

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NURSING HOMES LEGISLATION AMENDMENT BILL 1995

EXPLANATORY MEMORANDUM

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



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NURSING HOMES LEGISLATION AMENDMENT BILL 1995

OUTLINE

This Bill gives effect to a 1995-96 Budget initiative to introduce a new system of infrastructure funding to provide incentives for providers to improve and maintain the quality of their nursing home buildings, with enforcement measures for those who do not.

This Bill is the Government's response to the findings of Professor Bob Gregory in his report "Review of the Structure of Nursing Home Funding Arrangements" (May 1994).

Professor Gregory found that many nursing home buildings are of poor quality which can, in some circumstances, inhibit the quality of care which is provided. He also found that a significant proportion of nursing home buildings fail safety standards.

The poor condition of nursing home building stock has been attributed in part to a lack of financial incentives for proprietors to invest money in improving buildings.

Through the initiative \$36.4 million has been provided over four years for a tiered system of additional benefit to fund capital work in nursing homes.

Amendments to the *National Health Act 1953*

The amendments to the *National Health Act 1953* (the Act) replace those Parts of the Act which governed the operation of the previous funding arrangements which will no longer apply. The new Parts will enable infrastructure assistance to be provided under four categories:

- new and rebuilt homes may be eligible to receive an additional \$7 per place per day indexed, for 10 years;
- homes spending at least \$20,000 per place on upgrading may be eligible to receive an additional \$3 per bed day indexed for 10 years, where expenditure is equivalent to \$20,000 per place for at least 20% of the approved places in the home;
- homes of a satisfactory standard will continue to receive existing infrastructure funding, indexed; and
- a small proportion of homes, those which fail to meet basic standards (eg in areas of fire and safety) will have their infrastructure funding frozen at the

previous year's rate until standards are improved (care funding will not be frozen).

Projects completed after 1 July 1995 will be able to apply for additional benefit.

Eligibility for additional benefit is confined to non-Government nursing homes only. Government and adjusted fee (State Government auspiced) nursing homes will not be eligible for additional benefit. This is because State Governments are responsible for capital investment in their nursing homes.

Not for profit sector homes will be able to elect to receive an amount equal to the capitalised value of the additional benefit as a grant.

Inspections to assess the state of buildings will be undertaken by suitably qualified professionals specifically contracted for the task. An inspection methodology has been developed in consultation with the nursing home industry, the unions and consumer groups and will be tested in some 50 homes prior to implementation.

Amendments to the exempt homes provisions in the *National Health Act 1953* will allow the introduction of exempt nursing home wings. Current legislation requires that whole homes become exempt. Introduction of exempt wings will allow more approvals and is expected to move the proportion of approved beds closer to the 6 percent limit. Principles under the Act will define the conditions for approval, including the size and degree separateness required for approved wings.

Amendments to the *Aged or Disabled Persons Care Act 1954*

Amendments to the *Aged or Disabled Persons Care Act 1954* will maintain existing funding arrangements for projects catering exclusively or almost exclusively for Aboriginal Persons and Torres Strait Islander people. This is to avoid further changes in services which have been subject to transition under the four year Aboriginal and Torres Strait Islander Peoples Aged Care Strategy and in recognition of the current review of services being undertaken as part of that Strategy.

FINANCIAL IMPACT

It is estimated that the new infrastructure funding arrangements will involve additional outlays of \$1.598m in 1995-96, \$5.314m in 1996-97, \$12.031m in 1997-98 and \$23.884m in 1998-99.

NURSING HOMES LEGISLATION AMENDMENT BILL 1995

NOTES ON CLAUSES

Clause 1 - Short title

This clause provides for the Act to be cited as the Nursing Homes Legislation Amendment Act 1995.

Clause 2 - Commencement

Clause 2 provides for the Act to commence on the day on which it receives Royal Assent.

Clause 3 - Schedules

Clause 3 provides for amendments to the *National Health Act 1953* and the *Aged or Disabled Persons Care Act 1954* as set out in Schedules 1 and 2 respectively. Schedule 3 contains saving and transitional amendments.

SCHEDULE 1

AMENDMENTS OF THE NATIONAL HEALTH ACT 1953

Item 1

This item inserts a definition of "exempt area" into section 4 of the Principal Act.

Item 2

This item amends paragraphs 39AB(1)(b) and (c) of the Principal Act to extend its effect to provide for applications by proprietors for grant of exempt status to only some of the beds in a nursing home.

Item 3

This item amends subsection 39AB(1) of the Principal Act to extend its effect to provide for applications for the grant of exempt bed status to all of the beds in an identified area of a nursing home.

Item 4

This item amends subsection 39AB(3) of the Principal Act to extend its application to applications for grants of exempt bed status to beds in an identified area of a nursing home.

Item 5

This item inserts new subsection 39AB(3A) into the Principal Act to prohibit a grant of exempt bed status to some only of the beds in a nursing home unless the area identified in the application as the area in which the beds will be located meets the criteria for identified areas in principles under subsection (4).

