

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMMUNITY SERVICES AND HEALTH LEGISLATION

AMENDMENT BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of the Honourable Dr Neal Blewett MP,  
Minister for Community Services and Health.)



COMMUNITY SERVICES AND HEALTH LEGISLATION

AMENDMENT BILL 1987

GENERAL OUTLINE

The Bill is an omnibus Bill to amend the Aged or Disabled Persons Homes Act 1954; the Health Insurance Act 1973; the National Health Act 1953; and the States Grants (Nurse Education Transfer Assistance) Act 1985.

2. The amendments of the Aged or Disabled Persons Homes Act 1954:
  - . introduce a new system of capital funding in Part II of the Act in respect of approved hostels;
  - . require the amounts of capital funding of approved hostels to be determined in accordance with guidelines formulated by the Minister;
  - . define an approved hostel as an approved home, or part thereof, which is not a nursing home and in which hostel care services, hostel care services and personal care services, or respite care services are provided;
  - . introduce a new system of recurrent funding in Part III of the Act applicable to approved organisations providing care other than in nursing homes; and
  - . require recurrent funding under Part III of the Act to be subject to gazetted General Conditions and other conditions specified by the Minister and that such funding be not payable unless an agreement incorporating those conditions has been entered into.

3. The amendment of the Health Insurance Act 1973 removes the requirement for acute care certificates in respect of particular in-patients of hospitals to be tabled in the Parliament.
  
4. The amendments of the National Health Act 1953:
  - . insert provisions to facilitate the transfer of approvals in respect of bed numbers from current premises to others where a nursing home or part thereof is relocated;
  - . remove a legal doubt that the Minister can review any decisions of the Secretary under subsection 40AD(1B) of the Act to alter conditions applicable to an approved nursing home;
  - . amend section 45E of the Act to provide in relation to Standards Review Panels where the Minister declares that a nursing home does not satisfy determined nursing home care standards;
  - . provide for prescribing the manner in which records are to be kept by nursing home proprietors under section 61 of the Act;
  - . insert new provisions, modelled on provisions of the Bounty (Ship Repair) Act 1986, in relation to the keeping of books and records, answering of questions and production of documents, and entry onto premises;
  - . amend the secrecy provision in section 135A to require the kinds of information which can be released to a prescribed person or authority to be prescribed; and
  - . specify revised amounts in various penalty provisions of the Act including amounts in respect of a body corporate.
  
5. The amendment of the States Grants (Nurse Education Transfer Assistance) Act 1985 specifies a revised maximum amount of assistance to States under the Act for 1988 and for subsequent years.

## FINANCIAL IMPACT STATEMENT

The measures proposed in the legislation to revise the Commonwealth capital funding arrangements for hostels will result in savings of \$7m in each of the years 1987-88, 1988-89 and 1989-90.

The increased participation by residents and organisations in financing capital construction of hostels will enable planning quotas for hostel places to be achieved while effecting the foreshadowed savings.

It will also enable the Commonwealth to target its capital funding to achieve equitable access to hostels of people with limited means and all other people requiring and choosing hostel accommodation and care by enabling levels of Commonwealth capital subsidy to be varied having regard mainly to the proportion of financially disadvantaged residents to be accommodated.

The amendments to the States Grants (Nurse Education Transfer Assistance) Act 1985 will authorise, subject to appropriation, expenditure to assist in the transfer of nurse education from hospitals to colleges of advanced education of \$14m in the calendar year 1988, \$21m in the calendar year 1989 and \$28m in each subsequent year to which the Act applies (1990-1993).

The other measures in the Bill have no readily quantifiable financial impact, although it is expected that there will be some very small savings in administrative costs.

COMMUNITY SERVICES AND HEALTH LEGISLATION  
AMENDMENT BILL

PART I - PRELIMINARY

Clause 1 : Short Title

This clause provides that the amendment Act may be cited as the Community Services and Health Legislation Amendment Act 1987.

Clause 2 : Commencement

This clause provides for the coming into operation of various provisions of the amendment Act.

Clause 2(1) provides that sections 1, 2, and 3, paragraphs 4(d) and (g), and sections 5, 6, 7, 21, 22, and 31 shall come into operation on the day on which the amendment Act receives the Royal Assent.

Clause 2(2) provides that the remaining provisions of the amendment Act shall come into operation on a day or days to be fixed by proclamation.

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

Clause 3 : Principal Act

This clause defines "Principal Act" in this Part to mean the Aged or Disabled Persons Homes Act 1954.

