

1989

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMMUNITY SERVICES AND HEALTH LEGISLATION AMENDMENT BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by authority fo the Minister for Community Services
and Health, the Hon. Neal Blewett, M.P.)

COMMUNITY SERVICES AND HEALTH LEGISLATION
AMENDMENT BILL 1989

OUTLINE

This Bill proposes amendments to the Australian Institute of Health Act 1987 to strengthen safeguards on confidentiality. The amendments will impose more stringent controls on release of information by the Institute, preventing the disclosure of information, other than to the Minister, contrary to the conditions under which it was supplied to the Institute. The amendments recognise the concerns of States and Territories that provisions in the current Act provide inadequate safeguards of confidentiality of data which may be supplied by States and Territories to the Institute.

This Bill also proposes amendments to the Health Insurance Act 1973 to:

- . Institute arrangements by which certain medical practitioners will be eligible for registration on a Vocational Register of General Practitioners. New items which will, by regulations, be identified in the general medical services table in Schedule 1 to the Act will then be introduced into the Medicare Benefits Schedule for which medicare benefit will be payable only to patients of vocationally registered general practitioners. The proposed amendments also make arrangements for the Health Insurance Commission to establish and maintain the Vocational Register.
- . Affect the administration of arrangements for the payment of medicare benefit in respect of the provision of pathology services. The pathology Services Advisory Committee is to be terminated, and alterations will be made to the procedure for establishing the pathology services table.

- . Include a new pathology services table in Schedule 1A to that Act.
- . Strengthen the prohibition on certain medical insurance.

The Bill also proposes amendments to the National Health Act 1953 to achieve the following objectives:

- (a) to rationalise the provision of health benefits under the basic private table for 'same day' patients of hospitals and day hospital facilities to encourage the provision of procedures in a day only environment, rather than on an in-patient basis, and introduce differential benefits which have regard to the complexities of different types of treatments;
- (b) to introduce arrangements to enable the Secretary to determine that an independent body or person shall apply for the classification of residents in nursing homes where the proprietor has frequently provided inaccurate information leading to classifications of residents in those homes which, when received, have had lower classifications substituted for them;
- (c) to introduce more stringent solvency requirements for health benefits organisations;
- (d) to vary the reinsurance account arrangements to provide for a more equitable sharing of hospital benefits liability for the aged and chronically ill between all health funds; to repeal the requirement for an annual Commonwealth contribution to the Reinsurance Trust Fund; and to make provision for a special once-only Commonwealth contribution for 1988-89; and
- (e) to establish an industry body to carry out a number of health insurance functions currently performed by the Department of Community Services and Health.

In addition, this Bill proposes amendments to the Nursing Homes Assistance Act 1974 (NHA Act) to provide that the operation of nursing homes for disabled persons under the NHA Act shall cease on 30 June 1992 and, until that date, to ensure that the operation of the NHA Act is complementary to the general approach to services for people with disabilities established by the Disability Services Act 1986.

Under the proposed amendments no approvals for new nursing homes will be made under the NHA Act, but that the renewal of approvals for homes that are currently approved under that Act can continue up until 30 June 1992 with certain additional conditions. The main additional conditions are -

- (a) the introduction of an upper limit on the adjusted deficit that can be approved for nursing homes, taking into account per capita costs and occupancy levels;
- (b) a provision that approved nursing homes must take any steps that are applicable to further the principles and objectives of the Disability Services Act 1986 in providing nursing home care and approved services; and
- (c) the introduction of additional conditions relating to admission to a nursing home, to ensure that no-one is admitted to a nursing home if his or her needs could be adequately and more suitably met in alternative accommodation that is available to the person.

The definition of 'nursing home care' in the NHA Act is broadened by this Bill to include 'personal care', defined as 'assistance of a personal nature given to help a person attend to his or her daily needs or carry out his or her daily routine'. This definition is included in recognition that many people with disabilities are in need of personal care rather than nursing care.