Item 6

This item inserts new subsection 39AB(4A) into the Principal Act to provide that principles under subsection (4) must include the criteria to be met by areas identified in applications under paragraph 39AB(1).

Item 7

This item amends subsection 39AB(8) of the Principal Act to extend its effect to provide for the grant of exempt bed status to beds in an exempt area.

Item 8

This item inserts new subsection 39AB(8A) into the Principal Act to require that certificates of grant of exempt status under subsection 39AB(8) state whether all or some of the beds in the nursing home have been granted exempt status and, in the latter case, to require that they specify the area in which the beds are to be located.

Item 9

This item amends subparagraph 39AB(9)(a)(ii) of the Principal Act to clarify the meaning of the provision.

Item 10

This item inserts new paragraphs 39AB(9)(c) and (d) into the Principal Act to provide date of commencement in respect of grants of exempt status to beds in exempt areas of nursing homes.

Item 11

This item amends subsection 39AB(9A) to extend its effect to provide in relation to applications for grants of exempt status to beds in an exempt area of a nursing home.

Item 12

This item amends subsection 39AC(3) to extend its effect to provide in relation to applications for grants of exempt status to beds in an exempt area of a nursing home.

Item 13

This item amends paragraph 39AC(4)(a) of the Principal Act to extend its effect to provide in relation to applications for grants of exempt status to beds in an exempt area of a nursing home.

Item 14

This item amends paragraph 39AC(4)(c) of the Principal Act to extend its effect to provide in relation to applications for grants of exempt status to beds in an exempt area of a nursing home.

Item 15

This item amends the definition of "exempt patient" in subsection 39AD(1) of the Principal Act so that it is applicable to patients occupying exempt beds in nursing homes in which some or all of the beds have been granted exempt status.

Item 16

This item amends subsection 39AD(6) of the Principal Act to extend its effect to provide in relation to applications for grants of exempt status to beds in an exempt area of a nursing home.

Item 17

This item amends subsection 39AD(7) of the Principal Act to extend its application to applications for grants of exempt status to beds in an exempt area of a nursing home.

Item 18

This item amends subsection 40ADB(1) of the Principal Act to extend its application to provide that patients occupying beds at the time the beds are granted exempt status in an exempt area continue to be treated as if the bed were not an exempt bed but may elect at any time during the following six months to be treated as if they had newly entered the nursing home to occupy an exempt bed, and to provide for the date of effect of such elections.

Item 19

This item omits subsections 40ADB(2) and (3) of the Principal Act and substitutes new subsections (2), (2A), (2B) and (3).

New subsection (2) provides that patients occupying beds at the time the beds are granted exempt status may elect to be treated as if they had newly entered the nursing home to occupy an exempt bed, and provides for the date of effect of such elections.

New subsection (2A) provides for patients occupying beds outside an exempt area of a nursing home a right of election within six months of the grant of exempt status to occupy a bed in the exempt area that is available for election, and to be treated as if they were newly admitted to the nursing home to occupy the bed.

New subsection 40ADB(2B) provides that elections under subsection 40ADB(2A) in respect of exempt beds in an exempt area must be considered in the order of their receipt by the Secretary.

New subsection 40ADB(3) provides that where a patient is unable by reason of physical or mental incapacity to make an election under subsection (2) or (2A), such election may be made on their behalf by a person representing the patient.

Item 20

This item amends paragraph 40ADB(3A)(a) of the Principal Act to extend its application to exempt beds in an exempt area.

Item 21

This item amends paragraph 40ADB(3A)(a) of the Principal Act to extend its application to elections under subsection 40ADB(2A) in respect of exempt beds in an exempt area.

Item 22

This item amends paragraph 40ADB(3A)(a) of the Principal Act to extend its application to exempt beds in an exempt area.

Item 23

This item amends subparagraph 40ADB(3A)(c)(i) of the Principal Act consequential upon the omission of subsection 40ADB(4) under Item 29.

Item 24

This item inserts new paragraph 40ADB(3A)(ia) into the Principal Act to specify the period during which patients electing under paragraph 40ADB(3A)(e) continue to be treated as patients not occupying exempt beds.

Item 25

This item amends subparagraph 40ADB(3A)(ii) of the Principal Act consequential upon the insertion of new paragraph 40ADB(3A)(1a).

Item 26

This item amends paragraph 40ADB(3A)(d) of the Principal Act to confine its application to patients in exempt beds in a nursing home in which all the beds are exempt.

Item 27

This item inserts new paragraph 40ADB(3A)(e) into the Principal Act to provide to a patient occupying a bed outside an exempt area of a nursing home a right of election to occupy a bed in the exempt area that is available for election, at any time after the period of two years from the date of grant of exempt bed status.

Item 28

This item amends subsection 40ADB(3B) to provide for elections made on behalf of patients unable because of physical or mental incapacity to elect under paragraph 40ADB(3A)(e).

Item 29

This item omits subsection 40ADB(4) of the Principal Act and substitutes a new subsection (4) providing for the Secretary to consider elections made under subsection (3A) in the order in which they are received.