Clause 4 : Interpretation

This clause amends section 2 of the Principal Act which provides definitions of terms used in and rules for the interpretation of the Principal Act.

Clauses 4(a), (b) and (c) modify the definition of capital cost in relation to an approved home as follows:

- . clause 4(a) provides that this definition of capital cost will not apply to an approved hostel;
- . clause 4(b) omits references to "necessary fixtures" and substitutes references to "equipment and fixtures" in paragraphs (a) and (b) of the definition; and
- . clause 4(c) provides that where part of an approved home is an approved hostel, the capital cost of the approved home will not include any amount that the Minister considers attributable to the part of the approved home that is an approved hostel.

Clause 4(d) omits the definition of eligible organisation.

Clause 4(e) inserts definitions of "approved hostel" and "capital cost in relation to an approved hostel".

"Approved hostel" means an approved home or part of an approved home in which

- . hostel care services; or
- . hostel care services and personal care services; or
- . respite care services are, or will be, made available for each person resident in the home or part of the home as the case may be.

Capital cost in relation to an approved hostel includes, but is not limited to:

- . the cost of acquiring land (with or without buildings);
- . the cost of acquiring, erecting, altering or extending buildings; and
- . the cost of acquiring, altering or installing equipment.

Clause 4(f) inserts definitions of "hostel care services", "personal care services", and "respite care services" in similar terms as those set out in section 10A of the Principal Act which would be repealed by Clause 17.

The definitions of "hostel care services" and "personal care services" are the same definitions as those presently set out in section 10A of the Principal Act.

The definition of "respite care services" has been reframed but has the same meaning as in present section 10A of the Principal Act.

Clause 4(q) inserts three subsections after subsection 2(2) of the Principal Act to provide a definition of an eligible organisation.

New subsection 2(3) lists those organisations which are eligible organisations (being organisations to which new subsection 2(5) does not apply by the operation of new subsection 2(4)).

New subsections 2(5) and (6) enable an organisation which is conducted or controlled by the Commonwealth or a State or is conducted or controlled by persons appointed by the Commonwealth or a State or an organisation that conducts or has conducted a public hospital, to be an eligible organisation if the Minister in writing so declares.

#### Clause 5 : Purpose

Subsection 3(1) of the Principal Act provides that the purposes of the Act are to encourage and assist:

- (a) the provision of suitable homes for eligible persons, being homes at which eligible persons may reside in conditions approaching as nearly as practicable normal domestic life; and



- (b) the provision of accommodation at which respite care services may be provided for eligible persons.

This clause clarifies the purposes of the Act by including "care services" in paragraph 3(1)(b). It also substitutes a new sub-section 3(2) in similar terms to that omitted but referring to the exercise of powers under the Act by the Minister and the Secretary and not just by the Secretary as at present.

Clause 6 : Repeal of section 4

This clause repeals section 4 of the Principal Act which provides that the Secretary is subject to the directions of the Minister in the general administration of the Principal Act. The general transfer of powers from the Secretary to the Minister effected by the amending Act renders this provision unnecessary.

Clause 7 : Delegation

This clause inserts a new subsection 5(1A) into the Principal Act and amends subsection 5(1), (2) and (3). The amendments of these subsections render the provisions applicable to the delegation of powers by the Minister to the Secretary following the general transfer of powers by the amending Act from the Secretary to the Minister.

Clauses 8 and 9 : Insertion of headings

These clauses insert Division headings in Part II of the Principal Act.

Clause 10 : Grants to organisations

This clause inserts a new subsection 7(1A) before subsection 7(1) of the Principal Act.

Subsection 7(1) of the Principal Act allows the Secretary to approve the making of a grant of money to an eligible organisation as assistance towards meeting the capital cost of an approved home.

New subsection 7(1A) provides that (in this section) an approved home does not include:

- . an approved home that is to be used solely as an approved hostel; or
- . where a part of an approved home is to be used solely as an approved hostel, that part of the home.

Provision is made in a new Division which is inserted by clause 14 for capital funding of approved hostels.

Clause 11 : Conditions of grants

This clause:

- . omits subsection 8(3) of the Principal Act; and
- . substitutes a new subsection 8(3).

The new subsection 8(3) provides that the conditions upon which a grant may be made under subsection (1) include, but are not limited to:

- . the repayment of financial assistance; and
- . the giving of security for the repayment of financial assistance or the payment to the Commonwealth of amounts that under the conditions are to be taken as representing the Commonwealth's interest in:
  - land acquired (with or without buildings);
  - buildings acquired, erected, altered or extended; and
  - equipment acquired, altered, or extended;

as a result of the application of the financial assistance or of the financial assistance and other money.