The Bill also contains a proposed amendment to alter the States Grants (Nurse Education Transfer Assistance) Act 1985 in order that the conditions attached to the grants under this legislation comply with new census dates determined by the Department of Employment, Education and Training for collection of Higher Education Student Data. Key dates for collection of these data have been changed from 30 April and 30 September to 31 March and 31 August from 1989.

A regulation-making power is to be introduced into the States Grants (Nurse Education Transfer Assistance) Act 1985 so that any future changes in census dates can be prescribed by regulation.

FINANCIAL IMPACT

The proposed amendments to the Australian Institute of Health Act 1987 will have no financial impact on the Commonwealth.

The financial impact of the proposed amendments to the Health Insurance Act 1973 relating to the establishment of a Vocational Register of General Practitioners is dependent on the schedule of fees for the new items for use by Vocationally Registered General Practitioners. Those fees are being announced separately by the Minister.

It is estimated that the proposed amendments to the Health Insurance Act 1973 to introduce a new pathology services table will result in a full year saving of \$45 million over the estimate based on the August 1987 pathology services table.

The proposed amendments to the National Health Act 1953 relating to payments by the Commonwealth in respect of the reinsurance account arrangements will cost the Commonwealth an additional \$20 million in 1988-89. No payments will be made by the Commonwealth to the Reinsurance Trust Fund after 30 June 1989.

The proposed amendments to the National Health Act 1953 to establish an industry body to carry out a number of health insurance functions currently performed by the Department of Community Services and Health will save the Commonwealth by way of staff reductions an estimated \$150,000 in 1988-89 and \$1.2 million per year thereafter. However, a grant to assist in establishing the Private Health Insurance Administration Council will cost the Commonwealth \$300,000 spread over the three financial years 1988-89, 1989-90 and 1990-91.

The proposed amendments to the National Health Act 1953 relating to classification of patients in nursing homes are expected to result in some savings but it is not possible to quantify the extend of these savings.

The proposed amendments to the Nursing Homes Assistance Act 1974 are expected to provide moderate savings, in the order of \$1 million a year. These savings are expected to result from the proposal to set an upper limit on the deficit that can be approved for nursing homes.

The proposed amendment to the States Grants (Nurse Education Transfer Assistance) Act 1985 will have no financial impact.

COMMUNITY SERVICES AND HEALTH LEGISLATION AMENDMENT BILL 1989

PART I - PRELIMINARY

Clause 1 : Short title

When enacted the Bill may be cited as the Community Services and Health Legislation Amendment Act 1989.

Clause 2 : Commencement

Subclause 2(1) provides that subject to subclauses (2), (3), (4), (5), (6), (7) and (8), the Bill commences on the day on which it receives the Royal Assent.

Subclause 2(2) provides that Part 7 shall be taken to have commenced on 1 January 1989.

Subclause 2(3) provides that section 23 shall be taken to have commenced on 15 March 1989.

Subclause 2(4) provides that paragraphs 37(a) to (k) (inclusive) and (s) commence, or shall be taken to have commenced, on 1 June 1989.

Subclause 2(5) provides that Part 5 commences on 1 July 1989.

Subclause 2(6) provides that sections 11, 12, 13, 14, 15, 16 and 18 and the Schedule commence on 1 August 1989.

Subclause 2(7) provides that subject to subsection (8), subsection 20(2), sections 21, 22, 28, 29, 30, 31, 32, 33, 43 and 44, subsection 52(2) and section 53 commence on a day or days to be fixed by Proclamation.

Subclause 2(8) provides that if a provision referred to in subsection (7) does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences at the end of that period.

PART 2 - AMENDMENTS OF THE AUSTRALIAN INSTITUTE
OF HEALTH ACT 1987

Clause 3 - Principal Act

This clause cites the Australian Institute of Health Act 1987 as the Principal Act.

Clause 4 - Interpretation

This clause inserts in section 3 of the Principal Act a definition of "State Health Minister" as used in amended section 7 of the Principal Act -

"State Health Minister" refers to the Minister of a State, the Northern Territory, or the Australian Capital Territory responsible, or principally responsible, for the administration of matters relating to health in the relevant State or Territory.