Item 28

This item inserts a new subsection 40ADB(6A) into the Principal Act to provide that the Secretary must not approve an election to occupy a bed in an exempt area where there are no beds available for election in the exempt area.

Item 31

This item amends subsection 40ADB(7) of the Principal Act to extend its application to exempt beds in exempt areas.

Item 32

This item amends subsection 40ADB(8A) to extend its application to elections made under paragraph 40ADB(3A)(e).

Item 33

This item amends subsection 40ADB(11) of the Principal Act to extend its application to exempt beds in exempt areas.

Item 34

This item inserts new subsection 40ADB(11A) to provide for the date of effect of elections by patients occupying beds outside exempt areas of nursing homes to occupy beds in exempt areas.

Item 35

This item amends paragraph 40ADB(12)(a) of the Principal Act consequential upon the omission of subsection 40ADB(4) of the Principal Act under Item 29.

Item 36

This item amends subsection 40AH(1) of the Principal Act to provide for the application of a reduced standard infrastructure allowance for a nursing home during the period of effect of a declaration under section 54B that the nursing home is substandard.

Item 37

This item inserts new subsections 42(3), (4) and (5) into the Principal Act to provide for the giving of reports in relation to prescribed inspections, to provide for an inspection of nursing homes where a possible ground for a building order is seen or discovered, to provide that a copy of such an inspection report must be provided to the proprietor of the nursing home, and to provide a definition of "prescribed inspection".

Item 38

This item inserts new section 42A into the Principal Act to provide for the making of principles in accordance with which prescribed inspections must be carried out and reports of prescribed inspections must be prepared.

Item 39

This item amends section 44(2)(b) of the Principal Act to extend the grounds for variation, revocation and suspension of approvals of nursing homes to include non-compliance with a building order under Part VAD or a direction under subsection 54B(3).

Item 40

This item amends subsection 44A(4) to extend its application to provide for revocation of exempt bed status applying to beds in an exempt area.

Item 41

This item amends paragraph 44A(4)(a) to extend its application to patients occupying beds in an exempt area of a nursing home.

Item 42

This item amends paragraph 44A(4)(c) to extend its application to exempt beds in an exempt area of a nursing home.

Item 43

This item amends subsection 45E(2) of the Principal Act to provide that, where a declaration of non-compliance with standards is in force, a determination made under the subsection may provide that additional benefit under new Parts VAB and VAC is not payable in respect of a patient admitted after the making of the determination.

Item 44

This item amends subsection 45E(6) to provide that where a determination is in force under subsection 45E(2) additional benefit under new Parts VAB and VAC of the Principal Act is not payable in respect of an occupied bed day of a patient admitted after the making of the declaration.

Item 45

This item amends subsection 45EA(2) of the Principle Act to provide that, where a declaration of non-compliance with conditions is in force, a determination made under the subsection may provide that additional benefit under Part VAB or Part VAC is not payable in respect of a patient admitted after that date.

Item 46

This item amends subsection 45EA(3) of the Principal Act to provide that where a determination is in force under subsection 45EA(2) additional benefit under new Parts VAB and VAC of the Principal Act is not payable in respect of an occupied bed day of a patient admitted after the making of the declaration.

Item 47

This item omits section 50 of the Principal Act as being redundant.

Item 48

This item repeals Parts VAB and VAC of the Principal Act and substitutes new Parts VAB and VAC.

PART VAB - ADDITIONAL BENEFITS IN RESPECT OF NEW AND EXTENDED NURSING HOMES

Division 1 - Preliminary

Section 52 - Definitions

New subsection 52(1) inserts the following definitions for the purposes of the Part:

- "additional benefit";
- "AIP";
- "AIP period";
- "application period";
- "approved number of beds";
- "approved operator";
- "capital works costs";
- "eligible bed";
- "eligible nursing home";
- "extended nursing home";
- "maximum bed number";
- "new nursing home"; and
- "nursing home".

New subsection 52(2) provides that when an AIP is granted and is not revoked the number of beds specified in the AIP certificate is to be taken into account in determining the total number of beds in respect of which additional benefit might be payable in the financial year in which the AIP is granted and in future financial years.

Section 52A - Eligible nursing homes

New section 52A provides for the making of principles setting out requirements to be met by eligible nursing homes, and that a nursing home is an eligible nursing home if it is a new or extended nursing home that meets the requirements of the principles, and is not a new nursing home that incorporates part of a previous building that could lawfully have been demolished, a nursing home in which all the

beds have been granted exempt status, or an extended nursing home in which the extension consists solely of an area in which all of the beds have been granted exempt status.

Section 52B - Maximum bed number

New section 52B provides for the making of principles in accordance with which the Minister may determine under the section a yearly maximum bed number for one or more financial years.

Section 52C - Invitation to apply

New section 52C provides for the publication of notices inviting applications under new section 52D for AIP's and under section 52M for grants of additional benefit and specifying the period within which the applications must be made.