Clause 12 : Repeal of section 8A  
of the Principal Act

This clause repeals section 8A of the Principal Act which relates to the making of agreements with eligible organisations acquiring from other eligible organisations land or buildings for which capital funding had been received.

Clause 15 inserts a new provision which allows such agreements to be entered into.

Clause 13 : Amounts of grants

This clause omits subsections 9(4) to 9(7) inclusive of the Principal Act which apply certain provisions of the Acts Interpretation Act 1901, the Statutory Rules Publication Act 1903 and the Evidence Act 1905 to certificates under subsection 9(1) and determinations under subsection 9(3).

By Clause 15 of the amending Act new provisions are inserted which have the effect of applying the provisions of those Acts to such certificates and determinations.

Clause 14 : Insertion of new Division

Clause 14 inserts a new Division in Part II of the Principal Act.

This Division contains the new capital funding arrangements for approved hostels.

New section 9A provides the mechanism for the making of grants of financial assistance to eligible organisations to assist in meeting the capital cost of approved hostels.

New subsection 9A(1) provides that the Minister may, by instrument in writing, approve the making of a grant to an eligible organisation of financial assistance towards the capital cost of an approved hostel.

New subsection 9A(2) provides that where the Minister approves the making of a grant of financial assistance under new subsection 9A(1), the Minister shall in the instrument of approval:

- . specify the amount of the financial assistance as determined in accordance with guidelines formulated under new subsection 9B;
- . specify the times at which and the instalments in which the financial assistance is to be paid; and
- . specify the conditions on which the financial assistance is granted.

New subsection 9A(3) provides that the conditions on which the financial assistance is granted may include, but are not limited to conditions with respect to:

- . the amounts to be applied by the eligible organisation towards the capital cost of the approved hostel;
- . the furnishing of information by the organisation;
- . the class or classes of persons to be accommodated at the hostel;
- . compliance by the organisation with conditions to which a grant of financial assistance under Part III of the Principal Act is subject;
- . the provision of certificates with respect to the fulfilment of conditions;
- . the repayment of financial assistance; and
- . the giving of security for the repayment of financial assistance or the payment to the Commonwealth of amounts which under the conditions are to be taken as representing the Commonwealth's contribution towards meeting the capital cost of the approved hostel.

New subsection 9A(4) provides that the Minister may comply with the requirement that the Minister specify the amount of the financial assistance by specifying a method of calculating the amount of the financial assistance.

New section 9B provides for the formulation by the Minister of guidelines for the determination of the amounts of capital grants.

New subsection 9B(1) provides that the Minister shall by written instrument formulate guidelines for the determination of the amounts of capital grants of financial assistance to approved hostels.

New subsection 9B(2) provides that the guidelines may contain provision for matters to be taken into account in the determination of the amount of a grant such as:

- . the classes of persons to be accommodated;
- . the capacity of an organisation or proposed residents to contribute to the capital cost;
- . the capacity of an organisation to borrow towards the capital cost;
- . geographical location;

- . the cost of acquiring and developing land;
- . limits on grants; and
- . any other matters the Minister considers relevant.

New section 9C provides for the making of agreements with respect to grants.

New subsection 9C(1) provides that where the Minister approves a grant of financial assistance to an organisation under new section 9A, the financial assistance is not payable unless the organisation enters into an agreement with the Minister that specifies the conditions on which the financial assistance is granted and under which the organisation agrees to comply with those conditions.

New subsection 9C(2) provides that where an organisation has entered into an agreement specifying the conditions on which financial assistance under section 9A was granted and the Minister, with the consent of the organisation varies those conditions, the agreement shall be taken to be varied accordingly.

#### Clause 15 : Insertion of Headings and Section

Clause 15 inserts in Part II of the Principal Act a Division heading and new sections 9D and 9E which are miscellaneous provisions having application to funding under Divisions 2 and 3 of Part II of the Principal Act.

New section 9D provides for the entering into of agreements with the transferees of land, buildings or equipment in relation to which capital grants have been made.

New subsection 9D(1) provides that:

- (a) where a grant has been made or approved on conditions with respect to the use or disposal of any land, building or equipment; or
- (b) an eligible organisation has entered into an agreement under this subsection under which the organisation is required to comply with conditions with respect to the use or disposal of any land, building or equipment

and the organisation has transferred or proposes to transfer the whole or part of its interest in the land etc to another eligible organisation, the Minister may enter into an agreement with the transferee organisation under which the organisation is required to comply with conditions which are not limited to conditions with respect to the use or disposal of the land, buildings or equipment.