Clause 5 - Directions by Minister

This clause amends section 7 of the Principal Act which empowers the Minister after consultation with the Chairperson of the Institute to give directions to the Institute with respect to the performance of its functions or the exercise of its powers. The amendment requires the Minister to consult also with each of the State and Territory Health Ministers before issuing a direction.

Clause 6 - Confidentiality

This clause provides for the amendment of subsection 29 of the Principal Act which contains exceptions to the general secrecy requirements of section 29. Paragraph (a) of the clause omits present paragraph 29(2)(b) and (c) and substitutes new paragraphs 29(2)(b), (c) and (d). Paragraph (b) of the clause makes a minor consequential amendment, and paragraph (c) ensures that an information provider includes a State or Territory as a body politic.

New paragraph 29(2)(b) is in similar terms to present subparagraph 29(2)(b)(ii) except that a person who divulged or communicated the relevant information or produced the relevant document directly to the Institute is defined as "the information provider".

New paragraph 29(2)(c) permits as at present a person to divulge or communicate information or produce a document to a person specified in writing by the Australian Institute of Health Ethics Committee but this will now be able to be done only if this would not be contrary to any written terms and conditions upon which the information or document was acquired by the Institute from the information provider.

New paragraph 29(2)(d) permits as at present the publication of conclusions based on statistics derived from, or particulars of procedures used in, the work of the Institute if this does not identify an information subject but this will now be able to be done only if this would not be contrary to any written terms and conditions upon which the information or document was acquired by the Institute from the information provider.

PART 3 - AMENDMENTS OF THE HEALTH INSURANCE ACT 1973

Clause 7 : Principal Act

This clause cites the Health Insurance Act 1973 as the Principal Act for the purpose of Part 3 of this Bill.

Clause 8 : Interpretation

This clause amends section 3 of the Principal Act to inset a definition of a "vocationally registered general practitioner", being a medical practitioner whose name is entered on the Vocational Register of General Practitioners which was maintained by the Health Insurance Commission pursuant to new subsection 3F(2). This definition is part of the new arrangements whereby new items will be introduced into the general medical services table which will apply only to services rendered by vocationally registered general practitioners.

Clause 9 - Certificate of in-patient as needing
acute care

This clause amends section 3B of the Principal Act which provides in relation to the issuing of a certificate by a medical practitioner that a patient in a hospital is, or will be, in need of acute care and for the review of such certificates in certain circumstances by an Acute Care Advisory Committee established under the section. The effect of the issuing of such a certificate is to exempt the patient for the period of the certificate from becoming a "nursing home-type patient" as defined in subsection 3(1) of the Principal Act. The clause amends paragraph 3B(5)(b) to require the Secretary to request an Acute Care Advisory Committee to review a certificate within 14 days of receiving from the Council an application made to the

Council by a registered organisation. Presently under paragraph 3B(5)(b) such an application is made directly to the Secretary by a registered organisation. The clause also substitutes a new subsection 3B(8).

New subsection 3B(8) provides that the Secretary may establish a committee or committees to be known as Acute Care Advisory Committee or the Acute Care Advisory Committees. Subsection 3B(8) presently requires that the committees be established in relation to each State and each Territory.

The clause also includes a transitional provision relating to reviews being conducted by an Acute Care Advisory Committee on the commencement of these amendments.

Clause 10 : Insertion of new sections

This clause inserts new sections 3F, 3G and 3H in the Principal Act to establish arrangements by which medical practitioners may become registered as vocationally registered general practitioners, and arrangements for the continuing operation of this scheme. This will permit such general practitioners to itemise particular medical services for the purpose of the payment of medicare benefits.

New subsection 3F(1) sets out the purpose of the section, being to provide for the registration of certain medical practitioners as vocationally registered general practitioners.

New subsection 3F(2) provides that the Health Insurance Commission shall establish and maintain a Vocational Register of General Practitioners.