Division 2 - Approval-in-principle of grant of additional benefit

Section 52D - Application for AIP

New Section 52D provides for applications for AIP's by persons proposing to build or rebuild nursing homes, and by proprietors proposing to extend nursing homes for the purpose of increasing the number of approved beds in the home, and sets out the requirements for applications.

Section 52E - Principles that apply to the grant of an AIP

New Section 52E provides for the making of principles in accordance with which AIP's may be granted, and which set out the method for determining which applications may be refused in accordance with section 52G.

Section 52F - Grant of AIP

New subsection 52F provides that applications under section 52D must be considered as soon as practicable after the end of the application period, and under new subsection 52F(2) the Secretary may grant an application in accordance with principles in force under section 52E.

New subsection 52F(3) provides that an AIP must be in writing and specify the maximum number of eligible beds to which it relates.

New subsection 52F(4) provides that the Secretary must not specify a number of beds under paragraph (3)(b) that would result in the total number of beds in respect of which additional benefit might be payable in the financial year in which the AIP is granted being greater than the maximum bed number for that year.

New subsection 52F(5) provides that if the AIP relates to an extended nursing home, the Secretary must not specify a number of beds under paragraph (3)(b) that is greater than the number by which the number of eligible beds has been increased under section 40AD(1) of the Principal Act.

New subsection 52F(6) provides that an AIP comes into force on the day it is granted, and new subsection 52F(7) provides that the AIP stays in force until the end of the period specified in it, unless it is revoked before then.

Section 52G - AIP not to be granted in certain cases

New subsection 52G(1) provides that the Secretary must not grant an AIP unless there is a section 39A or section 39B certificate in force in respect of the construction or upgrading the subject of the application, and that an application must not be approved where to do so would result in the total number of beds in respect of which additional benefit might be payable in the financial year in which the AIP is granted being greater than the maximum bed number for that year.

New subsection 52G(2) provides that where approval of two or more applications otherwise entitled to be approved would result in the total number of beds approved under Part VAB exceeding the maximum bed number for the year in which the application is decided the Secretary must determine in accordance with the section 52E principles which applications are to be refused and must refuse those applications.

New subsection 52G(2) provides that any applications that are not made within the application period.

Section 52H - Effect of AIP

New section 52H provides that an application for a grant of additional benefit under section 52K by the holder of an AIP must not be refused where the applicant is eligible to apply and has complied with the conditions (if any) of the AIP, and that the Secretary may in accordance with principles made under the section extend an AIP period on the written application of the AIP holder.

Section 52I - Revocation of AIP at request of its holder

New Section 52I provides that the Secretary must revoke an AIP at the request of the AIP holder.

Section 52J - Revocation of AIP for breach of condition

New section 52J provides that the Minister may, in accordance with principles made under the section, revoke an AIP for failure to comply with a condition of the AIP after giving the AIP holder written notice of and reasons for the decision and taking into account any submission made by the proprietor in accordance with the section, and that the Minister must notify the person who held the AIP accordingly.

Division 3 - Approval of grant of additional benefit

Section 52K - Application for approval of grant of additional benefit

New section 52K provides that where the proprietor of a new or extended nursing home is an approved operator the proprietor is entitled to apply for approval of a grant of additional benefit, within the AIP period if the applicant is an AIP holder and otherwise within the application period.

Section 52L - Principles that apply to the grant of approval

New section 52L provides for the making of principles in accordance with which the grant of additional benefit may be approved, and which must require the Secretary to take into account the matters set out in the section and must set out a method for making a determination as to which applications are to be refused under subsection 52N(2).

Section 52M - Approval of grant

New section 52M provides that applications made during the application period by applicants who do not hold AIP's must be considered as soon as practicable after the period, and that applications made during the AIP period by AIP holders must be considered as soon as practicable after receipt. The section provides that the Secretary may approve such applications if the applicant is an approved operator of an eligible nursing home, a grant of additional benefit has not previously been approved in respect of the work in question, a building order is not in force under Part VAD in respect of the nursing home, the nursing home is not a substandard nursing home under Part VAD of the Act, and if the AIP conditions (if any) applicable to an applicant who is an AIP holder have been complied with.

New subsection 52M(5) provides that an approval must be in writing and specify the maximum number of eligible beds to which it relates and any conditions to which it is subject.

New subsection 52M(6) provides that in relation to an applicant who is not an AIP holder the Secretary must not specify a number of beds that would result in the total number of beds in respect of which additional benefit might be payable in a financial year exceeding the maximum number for that year.

New subsection 52M(7) provides that the Secretary must not specify a number of beds that is greater than the number by which the number of eligible beds available in the nursing home has been increased.

Section 52N - Grant not to be approved in certain cases

New subsection 52N(1) provides that the Secretary must not approve the grant of additional benefit to a person if to do so would result in the total number of beds in respect of which such benefit might be payable in a financial year being greater

than the maximum bed number for that year

New subsection 52N(2) provides that where approval of two or more applications otherwise entitled to be approved would result in the total number of beds in relation to which benefit might be payable in the financial year in which the application is being decided exceeding the maximum bed number for the year in which the application is decided the Secretary must determine in accordance with the section 52L principles which applications are to be refused and must refuse those applications and any applications that are not made within the application period.