New section 9D(2) would provide that an agreement under subsection (1) may be varied by further agreement.

New section 9E provides for the application of certain provisions of the Acts Interpretation Act 1901, the Statutory Rules Publication Act 1903; and the Evidence Act 1905 to particular instruments under Part II of the Principal Act. Sub-sections 9(4), (5), (6) and (7), repealed by Clause 13 of the Bill, presently have this function in respect of certificates under sub-section 9(1) and determinations under sub-section 9(3) of the Principal Act.

New subsection 9E(1) provides that a "Ministerial instrument" for the purposes of new section 9E means:

- . a certificate under subsection 9(1);
- . a determination under subsection 9(3); or
- . guidelines formulated under new section 9B.

New subsection 9E(2) provides that Part XII of the Acts Interpretation Act 1901 applies to the above "Ministerial instruments", as though these were regulations, with the principal effects that they must be notified in the Gazette, tabled in the Parliament within 15 sitting days of their making, and can be disallowed by either House.

New subsections 9E(3) and (4) provide that the provisions of the Statutory Rules Publication Act 1903, relating to notification of statutory rules in the Gazette apply to "Ministerial instruments".

New subsection 9E(5) provides that section 5 of the Evidence Act 1905, relating to the proof of instruments in a court, applies to "Ministerial instruments".

Clause 16 : New Heading Inserted

This clause:

- . omits the heading to Part III of the Principal Act; and
- . inserts a new heading.

Clause 17 : Interpretation

This clause:

- . repeals section 10A of the Principal Act; and
- . substitutes a new section 10A.

New section 10A contains the same definitions of "approved organisation" and "respite care bed" as those which were provided for in the repealed section 10A and a new definition - "General Conditions".

General Conditions mean the conditions formulated under new section 10F.

Clause 18 : Approvals

This clause amends section 10B of the Principal Act so that approvals thereunder will be given by the Minister instead of the Secretary.

Clause 19

This clause repeals sections 10C and 10D of the Principal Act and substitutes new sections 10C, 10D, 10E, 10F, 10FA and 10FB.

The new sections inserted and section 10B of the Principal Act, will provide the new recurrent funding arrangements for hostels and approved homes which are not nursing homes within the meaning of the National Health Act 1953 and the Nursing Homes Assistance Act 1974.

New section 10C provides for Ministerial authorisation of payments in respect of the services listed.

New subsection 10C(1) provides that the Minister may authorise the payment to an approved organisation of financial assistance in respect of the provision by the organisation of:

- . hostel care services;
- . hostel care services and personal care services; or
- . respite care services.

New subsection 10C(2) requires that an authorisation under subsection 10C(1) be by written instrument.

New subsection 10C(3) prevents the payment of recurrent subsidies in respect of premises that are a nursing home within the meaning of the National Health Act 1953 or the Nursing Homes Assistance Act 1974.

New section 10D provides the rates of payment of financial assistance and a method of determining those rates.

New subsection 10D(1) provides that financial assistance is payable in respect of each eligible person assessed as requiring a service and for whom a service is made available by the organisation at the rate of:

- . \$2.10 per day for hostel care services only;
- . \$11.85 per day for hostel care services and personal care services; and
- . \$8.05 per day for respite care services

or such higher rate as is fixed by the Minister by written instrument.

New subsection 10D(2) provides that without limiting the generality of subsection 10D(1) the Minister may determine a rate for the purposes of that subsection by determining a method of calculating the rate.

New subsection 10D(3) provides that payments to an approved organisation under Part III shall be made in such manner and at such times as the Minister determines.

New section 10E provides that payment of financial assistance under Part III is subject to:



- (a) the General Conditions as in force from time to time; and
- (b) such other conditions, not inconsistent with the General Conditions as the Minister specifies in the instrument of authorisation under section 10C.

New section 10F provides for the formulation of General Conditions.

New subsection 10F(1) provides that the Minister shall by written instrument formulate General Conditions of grants of financial assistance under this Part.

New subsection 10F(2) provides that the subject matter of conditions may include the manner of assessment of persons, classes of persons to be accommodated, fees or charges payable, furnishing of information, the rights and obligations of residents, the standards to be met in the provision of services, the repayment of financial assistance and the giving of security therefor and the withholding of payments in the event of breach of a condition.

