause 16(a) would amend sub-section 47(1) to simplify the mechanism for approving higher amounts of Commonwealth benefit. Under the amended provision, higher amounts would be determined by the Minister rather than prescribed in regulations.

Sub-paragraph 47(2)(b)(iii) of the Principal Act also provides for an amount higher than the amount specified in that paragraph to be prescribed in regulations.

Clause 16(b) would omit sub-paragraph 47(2)(b)(iii) and substitute a new sub-paragraph which would provide for the higher amount to be determined by the Minister.

Clause 16(c) would insert a new sub-section 47(2B) in the Principal Act. The new sub-section would require a determination by the Minister under sub-section 47(1) or (2) to be made by notice in writing.

By virtue of the amendment contained in clause 21, Part XII of the Acts Interpretation Act 1901 would apply in relation to such a notice. The notice would be required to be notified in the Gazette and laid before each House of the Parliament and would be subject to disallowance in the same manner as regulations.

Clause 16(d) would omit sub-section 47(4) of the Principal Act which is unnecessary because of the operation of sub-section 33(3A) of the Acts Interpretation Act 1901.

By clause 2(4), clause 16 would come into operation on such day as is fixed by Proclamation.

Clause 17: Extensive care benefit payable
in respect of nursing home care

Section 49 of the Principal Act provides that the rate of extensive care benefit is \$6 per day or such higher amount as is prescribed in regulations.

This clause would amend section 49 to simplify the mechanism for approving a higher amount of extensive care benefit. Under the amended provision a higher amount would be determined by the Minister rather than prescribed in regulations.

By virtue of the amendment contain in clause 21, Part XII of the Acts Interpretation Act 1901 would apply in relation to such a notice. The notice would be required to be notified in the Gazette and laid before each House of the Parliament and would be subject to disallowance in the same manner as regulations.

By clause 2(4), this clause would come into operation on such day as is fixed by proclamation.

Clause 18: Interpretation

Sub-section 58D(1) of the Principal Act contains definitions of terms used in Part VB of that Act. "Registered nurse" is defined in respect of the Territories of Cocos (Keeling) Islands and Christmas Island as a nurse with such qualifications as are prescribed in regulations.

This clause would amend the definition to simplify the mechanism for determining qualifications by providing that they be determined by notice in writing published in the Gazette.

Clause 19: Applications for review by Tribunal
of certain decisions under Part V

Section 105AAB of the Principal Act provides a mechanism for review of certain decisions under Part V of that Act by the Administrative Appeals Tribunal (AAT). Some of these decisions relate to the approval in principle and approval of nursing homes and the numbers of beds therein, and they involve apportioning a limited resource among a number of claimants. Concerns have been raised that it is inappropriate for the AAT to have jurisdiction in cases where the assessment of the merits of one applicant's claim involves the assessment of the relative merits of the claims of all applicants who seek a proportion of the limited resource. Accordingly, provisions that are subject to the new growth control arrangements would be withdrawn from AAT jurisdiction by this clause.

Sub-section 105AAB(1) of the Principal Act contains a definition of "reviewable decision" for the purposes of section 105AAB. The definition contains a list of provisions which are subject to AAT review.

Clause 19(a) would omit sub-section 105AAB(1) and substitute a new sub-section containing an amended list of provisions. Those provisions omitted from the list are sub-sections 39A(1), (2), (3), (4), 40AA(2), (3), (3A), (4), (5) and (6), section 40AD (other than sub-section 40AD(1A)) and sub-section 41(2).

Clauses 19(b), (c) and (d) would make consequential amendments to sub-sections 105AAB(2), (2A) and (5) respectively, of the Principal Act.

Clause 20: Statements to accompany
notification of decisions

This clause would amend paragraph 105AC(1)(a) as a consequence of the amendments made by clause 19.

Clause 21: Insertion of new section

This clause would insert a new section 139B in the Principal Act. New section 139B would provide that certain notices under the Principal Act would be treated in a similar manner to regulations.

New sub-section 139B(1) would define the notices to which new section 139B applies.

New sub-section 139B(2) would apply Part XII of the Acts Interpretation Act 1901 to the notices defined in sub-section 139B(1). The effect of this provision is, amongst other things, to require a notice to be notified in the Gazette and to be laid before each House of Parliament within 15 sitting days of that House after the making of the notice. Furthermore, such a notice would be subject to disallowance in the same manner as regulations are subject to disallowance.

New sub-section 139B(3) would provide that certain provisions contained in the Statutory Rules Publication Act 1903 would apply in relation to the notices defined in sub-section 139B(1).