New subsection 52N(3) provides that the Secretary must refuse an application that is not made in accordance with subsection 52K(3).

New subsection 52N(4) provides that subsections (1) and (2) do not apply in relation to AIP holders.

Section 52P - Entitlement to benefit

New section 52P provides for payment of additional benefit to a proprietor approved for a grant of additional benefit who has not elected to receive a capital grant under Division 4, and for the allocation of entitlements to payment of additional benefit where the proprietorship of a nursing home changes during a month.

52Q - Amount of additional benefit

New section 52Q provides for the calculation of amounts of additional benefit and that such amounts are payable monthly for ten years from a day specified in the approval.

Division 4 - Capital grants

Section 52R - Election to receive capital grant

New section 52R provides that the proprietor of a new or extended home holding an approval in principle under subsection 39A(2) or (3) of the Principal Act being an eligible organisation under the Aged or Disabled Persons Care Act 1954 may irrevocably elect in an application for an AIP or a grant of additional benefit under the Part to receive a capital grant in place of the monthly amounts of additional benefit that would otherwise be payable to the proprietor.

Section 52S - Capital grants

New section 52S provides that where an election is made under new section 52R an amount of financial assistance by way of a grant towards the capital works costs in respect of the nursing home, and equal to the capitalised value of the additional

benefit that would otherwise have been payable, is payable to the proprietor. The grant is payable only to the proprietor of the nursing home and at a time determined by agreement between the Secretary and the proprietor or, failing such agreement, by the Secretary, and the capitalised value must be worked out in accordance with principles made under the section.

Section 52T - Terms and conditions of grant

New section 52T provides that an amount of grant is not payable until the proprietor has entered into an agreement with the Secretary under which the proprietor agrees to comply with the specified conditions to which the grant is subject pursuant to subsection 52T(1) and which may include conditions set out in subsection 52T(4).

Division 5 - Suspension and revocation of approvals

Section 52U - Meaning of approval

New section 52U defines "approval" for the purposes of Division 5.

Section 52V - Suspension and revocation of approvals

New section 52V provides for the suspension and revocation of approvals and for the making of principles in accordance with which an approval may be suspended or revoked, for the giving of a copy of a suspension or revocation of the approval to the person who was its holder, for the giving of a notice of intention to suspend or revoke an approval to the person who was its holder, for the making of submissions by the holder, and that the Secretary must not suspend or revoke the approval without considering any submission made by the holder.

Division 6 - Effect of suspension, revocations, building orders etc.

Section 52W - Effect of certain suspensions, revocations, building orders etc.

New section 52W provides that an amount of additional benefit or a capital grant under Part VAB is not payable while the approval of the nursing home is suspended, the approval of the grant of additional benefit is suspended, a building order under Part VAB is in force in respect of the nursing home, or a declaration under section 54B is in force in respect of the nursing home, and that a proprietor is not entitled to any payment under the Part in respect of any period after the approval of the nursing home is revoked or the approval of the grant of an additional benefit is revoked. The section provides that a period of suspension of the nursing home, a period of suspension of the grant of an additional benefit, a period during which a building order under Part VAD is in force, and a period during which a declaration under section 54B is in force are each to be counted as part of a 10 year period of payment of additional benefit.

*Division 7 - Miscellaneous***Section 52X - Advances of benefit**

New section 52X provides for payment of advances of additional benefit.

Section 52Y

New section 52Y provides for repayment of overpayment of additional benefit and for payment to the proprietor of an underpayment of benefit.

Section 52Z - Recovery of overpayment

New section 52Z provides that overpayments of additional benefit may be recovered by deduction from amounts payable to the proprietor under Part VA or Part VAB of the Principal Act.

Section 52ZA - Meaning of overpayment

New section 52ZA defines "overpayment of additional benefit" for the purposes of Division 7.

PART VAC - ADDITIONAL BENEFIT IN RESPECT OF UPGRADED NURSING HOMES**Section 53 - Definitions**

New section 53 inserts the following definitions for the purposes of the Part:

- "additional benefit";
- "AIP";
- "AIP period";
- "approved number of beds";
- "basic amount".

Section 53A - Eligible nursing homes

New section 53A provides for the making of principles setting out requirements to be met by eligible nursing homes, and provides that a nursing home is an eligible nursing home if it has been upgraded after 1 July 1995 by construction work or the installation of major items of equipment, the acceptable expenditure at least equals the basic amount for the nursing home, and the upgraded nursing home meets the requirements of the principles.

Section 53B - Maximum bed number

New section 53B provides for the making of principles in accordance with which the Minister may determine under the section a yearly maximum bed number for the purposes of the Part for one or more financial years.

Section 53C - Invitation to apply

New section 53C provides for the publication of notices inviting applications for AIP's under section 53D and for grants of additional benefit under section 53K and specifying the period within which the applications must be made.