New section 10FA provides for agreements in respect of financial assistance granted.

New subsection 10FA(1) provides that where the Minister authorises the payment of financial assistance to an organisation, the financial assistance is not payable unless the organisation has entered into an agreement that specifies the conditions applicable to the grant and under which the organisation agrees to comply with these conditions.

New subsection 10FA(2) provides where an organisation has entered into an agreement specifying conditions in addition to the General Conditions and the Minister with the consent of the organisation varies those conditions, the agreement shall be taken to be varied accordingly.

New section 10FB provides for the application of certain provisions of the Acts Interpretation Act 1901, the Statutory Rules Publication Act 1903 and the Evidence Act 1905 to certain "Ministerial instruments" under Part III of the Principal Act.

New subsection 10FB(1) provides that a "Ministerial instrument" for the purposes of new section 10FB means:

- . an instrument under new subsection 10D(1); or
- . General Conditions formulated under new section 10F.

New subsection 10FB(2) provides that Part XII of the Acts Interpretation Act 1901 applies to the above "Ministerial instruments", as though these were regulations, with the principal effects that they must be notified in the Gazette, tabled in the Parliament within 15 sitting days of their making, and can be disallowed by either House.

New subsections 10FB(3) and (4) provide that the provisions of the Statutory Rules Publication Act 1903, relating to notification of statutory rules in the Gazette apply to "Ministerial instruments".

New subsection 10FB(5) provides that section 5 of the Evidence Act 1905, relating to the proof of instruments in a court applies to "Ministerial instruments".

#### Clause 20 : Further amendments

Sub-clause 20(1) provides that the Principal Act is amended as set out in Schedule 1 to the amendment Act.

Changes effected by these minor amendments in Schedule 1 include:

- . the insertion of a requirement that an approval under section 6 of the Principal Act be in writing;
- . the substitution of references to "Minister" for references to "Secretary" in current provisions of Part II of the Principal Act thereby providing consistency with the new provisions of the Principal Act; and
- . some minor consequential amendments of current provisions of Part II of the Principal Act.

Sub-clause 20(2) provides that the Principal Act is amended as set out in Schedule 2.

The purpose of these amendments is the substitution of "Minister" for "Secretary" in present sections 10C and 10D of the Principal Act which would be repealed on commencement of the new recurrent subsidy provisions being inserted in Part III of the Principal Act.

Clause 21 : Transitional and Savings

The purpose of this clause is to ensure that all approvals granted and agreements entered into prior to the commencement of relevant provisions of the amendment Act will continue to have effect according to their terms and that any act or thing done by the Secretary shall on such commencement have the same effect as if it had been done by the Minister.

PART III - AMENDMENT OF THE HEALTH INSURANCE ACT 1973

Clause 22 : Determinations that in-patients  
need acute care

This clause amends section 3A of the Health Insurance Act 1973 to remove the requirement that determinations under that section are to be laid before both Houses of Parliament.

Section 3A empowers the Secretary to determine, by instrument in writing, that particular in-patients in particular hospitals are in need of acute care. Such a determination identifies the in-patient and relates, specifically or by implication, to the personal medical particulars of the in-patient. The right to privacy of the in-patient is inconsistent with these matters being laid before the Parliament, and it is therefore appropriate that this requirement be repealed.

PART IV - AMENDMENTS OF THE NATIONAL HEALTH ACT 1953

Clause 23 : Principal Act

This clause identifies the National Health Act 1953 as the Principal Act for the purposes of Part IV of the Bill.

Clause 24 : Approval in principle of transfer  
of nursing home beds

This clause inserts a new section 39B in the Principal Act.

The new provision is intended to facilitate approval and approval in principle processes under the Principal Act where it is proposed to transfer an approval or an approval in principle relating to a particular number of beds from existing nursing home premises to other existing or proposed new nursing home premises (referred to herein as the transfer of beds). A particular problem has been reconciling the necessary co-existence for a time of approvals and approvals in principle in respect of premises proposing to transfer beds and premises ultimately intended to receive the beds with the requirements of section 39AA of the Principal Act under which a limit is placed on the number of beds in a particular State or Territory in relation to which the Minister can grant approval or approval in principle at any one time.

New subsection 39B(1) is an interpretative provision for the purposes of new section 39B.