New sub-section 139B(4) would modify the effect of one of the provisions contained in the Statutory Rules Publication Act 1903 in relation to its application in accordance with sub-section 139B(3).

New sub-section 139B(5) would provide that certain provisions contained in section 5 of the Evidence Act 1905 which apply to an order made by or under the authority of a Minister would also apply in relation to the notices defined in sub-section 139B(1).

By clause 2(4), this clause would come into operation on such day as is fixed by proclamation.

Clause 22: Certain notices to be subject
to disallowance

This clause would amend the new sub-section 139B(1) inserted by the previous clause to provide that a notice under the definition of "Government nursing home" in sub-section 4(1) of the Principal Act would also be treated in a similar manner to regulations.

By clause 2(4), this clause would come into operation on such day as is fixed by proclamation.

Clause 23: Transitional

This clause is a transitional provision which would preserve the operation of the current Act in relation to applications for review by the AAT made before the commencement of the clause (Royal Assent).

PART IV - AMENDMENTS OF THE NURSING HOMES
ASSISTANCE ACT 1974

Clause 24: Principal Act

This clause provides that the Nursing Homes Assistance Act 1974 would be referred to in this Part as the Principal Act.

Clause 25: Interpretation

This clause would amend section 3 of the Principal Act which provides definitions of terms used in, and rules for the interpretation of the Principal Act.

The definition of "nursing home care" in sub-section 3(1) of the Principal Act provides that "nursing home care" means accommodation and nursing care of a kind provided in a nursing home, and includes any prescribed service of a kind provided in a nursing home.

Clause 25(1)(a) would simplify the mechanism contained in the definition for approving services of a kind provided in a nursing home by omitting the requirement that they be prescribed in regulation and require instead that they be specified by the Minister by notice in writing published in the Gazette.

Clause 25(1)(b) would insert a new definition of "special needs group" in sub-section 3(1) of the Principal Act.

Clause 25(2) would omit the definition of "Government nursing home" in sub-section 3(1) of the Principal Act and substitute a new definition.

The current definition requires that Government nursing homes be prescribed in regulations and be conducted by or on behalf of the Commonwealth or a State. The amendment would simplify the mechanism for approving Government nursing homes by requiring only that they be specified by the Minister by notice in writing.

By virtue of the amendments contained in clauses 37 and 38, Part XII of the Acts Interpretation Act 1901 would apply in relation to such a notice. The notice would be required to be notified in the Gazette and laid before each House of the Parliament and would be subject to disallowance in the same manner as regulations.

By clause 2(4), clause 25(2) would come into operation on a day to be fixed by proclamation.

Clause 26: Insertion of new section

This clause would insert a new section 3AA in the Principal Act. The new section would provide that sections 3A, 4 and 9 of the Principal Act have effect subject to the growth control mechanism in the new section 39AA of the National Health Act 1953 (the National Health Act).

Clause 27: Approval in principle of nursing home, & c.

Section 3A of the Principal Act provides the mechanism for the approval in principle of new nursing homes and new nursing home beds.

Under sub-section 3A(1), the Minister may invite interested persons to apply for a certificate of approval in principle only where a person applies to the Minister to invite persons to so apply. This is a cumbersome mechanism which effectively prevents the Minister from planning the allocation of resources on the basis of need.

Clause 27(a) would omit sub-section 3A(1).

Sub-sections 3A(2) and (3) require applications for an approval in principle to be in accordance with an authorised form and in response to an invitation under sub-section 3A(1).

Clauses 27(b) and (c) would omit these requirements and substitute a requirement that an application be in writing to streamline administration.

Sub-section 3A(4) requires an application to vary a certificate of approval in principle to be in accordance with an authorised form.

Clause 27(d) would omit this requirement and substitute a requirement that an application be in writing.

Clause 27(e) would insert new sub-sections 3A(4A) and (4B) in the Principal Act. The new sub-sections, together with new sub-sections 4(6AB) and (6AC) to be inserted by clause 28(c), and new sub-sections 9(1AB) and (1AC) to be inserted by clause 31(a) provide a mechanism for the Minister to approve beds in relation to a particular special needs group or particular special needs groups.

"Special needs group" is defined in the new definition inserted in sub-section 3(1) of the Principal Act by clause 25(1)(b) to have the same meaning as in section 39 of the National Health Act ie a class of persons determined by the Minister, in writing, to be a special needs group for the purposes of the definition.

New sub-section 3A(4A) provides that where the Minister specifies a number of beds in a certificate granting an approval in principle under sub-section 3A(2) or (3), the Minister may make a determination specifying that a number of those beds are approved in relation to a special needs group or groups.