Division 2 - Approval-in-principle of grant of additional benefit

Section 53D - Application for AIP

New section 53D provides for applications for AIP's by persons proposing to upgrade nursing homes, and sets out the requirements for applications.

Section 53E - Principles that apply to the grant of an AIP

New section 53E provides for the making of principles in accordance with which AIP's may be granted, and which set out the method for determining which applications may be refused in accordance with section 53G.

Section 53F - Grant of AIP

New subsection 52F provides that applications under section 53D must be considered as soon as practicable after the end of the application period, and that the Secretary may grant an application in accordance with principles in force under section 52E.

New subsection 52F(3) provides that an AIP must be in writing and must specify the maximum number of eligible beds to which it relates.

New subsection 53F(4) provides that the Secretary must not specify a number of beds that would result in the total number of beds in respect of which additional benefit under this Part might be payable in the financial year in which the AIP is granted being greater than the maximum bed number for that year.

New subsection 53F(5) provides that an AIP comes into force on the day it is granted, and new subsection 53F(6) provides that the AIP stays in force until the end of the period specified in it, unless it is revoked before then.

Section 53G - AIP not to be granted in certain cases

New subsection 53G(1) provides that the Secretary must not grant an AIP in respect of a nursing home unless a certificate under section 39A or 39B is in effect in respect of the building or rebuilding or the construction work, or it to do so would result in the total number of beds in respect of which additional benefit might be payable in the financial year in which the AIP is granted being greater than the maximum bed number for that year

New subsection 53G(2) provides that where approval of two or more applications otherwise entitled to be approved would result in the total number of beds in relation to which benefit might be payable in the financial year in which the application is being decided exceeding the maximum bed number for the year in which the application is decided the Secretary must determine in accordance with the section 53E principles which applications are to be refused and must refuse those applications and any applications that are not made within the application period.

Section 53H - Effect of AIP

New section 53H provides that an application for a grant of additional benefit under section 53K by the holder of an AIP must not be refused where the applicant is eligible to apply and has complied with the conditions (if any) of the AIP, and that the Secretary may in accordance with principles made under the section extend an AIP period on the written application of the AIP holder.

Section 53I - Revocation of AIP at request of its holder

New section 53I provides that the Secretary must revoke an AIP at the request of the AIP holder.

Section 53J - Revocation of AIP for breach of condition

New section 53J provides that the Minister may, in accordance with the principles made under the section, revoke an AIP for failure to comply with a condition of the AIP, after giving the AIP holder written notice of and reasons for the decision and having taken into account any submission made by the proprietor in accordance with the section, and that the Minister must notify the person who held the AIP accordingly.

Division 3 - Approval of grant of additional benefit

Section 53K - Application for approval of grant of additional benefit

New section 53K provides that the proprietor of an upgraded nursing home who is an approved operator may apply for approval of the grant of additional benefit, within the period if the applicant is an AIP holder, and otherwise within the

Section 53L - Principles that apply to the grant of approval

New section 53L provides for the making of principles in accordance with which the grant of additional benefit may be approved, and which must require the Secretary to take into account the matters set out in the section and must set out a method for making a determination of which applications are to be refused under section 53N.

Section 53M - Approval of grant

New section 53M provides that applications made during the application period by applicants who do not hold AIP's must be considered as soon as practicable after the period, and that applications made during the AIP period by AIP holders must be considered as soon as practicable after receipt. The section provides that the Secretary may approve such applications if the applicant is an approved operator of an eligible nursing home, a grant of additional benefit has not previously been approved in respect of the work in question, a building is not in force under Part VAD in respect of the nursing home, and the nursing home is not a substandard nursing home under Part VAD of the Principal Act. The Secretary may refuse an application if the AIP conditions (if any) applicable to an applicant who is an AIP holder have not been complied with.

New subsection 53M(5) provides that an approval must be in writing and must specify the maximum number of eligible beds to which it relates and any conditions to which it is subject.

New subsection (6) provides that an approval must not specify a number of beds that under paragraph (5) that would result in the total number of beds in respect of which additional benefit might be payable in a financial year being greater than the maximum bed number for that year.

Section 53N - Grant not to be approved in certain cases

New subsection 53N(1) provides that the Secretary must not approve the grant of additional benefit to a person if to do so would result in the total number of beds in respect of which such benefit might be payable in a financial year being greater than the maximum bed number for that year.

New subsection 53N(2) provides that where approval of two or more applications otherwise entitled to be approved would result in the total number of beds in relation to which benefit might be payable in the financial year in which the application is being decided exceeding the maximum bed number for the year in which the application is decided the Secretary must determine in accordance with the section 53L principles which applications are to be refused and must refuse those applications and any applications that are not made within the application period.

New subsection 53N(3) provides that the Secretary must refuse an application that is not made in accordance with subsection 53K(3).

New subsection 53N(4) provides that subsections (1) and (2) do not apply in relation to AIP holders.

Section 53P - Entitlement to benefit

New Section 53P provides for payment of benefit to a proprietor approved for a grant of additional benefit, for benefit to be payable only to the proprietor of the nursing home, and for the allocation of entitlements to benefit between proprietors where the proprietorship of a nursing home changes during a month.