- . "application State or Territory" is defined so that a bed transfer must be within a particular State or Territory.
- . "number of beds to which a reduction request relates" is defined so that the number of beds potentially able to be transferred can be identified. This can be:
  - (a) where revocation of an existing approval of a nursing home will be sought - the total number of beds to which the approval relates;
  - (b) where reduction of the number of beds to which an approval of an existing nursing home relates will be sought - the number of the reduction;
  - (c) where the revocation of approval in principle of a proposed nursing home, or of alterations or additions to a nursing home will be sought - the full number of

beds specified in the relevant certificate under subsections 39A(2) or (3) of the Principal Act; and

- (d) where only reduction of the number of beds in the above certificates under subsections 39A(2) or (3) will be sought - the number of that reduction.

"reduction request" is defined to enable the kind of proposal for the transfer of beds to be identified. These can be:

- (a) where revocation of the approval of existing nursing home premises will be sought under subsection 44(3) of the Principal Act;
- (b) where a reduction of the number of beds specified for the purposes of paragraph 40AA(6)(a) in respect of the approval of a nursing home will be sought;
- (c) where the revocation of a certificate giving approval in principle under subsection 39A(2) of a proposed nursing home, or under subsection 39A(3) for alterations or additions to a nursing home, will be sought; and
- (d) where variation, by the reduction of the number of beds specified in a certificate referred to in (c) above will be sought.

"transferrable number" is defined to identify the total number of beds referred to in an application under the section as being available for transfer consequent upon a revocation, alteration, or variation of the kind referred to in the definition of "reduction request".

New subsection 39B(2) provides that a person who is or proposes to become the proprietor of a nursing home can apply in writing for a certificate under new section 39B.

New subsection 39B(3) provides that in an application the applicant shall make one or more "reduction requests" and make a statement in respect of intentions as to premises to which beds are to be transferred. The applicant must state an intention to:

- seek approval as a nursing home of specified premises, different to those referred to in the reduction request but in the same application State or Territory and with a number of beds not exceeding the number of transferrable beds;

seek variation under section 40AD of the Principal Act for the increase for the purposes of paragraph 40AA(6)(a) of the number of beds specified in relation to the approval of a different nursing home in the application State or Territory. This increase must be specified in the statement and cannot exceed the number of transferrable beds;

seek variation of an existing certificate giving approval in principle under subsections 39A(2) or (3) in relation to a different nursing home in the application State or Territory by increasing the number of beds specified. The increase must be specified in the statement, and cannot exceed the number of transferrable beds.

New subsection 39B(4) provides that where an applicant under the section intends to make alterations or additions to a nursing home to which beds are to be transferred and in respect of which the applicant intends to seek a variation of the bed number specified for the purposes of paragraph 40AA(6)(a), a statement to this effect shall be included in the relevant statement for the purposes of new subparagraph 39B(3)(b)(ii).

New subsection 39B(5) provides that the Minister in his or her discretion may grant to an applicant under new section 39B a certificate in writing of the following kinds:

- (a) in respect of an application containing a statement referred to in new subparagraph 39B(3)(b)(i) (new approval of specified different premises) - a certificate stating that:
- if application for approval is made within 12 months, and the premises comply, at the time, with specifications (if any) set out in the certificate the application will not be refused under subsections 40AA(3) or (3A) of the Principal Act;
  - the number of beds determined in relation to such approval for the purposes of paragraph 40AA(6)(a) will be at least the number of beds specified in the application statement; and
  - if the Minister considers it appropriate to do so that such approval will be as a nursing home for disabled people, or that admissions will be in accordance with a special purpose set out in the certificate (section 39A of the Principal Act makes similar provision);
- (b) in respect of an application containing a statement referred to in new subparagraph 39B(3)(b)(ii) (variation of bed number of existing nursing home and the reason for the statement is the making of alterations or additions to the premises) - a certificate:

- (i) approving the alteration or addition;
  - (ii) stating that if within 12 months the alteration or additions are completed in accordance with specifications, if any, in the certificate or application under section 40AD for the variation of bed numbers specified for the purposes of paragraph 40AA(6)(a), by at least the number specified in the statement will not be refused; and
  - (iii) stating, if the Minister considers it appropriate, that admissions will be in accordance with a special purpose of the nursing home specified in the certificate (section 39A makes similar provision);
- (c) in respect of an application containing a statement referred to in new subparagraph 39B(3)(b)(ii) where no alteration or addition is intended - a certificate stating if the applicant applies under section 40AD within 12 months for variation of the bed numbers specified for the purposes of paragraph 40AA(6)(a) in respect of the specified nursing home by at least the number specified in the statement, that application will not be refused; and
- (d) in respect of an application referred to in new subparagraph 39B(3)(b)(iii), (variation of existing approval in principle certificates under subsections 39A(2) and 39A(3)) - a certificate stating that an application within 12 months for variation of the certificate having the effect of increasing the numbers of beds specified therein by at least the number specified in the statement will not be refused.