New sub-section 3A(4B) provides that the Minister may, at any time, revoke or vary a determination made under new sub-section 3A(4A) in relation to a certificate.

By virtue of the new section 3AA inserted by clause 26, new paragraph 39AA(5)(b) of the National Health Act would operate to prevent the Minister making, varying or revoking a determination under the new sub-section 3A(4A) if the effect would be that the State maximum, the regional maximum or special bed maximum would be exceeded (paragraphs 39AA(5)(f), (g) and (h) respectively of the National Health Act).

Sub-section 3A(5) of the Principal Act provides that in exercising his or her powers under certain sub-sections, the Minister will comply with any relevant principles in force under sub-section 3A(6).

Sub-section 3A(6) enables the Minister to formulate principles with respect to any of the powers under those sub-sections.

Clauses 27(f) and (g) would omit the list of sub-sections from sub-sections 3A(5) and (6) and substitute a new list. The new list includes the existing list, with the exception of sub-section 3A(1) which would be omitted as a consequence of the amendment made by clause 27(a), and also includes the new sub-sections 3A(4A) and (4B).

Sub-section 3A(9) of the Principal Act requires an application under sub-section 3A(2), (3) or (4) to be accompanied by such information and documents as are prescribed in regulations.

Clause 27(h) would omit the requirement that the information and documents be prescribed in regulations and substitute a requirement that they be specified by the Minister in writing. This would simplify administration by enabling the Minister to specify in a particular case that further information is required.

Clause 27(j) would omit sub-sections 3A(12) and (13) of the Principal Act and substitute new restructured sub-sections 39A(12) and (13). Sub-section 3A(12) of the Principal Act provides that where the Minister makes a decision under certain provisions, he or she shall publish a Gazette notice setting out such particulars in relation to the decision as he or she considers to be appropriate and include a statement that a person affected by a decision may seek a reconsideration under sub-section 11A(2A).

New sub-section 39A(12) would reflect the changes made by clause 27 by omitting the reference to sub-section 3A(1) and including references to the new sub-sections 3A(4A) and (4B). It would also reflect the repeal of sub-section 11A(2A) (see clause 32(c)).

Sub-section 3A(13) of the Principal Act provides that where the Minister makes a decision under certain provisions not in accordance with an application, the Minister shall cause to be served on the applicant a notice setting out the decision and giving the reasons for that decision.

New sub-section 39A(13) would reflect the changes to section 3A made by clause 27 by omitting the reference to sub-section 3A(1) and including references to the new sub-sections 3A(4A) and (4B). It would also remove the requirement that the reasons be given for a decision, to reflect the removal of section 3A from the jurisdiction of the AAT (see clause 32).

Clause 28: Approval of nursing home

This clause would amend section 4 of the Principal Act, which contains the mechanism for approving premises as a nursing home under the Principal Act.

Clause 28(a) would omit the requirement in paragraph 4(3)(b) that the Minister consult with the relevant State authority before forming an opinion as to whether nursing homes in a locality to which an application relates make adequate provision for nursing home care in that locality. This requirement is made unnecessary by the introduction of the new growth control mechanism in new section 39AA of the National Health Act (clause 8).

Clause 28(b) would insert a new paragraph 4(6)(aa) imposing a new condition on the approval of nursing homes. The new condition would enable the enforcement of a special purpose of a nursing home.

Under paragraphs 3A(2)(c) and (3)(c) of the Principal Act, the Minister may grant a certificate of approval in principle stating that if an approval is granted, the admission of persons to the nursing home will be in accordance with a special purpose of the nursing home specified in the certificate.

Under sub-section 40AB(4AA) of the National Health Act, applied by sub-section 5(1) of the Principal Act, the Minister may refuse to approve an application for the admission of a person to a nursing home if the admission would be inconsistent with a special purpose specified in a certificate under section 3A that was in force at a certain time.

There are administrative difficulties with using this provision to enforce a special purpose. By making the special purpose a condition of approval, the special purpose may be enforced under sub-section 11(2) of the Act by varying the nature of the approval or by revoking the approval. A decision to vary the nature of an approval or to revoke an approval would continue to be subject to review by the AAT (see the definition of "reviewable decision" in sub-section 11A(1) of the Principal Act substituted by clause 32(a)).

The new condition would provide that where the Minister determines that the admission of persons to the nursing home is to be in accordance with a special purpose, the operations of the nursing home are to be carried out in a manner consistent with the determination.

Clause 28(c) would insert new sub-sections 4(6AA), (6AB) and (6AC) in the Principal Act.