Section 53Q - Amount of additional benefit

New section 53Q provides for the calculation of amounts of additional benefit, to be payable monthly for ten years from a day specified in the approval.

Division 4 - Suspension and revocation of approvals

Section 53R - Meaning of approval

New section 53R defines "approval" for the purposes of Division 4.

Section 53S - Suspension and revocation of approvals

New section 53S provides for the suspension and revocation of approvals and for the making of principles in accordance with which an approval may be suspended or revoked, for the giving of a copy of a suspension or revocation of the approval to the person who was its holder, for the giving of a notice of intention to suspend or revoke an approval to the person who was its holder, for the making of submissions by the holder, and that the Secretary must not suspend or revoke the approval without considering any submission made by the holder.

Division 5 - Effect of suspensions, revocation, building orders etc.

Section 53T - Effect of certain suspensions, revocations, building orders etc

New section 53T provides that an amount of additional benefit or a grant under Part VAC is not payable while the approval of the nursing home is suspended, the approval of the grant of additional benefit is suspended, a building order under Part VAD is in force in respect of the nursing home, or a declaration under section 54B is in force in respect of the nursing home, and that a proprietor is not entitled to any payment under the Part in respect of any period after the approval of the nursing home is revoked or the approval of the grant of an additional benefit is revoked. The section provides that a period of suspension of the nursing home, a

period of suspension of the grant of an additional benefit, a period during which a building order under Part VAD is in force, and a period during which a declaration under section 54B is in force are each to be counted as part of a 10 year period of payment of additional benefit.

Division 6 - Miscellaneous

Section 53U - Advances of benefit

New section 53U provides for payment of advances of additional benefit under Division 3.

Section 53V - Overpayments and underpayments

New section 53V provides for repayment of overpayment of additional benefit and for payment to the proprietor of an underpayment of benefit.

Section 53W - Recovery of overpayment

New section 53W provides that overpayments of additional benefit may be recovered by deduction from amounts payable to the proprietor under Part VA or Part VAB of the Principal Act.

Section 53X - Meaning of overpayment

New section 53X defines "overpayment of additional benefit" for the purposes of Division 6.

PART VAD - SUBSTANDARD NURSING HOMES AND BUILDING ORDERS

Division 1 - Preliminary

Section 54 - Definitions

New section 54 inserts the following definitions:

- "building order";
- "declaration";
- "declaration period";
- "substandard nursing home".

*Division 2 - Substandard nursing homes***Section 54A - Principles to be applied**

New section 54A provides for principles to be made in accordance with which a nursing home may be declared to be a substandard nursing home and such a declaration may be revoked, such principles to require the Secretary to take into account an inspection report made in relation to an inspection under section 42.

Section 54B - Declaring nursing homes to be substandard

New section 54B provides that the Secretary may, in accordance with the principles under section 54A, declare a nursing home to be a substandard nursing home, that the Secretary may include in the declaration a direction requiring the proprietor to take the action described in the direction by the specified date, and that the Secretary must give a copy of the declaration to the proprietor of the nursing home.

Section 54C - Effect of declaration on standard infrastructure allowance

New section 54C provides that if the Secretary makes a declaration in relation to a nursing home, the standard infrastructure allowance per occupied bed day for the nursing home while the declaration is in force is the amount that applied under subsection 40AH during the last financial year before the financial year in which the declaration is made.

Section 54D - Revocation of declaration

New section 54D provides that the Secretary may, on the written application of the proprietor of a substandard nursing home, revoke a declaration in accordance with the principles under section 54A, that a declaration must be in writing, that it takes effect on the day the Secretary grants it, and that the Secretary must notify the proprietor in writing of a grant or refusal of an application for revocation.

*Division 3 - Building orders***Section 54E - Principles to be applied**

New section 54E provides that the Minister must make principles in accordance with which a building order may be imposed and may be revoked, and that such principles must specify the circumstances in which an order may be imposed and require the Secretary to take into account an inspection report made in relation to an inspection under section 42.

Section 54F - Building orders

New section 54F provides that the Secretary may by written notice impose a building order on a nursing home in accordance with the principles under section 54E, and that

an order must contain a description of the building work required, must specify a date by which that work must be finished and one or more dates by which specified stages of work must be finished, and that an order comes into force on the day it is given to the proprietor.

Section 54G - Revocation of building orders

New section 54G of the Principal Act provides that the Secretary may, on written application of the proprietor of a nursing home and in accordance with the principles under section 54E, revoke a building order imposed on the nursing home, that the revocation must be in writing, that it takes effect on the day the Secretary grants it, and that the Secretary must notify the proprietor in writing of the grant or refusal of an application.

Item 49

This item amends the Heading to Part VC of the Principal Act consequential upon amendments to the Act to extend the application of Part VC to new Parts VAB and VAC.

Item 50

This item amends the definition of "Commonwealth benefit" in subsection 58K(1) of the Principal Act to include benefit payable under new Part VAC.