New subsection 39B(6) provides that requirements applicable to the exercise of powers in respect of certificates under subsection 39A(2) as set out in subsections 39A(4) to (12) (inclusive) and (14) and (15) apply in respect of certificates under new subsection 39B(5) as though these were certificates under subsection 39A(2).

New subsection 39B(7) excludes the operation of subsection 39A(5) of the Principal Act from the exercise of the Minister's powers to give effect to a statement in a certificate under new subsection 39B(5) where the variation of a certificate under subsection 39A(2) or (3) is involved. Subsection 39A(5) requires the Minister to comply with any relevant principles in force under subsection 39A(6) of the Principal Act in exercising powers under subsections 39A(2) or (3). It would not be appropriate for the Minister to again have regard to such principles as in force in giving effect to a statement contained in subsection 39B(5) certificates.



New subsection 39B(8) provides that where the Minister gives effect to a statement in a certificate under new subsection 39B(5) in respect of premises to which beds are being transferred, then the corresponding revocation, alteration or variation (of an approval, a condition as to bed numbers for the purpose of paragraph 40AA(6)(a), or an approval in principle) in respect of the premises from which beds are being transferred shall be deemed to have occurred simultaneously.

New subsection 39B(9) provides that the Minister's powers to give effect to any statement contained in a certificate under new subsection 39B(5) is not restricted by the requirements of subsection 39AA(5) which circumscribe the exercise of the Minister's powers in respect of approvals and approvals in principle where maximum bed numbers in a State or Territory would be exceeded. This restriction is not necessary where, as here, beds are being transferred within an application State or Territory as actual numbers will not increase.

Clause 25 : Approval of nursing home

This clause amends section 40AA of the Principal Act to insert an additional condition to which the approval of a nursing home is subject. The new condition requires the proprietor of the nursing home to submit to the Secretary information relating to the employment of nursing staff and personal care staff in connection with the nursing home.

Clause 26 : Alteration of conditions applicable to a nursing home

This clause amends section 40AD of the Principal Act to reflect the insertion of section 39B in that Act.

It may be a condition to which the approval of a nursing home is subject that where the Minister determines, in writing, that the admission of persons to the nursing home is to be in accordance with a special purpose of the nursing home specified in the determination, the operations of the nursing home are to be carried out in a manner consistent with that determination (paragraph 40AA(6)(aa)).

Substituted subsection 40AD(1CB) provides that the Minister shall not determine that condition, vary it or revoke it in a manner which is inconsistent with:

- a certificate or determination such as was provided for in the replaced subsection 40AD(1CB); or

- . a certificate in force in respect of the home under new subsection 39B(5) of the Principal Act, and which contains a statement for the purpose of new sub-paragraphs 39B(5)(a)(iii) or (b)(iii).

The effect of the amendment is that where the proprietor of a nursing home applies, pursuant to new section 39B, for the transfer of nursing home beds from one nursing home to a second nursing home, and the Minister has stated that the beds so transferred will be made available in accordance with a special purpose of the nursing home, the Minister may only determine, vary or revoke conditions to which the second nursing home is subject in accordance with the certificate issued under new subsection 39B(5) in the course of the transfer of the beds.

#### Clause 27 : Ministerial review of decisions

This clause amends section 40AE of the Principal Act to clarify the power of the Minister to review decisions taken by the Secretary in respect of the conditions to which an approved nursing home is subject. The new subsection 40AE(2) will make it explicit that the Minister may review a decision:

- . altering the conditions applicable to an approved nursing home without an application having been made for that alteration;
- . altering those conditions other than in accordance with the terms of an application for alteration; or
- . refusing an application for alteration.

The Minister shall apply any principle that was in force under subsection 40AA(7) of the Principal Act at the time the decision was made.

#### Clause 28 : Consequences of non-compliance with standards

This clause amends section 45E of the Principal Act to provide that the Minister shall not make a declaration that an approved nursing home does not satisfy the standards to be observed in the provision of nursing home care being standards determined pursuant to section 45D of the Principal Act unless a Standards Review Panel has been established in the State or Territory in which the home is situated and unless the requirements of any regulations made for the purposes of this provision are satisfied. Such regulations may relate to the giving of notice

to the proprietor of the Minister's intention to make a declaration, the consideration by the Panel of the grounds for such a notice and recommendatory functions of the Panel.