New sub-section 4(6AA) would ensure that the Minister in determining a special purpose under the new paragraph 4(6)(aa) would not act in a manner inconsistent with any certificate that was in force under sub-section 3A(2) immediately before the date on which application was made for the approval of the nursing home.

New sub-section 4(6AB) provides a method for the Minister to determine that a number of the beds determined under paragraph 4(6)(a) as the approved number of beds in relation to a nursing home are special needs beds.

New sub-section 4(6AC) provides that the Minister may revoke or vary a determination made under new sub-section 4(6AB).

Clause 29: Application of National Health Act

Sub-section 5(1) of the Principal Act provides for the application of section 40AB of the National Health Act to nursing homes approved under the Principal Act. Section 40AB provides for the approval of the admission of persons to approved nursing homes.

This clause would amend paragraph 5(1)(a) of the Principal Act to make a consequential amendment to the insertion of new paragraph 4(6)(aa) in the Principal Act (clause 28(b)) and to correspond with the amendment of sub-section 40AB(4AA) of the National Health Act made by clause 11.

Clause 30: Approval of additional services

Section 6 of the Principal Act provides for the approval of additional services provided by the proprietor of a nursing home. Where the statutory criteria for such an approval are met, sub-section 6(2) makes the approval mandatory.

Sub-section 6(2) is subject to sub-section 6(3A), which was inserted on 4 June 1985 to prevent the approval of any new or additional services where those services were not approved or approved in principle prior to 21 August 1985.

An unintended consequence of this amendment is that approved services existing at that date could not be reapproved.

This clause would omit sub-section 6(3A) and insert new sub-sections 6(3A), (3B) and (3C) to remedy this defect.

New sub-section 6(3A) would prevent the approval of additional services on or after 21 August 1985, subject to sub-sections 6(3B) and 6(3C).

New sub-section 6(3B) would enable the approval of additional services on or after 21 August 1985 where there was an approval in principle before that date.

New sub-section 6(3C) would enable the approval of additional services on or after 21 August 1985 where there was an existing approval in relation to those services immediately before, or on or after that date.

By clause 2(1), this clause would be deemed to have come into operation on 5 June 1985, the day following the commencement of the current sub-section 6(3A).

Clause 31: Alteration of conditions applicable
to a nursing home

Clause 31(a) would insert new sub-sections 9(1AA), (1AB) and (1AC) in the Principal Act.

New sub-section 9(1AA) provides a method of altering the special purpose condition under the new paragraph 4(6)(aa). Under the new sub-section, the Minister may determine conditions for the purposes of new paragraph 4(6)(aa) or revoke or vary any such conditions previously determined.

Under sub-sections 4(1) and (1A) of the Principal Act, the Minister may alter the conditions applicable to a nursing home by substituting a number determined by the Minister for the number of beds determined in relation to the nursing home under paragraph 4(6)(a).

New sub-section 9(1AB) provides that where the Minister determines, or has at any time determined, a number of beds under sub-section 40AD(1) or (1A), the Minister may determine that a number of those beds are special needs beds.

New sub-section 9(1AC) provides that the Minister may revoke or vary a determination made under new sub-section 9(1AB).

Clause 31(b) would insert a new sub-section 9(1CB) in the Principal Act. The new sub-section would ensure that the Minister, in determining, revoking or varying a special purpose condition under the new sub-section 9(1AA), would not act in a manner inconsistent with a certificate in force under sub-section 3A(3) of the Principal Act.

Clause 32: Review of decisions

Section 11A of the Principal Act provides a mechanism for review of certain decisions under the Principal Act by the AAT. Some of these decisions relate to the approval in principle and approval of nursing homes and the number of beds therein, and they involve apportioning a limited resource among a number of claimants. Concerns have been raised that it is inappropriate for the AAT to have jurisdiction in cases where the assessment of the merits of one applicant's claim involves the assessment of the relative merits of the claims of all applicants who seek a proportion of the limited resource. Accordingly, provisions that are subject to the new growth control arrangements would be withdrawn from AAT jurisdiction by this clause.

Sub-section 11A(1) of the Principal Act contains a definition of "reviewable decision" for the purposes of section 11A. The definition contains a list of provisions which are subject to AAT review.

Clause 32(a) would omit the definition of "reviewable decision" from sub-section 11A(1) and substitute a new definition containing an amended list of provisions. Those provisions omitted from the list are sub-sections 3A(1), (2), (3), (4), 4(2), (3), (3A), (4), (5), (6) and (10), section 8 and section 9 (other than sub-sections 9(1A) and (1B)).