Item 51

This item omits subsection 59(7) of the Principal Act and substitutes a new subsection 59(7) to exclude benefit under new Parts VAB and VAC from the application of section 59.

Item 52

This item amends section 60B of the Act to extend its application to new Parts VAB and VAC.

Item 53

This item amends the definition of "overpayment" in subsection 65(1) of the Principal Act to extend its application to amounts of likely overpayment determined under subsection 46E(1) of the Principal Act.

Item 54

This item amends section 105AA to insert a definition of "prescribed decision of the Secretary" to include decisions under new Parts VAB and VAC of the Principal Act.

Item 55

This item amends subsection 105AAB(1A) of the Principal Act to provide for review of decisions made under new Parts VAB and VAC of the Principal Act.

Item 56

This item amends subsection 137(1) of the Principal Act consequential upon the omission of Parts VAB and VAC of the Principal Act.

Item 57

This item amends Paragraph 139B(1)(a) to (ea) inclusive to clarify the meaning of the section.

Item 58

This item omits Paragraphs 139B(1)(eb) and (ec) and substitutes new paragraphs (eb) and (ec) consequential upon the omission of Parts VAB and VAC of the Principal Act and to provide for the application of the provision to instruments made under new Parts VAB and VAC.

SCHEDULE 2

AMENDMENTS OF THE AGED OR DISABLED PERSONS CARE ACT 1954

Item 1

This item omits the heading to Part II of the Principal Act and inserts a new heading consequential upon amendments to the Part to confine its application to nursing homes for Aboriginal Persons and Torres Strait Islanders.

Item 2

This item inserts a new part 5A into the Principal Act providing the following definitions:

- "Aboriginal person";
- "nursing home";
- "Torres Strait Islander".

Item 3

This item inserts new subsections 8(1A) and (1B) into the Principal Act to provide that it is a condition of a grant under section 7 of the Principal Act that the eligible

organisation will at all times continue to operate the nursing home exclusively, or almost exclusively, for the accommodation of Aboriginal Persons and Torres Strait Islanders, and that the Secretary may agree to the removal of the condition having regard to the continuing need to operate the nursing home as a nursing home.

Item 4

This item amends subsection 8(1) of the Principal Act consequential upon the insertion of new subsections 8(1A) and (1B).

Item 5

This item omits subsection 9(1) of the Principal Act and inserts a new subsection 9(1) to provide for an amount of grant under section 7 to be an amount not exceeding the capital works costs in respect of the nursing home.

Item 6

This item omits subsections 9(3) and (4).

Item 7

This item inserts new subsection 10H(3) into the Principal Act to provide that an organisation affected by a decision of the Secretary under new subsection 8(1B) may apply to the Minister for reconsideration of the decision.

Item 8

This item amends subsection 10H(3) of the Principal Act to clarify its meaning.

Item 9

This item omits paragraph 10K(a) of the Principal Act.

SCHEDULE 3**TRANSITIONAL AND SAVING****Item 1 - Interpretation**

This item provides the following definitions for the purposes of the Schedule.

- "commencing time";
- "new Act";
- "old AIP";
- "old Act".

Item 2 - Holders of old AIPs

Subsection 2(1) provides that prescribed provisions of the old Act continue to apply to holders of old AIP's until the AIP ceases to have effect because the holder is granted additional benefit under section 52M or 53M of the new Act, and that prescribed provisions of the old Act continue to apply to holders of old AIP's who are granted benefit under the old Act until the full amount of the benefit is paid.

Subsection 2(2) provides that the old Act applies to the holder of an old AIP from the commencing time.

Subsection 2(3) provides that a person who is the holder of an old AIP may apply for an AIP under Part VAB or VAC of the new Act or for the approval of a grant under section 52M or 53M of the new Act, but the old AIP has no effect in relation to such an application and the holder cannot apply for grant of a benefit under Part VAB or VAC of the old Act unless the application under the new Act is refused.

Subsection 2(4) provides that the old AIP ceases to have effect if the holder is granted additional benefit under section 52M or 53M of the new Act.

Item 3 - Applicants for AIPs or grants

Subsection 3(1) provides that an application for an AIP under the old Act that has not been decided immediately before the commencing time lapses.

Subsection 3(2) provides that an application for the grant of additional benefit under the old Act by a person who is not the holder of an old AIP that has not been decided immediately before the commencing time lapses.

Subsection 3(3) provides that an application under section 6 of the *Aged or Disabled Persons Care Act 1954* as in force immediately before the commencing time that has not been decided before the commencing time lapses.

Item 4 - Regulations

Subsection 4(1) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 4(2) provides that regulations may be made in relation to transitional and savings matter arising out of the amendments of the *National Health Act 1953* and the *Aged or Disabled Persons Care Act 1954* made by the Act, or otherwise arising out of the enactment of the Act.

Subsection 4(3) provides that the regulations may provide for the continued operation of specified provisions of the old Act in relation to prescribed persons or matters, or in prescribed circumstances.