Clause 29 : Records to be kept by proprietors of approved nursing homes

This clause amends section 61 of the Principal Act to require the proprietor of an approved nursing home to keep, in such manner as is prescribed, records for the purpose of existing subsection 1A (records setting out prescribed particulars in relation to the nursing home).

Clause 30 : Books and records to be kept at nominated place; Power to require persons to answer questions and produce documents; Power to examine on oath etc; Entry on premises and inspection of books etc; Offences

Clause 30 inserts new sections 61A to 61E in the Principal Act.

New section 61A (Books and records to be kept at nominated place) requires the proprietor of an approved nursing home to keep all books, documents and records relating to the operation of the nursing home at the home or at some other place approved by the Secretary in writing.

New section 61B (Power to require persons to answer questions and produce documents) empowers an officer authorised by the Secretary in writing to obtain information from a person whom the officer believes on reasonable grounds to be capable of giving information relevant to the operation of the Principal Act in relation to the conduct of an approved nursing home. Such a person:

- . may be given a notice requiring the person to attend a specified place, answer questions and produce documents and records which are referred to in the notice; and
- . will be required to make a written statement if the person is aware that the documents and records produced are false or misleading in a material particular.

The information provided by the person will not be admissible in evidence against the person in criminal proceedings (other than in criminal proceedings related to the giving of false information to the authorised officer).

The new section provides that, unless the Secretary otherwise directs, Commonwealth benefit will not be payable to the proprietor of the approved nursing home where information has not been provided to the authorised officer.

New section 61C (Power to examine on oath, etc) empowers an authorised officer to examine a person who has been required to answer questions in pursuance of new section 61B by requiring the person to make an oath or affirmation that the person's answers will be true.

New section 61D (Entry on premises and inspection of books, etc) empowers an authorised officer to:

- . enter premises with the consent of the occupier of the premises;
- . apply to a Justice of the Peace for a warrant authorising entry of premises;
- . apply to a Justice of the Peace for a warrant authorising entry of premises with such assistance and force as is necessary;
- . search the premises; and
- . inspect and make copies of documents and records that are on the premises.

New section 61E (Offences) creates the following offences:

- . the refusal or failure, without reasonable excuse, to attend before an authorised officer, to take an oath or affirmation or to answer a question or produce documents or records;
- . knowingly or recklessly making to an authorised officer a statement that is false or misleading in a material particular; and
- . knowingly or recklessly presenting to an authorised officer an account, book, document or other record that is false or misleading in a material particular.

Clause 31 : Officers to observe secrecy

This clause amends section 135A of the Principal Act (which is the secrecy provision of the Act) by replacing the existing paragraph 135A(3)(b).

The existing paragraph provides that information obtained by a person in the performance of duties, or in the exercise of powers or functions, under the Principal Act may be divulged to any prescribed authority or person. Where an authority or person is prescribed, there is no restriction upon the kind of information that may be divulged to the authority or person. This could authorise the divulgence of a person's private affairs, which might trespass upon the person's personal rights.

The amendment will provide that information to be divulged to a prescribed authority or person must be information of a kind that may be provided in accordance with the regulations.

Clause 32 : Further amendments

This clause provides that the Principal Act is amended as set out in Schedule 2.

A number of these minor amendments are consequential upon the insertion of section 39B in the Principal Act. A majority of the other amendments are increases in penalties in respect of offences under the Principal Act.

PART V - AMENDMENT OF THE STATES GRANTS  
(NURSE EDUCATION TRANSFER ASSISTANCE) ACT 1985

Clause 33 : Special nurse education  
transfer grants

This clause amends subsection 4(4) of the States Grants  
(Nursing Education Transfer Assistance) Act 1985.

Subsection 4(4) places a ceiling on the aggregate of the amount of money which the Minister may determine is to be provided to the States and the Northern Territory to assist in the transfer of nurse education from hospitals to colleges of advanced education.

The amendment to subsection 4(4) will provide the amounts of money that, subject to appropriation, the Minister may determine is to be provided to the States and the Northern Territory for the next triennium. The amendment provides for the following amounts:

- . in respect of the year 1987 - \$10,080,000;
- . in respect of the year 1988 - \$14,000,000;
- . in respect of the year 1989 - \$21,000,000; and
- . in respect of each subsequent year to which the Act applies - \$28,000,000.

The above amounts have been calculated by multiplying the number of places to be partially funded by the Commonwealth by an amount of \$1,500 in December 1983 values, indexed to current values.