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Clauses 32(b), (c) and (d) would make consequential amendments to sub-sections 11A(2), (2A) and (5) respectively of the Principal Act.

Clause 33: Statements to accompany
notification of decisions

This clause would amend paragraph 11B(1)(a) as a consequence of the amendments made by clause 32.

Clause 34: Common form of nursing home agreement

Sub-section 12(1) of the Principal Act enables the Minister to approve a common form of nursing home agreement after consultation with the associations prescribed in the regulations.

This clause would amend section 12 to simplify the mechanism for listing these associations by requiring that they be specified by the Minister by notice in writing published in the Gazette, rather than be prescribed in regulations.

By clause 2(4), this clause would come into operation on a day to be fixed by proclamation.

Clause 35: Fees

Sub-section 13(1) of the Principal Act provides the rate of fees a proprietor of a nursing home is required to charge a qualified nursing home patient under the form of agreement approved by the Minister under sub-section 12(1) of the Principal Act.

Under paragraph 13(1)(a), the rate of fees is expressed as a specified rate, or such higher rate as is prescribed in regulations. Under paragraph 13(1)(d), the rate of fees in relation to patients entitled to compensation or damages is the rate applicable to the patient in accordance with the regulations.

Clauses 35(a) and (b) would simplify the mechanism for approving new rates of fees under paragraph 13(1)(a) and (d) by providing that the rates would be determined by the Minister rather than prescribed in regulations.

Clause 35(c) would insert a new sub-section 13(1A) which would require a determination to be made by notice in writing.

By virtue of the amendment contained in clause 37, Part XII of the Acts Interpretation Act 1901 would apply in relation to such a notice. The notice would be required to be notified in the Gazette and laid before each House of the Parliament and would be subject to disallowance in the same manner as regulations.

By clause 2(4), clause 35 would come into operation on such day as is fixed by Proclamation.

Clause 36: Remuneration and allowances

This clause would update sub-section 18(1) of the Principal Act by omitting unnecessary words from the sub-section.

Clause 37: Insertion of new section

This clause would insert a new section 36A in the Principal Act. New section 36A would provide that certain notices under the Principal Act would be treated in a similar manner to regulations.

New sub-section 36A(1) would define the notices to which new section 36A applies.

New sub-section 36A(2) would apply Part XII of the Acts Interpretation Act 1901 to the notices defined in sub-section 36A(1). The effect of this provision is, amongst other things, to require a notice to be notified in the Gazette and to be laid before each House of Parliament within 15 sitting days of that House after the making of the notice. Furthermore, such a notice would be subject to disallowance in the same manner as regulations are subject to disallowance.

New sub-section 36A(3) would provide that certain provisions contained in the Statutory Rules Publication Act 1903 would apply in relation to the notices defined in sub-section 36A(1).

New sub-section 36A(4) would modify the effect of one of the provisions contained in the Statutory Rules Publication Act 1903 in relation to its application in accordance with sub-section 36A(3).

New sub-section 36A(5) would provide that certain provisions contained in section 5 of the Evidence Act 1905 which apply to an order made by or under the authority of a Minister would also apply in relation to the notices defined in sub-section 36A(1).

By clause 2(4), this clause would come into operation on such day as is fixed by proclamation.

Clause 38: Certain notices to be subject
to disallowance

This clause would amend the new sub-section 36A(1) inserted by the previous clause to provide that a notice under the definition of "Government nursing home" in sub-section 3(1) of the Principal Act would also be treated in a similar manner to regulations.

By clause 2(4), this clause would come into operation on such day as is fixed by proclamation.

Clause 39: Transitional

This clause is a transitional provision which would preserve the operation of the current Act in relation to applications for review by the AAT made before the commencement of the clause (Royal Assent).

PART V - AMENDMENTS OF THE HEALTH LEGISLATION
AMENDMENT ACT (NO. 2) 1983

Clause 40: Principal Act

This clause provides that the Health Legislation Amendment Act (No. 2) 1983 would be referred to in this Part as the Principal Act.

Clause 41: Omission of provisions

Sub-section 2(9) of the Principal Act provides that various provisions of the Principal Act shall come into operation on a day to be fixed by proclamation. Sub-sections 35(4), 40(2), (3) and (4), 41(2) and 54(3) and (5) of the Principal Act have never been proclaimed. This clause would omit these provisions.

The substance of sub-sections 35(4) and 41(2) are included in this Bill (clauses 9(c), (e) and (f) and clause 14).

The amendments made by sub-sections 40(2), (3) and (4) are no longer technically correct and together with the related amendments made by sub-sections 54(3) and (5), would not be proceeded with.