New subsection 3F(3) provides that the Vocational Register of General Practitioners may be maintained in any form, including the form of a computer record.

New subsection 3F(4) provides that a medical practitioner may apply to the Health Insurance Commission for registration under section 3F.

New subsection 3F(5) provides that an application for registration must be made in a manner approved by the Minister.

New subsection 3F(6) sets out the circumstances in which a medical practitioner will be entitled to have his or her name entered in the Vocational Register of General Practitioners -

- (a) the General Manager of the Health Insurance Commission is satisfied that the Royal Australian College of General Practitioners has certified that the practitioner's medical practice is predominantly in general practice, and that the practitioner's training and experience in general practice make it appropriate for the practitioner to be registered under section 3F; or
- (b) the practitioner is eligible for registration in accordance with regulations (if any) made for the purpose of section 3F.

Where this situation applies, the General Manager of the Health Insurance Commission shall, within 14 days after receiving the practitioner's application, enter the practitioner's name in the Register.

New subsection 3F(7) provides that the General Manager of the Health Insurance Commission shall give a medical practitioner written notice of the day on which the practitioner's name is to be entered in the Vocational Register of General Practitioners.

New subsection 3F(8) provides that the General Manager of the Health Insurance Commission, or an authorised officer, may give the Royal Australian College of General Practitioners information about -

- (a) the current state of the Vocational Register of General Practitioners;
- (b) additions to that Register; and
- (c) deletions from that Register.

This provision is to facilitate the operation of the vocational registration arrangements.

New subsection 3F(9) provides that the General Manager of the Health Insurance Commission, or an authorised officer, may make available to members of the public, on request, the names of medical practitioners who are registered under section 3F, and the addresses at which they practise.

This provision is to facilitate the public's access to information to enable them to make informed choices about medical care.

New subsection 3F(10) provides that, in section 3F, an "authorised officer" means a Commission staff member as defined in subsection 28(1) of the Health Insurance Commission Act 1973 authorised by the General Manager of the Health Insurance Commission as an authorised officer for the purposes of section 3F.

New subsection 3G(1) sets out the circumstances in which a medical practitioner's name will be removed from the Vocational Register of General Practitioners -

- (a) the medical practitioner may request the General Manager of the Health Insurance Commission to remove his or her name;
- (b) the Royal Australian College of General Practitioners may give notice to the General Manager of the Health Insurance Commission that the practitioner's medical practice is no longer predominantly in general practice;

- (c) The Royal Australian College of General Practitioners may give notice to the General Manager of the Health Insurance Commission that it is no longer satisfied that it is appropriate for the medical practitioner to be registered under section 3F;
- (d) the Royal Australian College of General Practitioners may give notice to the General Manager of the Health Insurance Commission that the practitioner has failed to meet the minimum requirements of the College for participation in continuing medical education and quality assurance programs; or
- (e) the removal is required by regulations (if any) made for the purpose of section 3G.

New subsection 3G(2) sets out a requirement that where the General Manager of the Health Insurance Commission decides to remove a practitioner's name from the Vocational Register of General Practitioners, the Commission shall give the practitioner written notice of the decision.

New subsection 3G(3) provides that the removal of a practitioner's name takes effect on the day specified by the General Manager of the Health Insurance Commission in the decision to remove the practitioner's name.

New subsection 3G(4) provides that the date of effect of the cancellation of a practitioner's registration shall be not less than 14 days after the day on which the decision is made.

New subsection 3H(1) empowers the Minister to make a determination by notice published in the Gazette that the references, in new sections 3F or 3G, to the Royal Australian College of General Practitioners shall be taken to be references to the body specified in the determination.

New subsection 3H(2) provides that if the Minister makes a determination pursuant to subsection 3H(1), section 3F or 3G will apply as if the references to the College were references to the body specified in the determination.

Clause 11 : Variation and alterations
of pathology services table

This clause repeals section 4A of the Principal Act and inserts a new section 4A. The purpose of the section is to set out the method by which the pathology services table (in Schedule 1A to the Principal Act) may be amended or replaced.

At present, the table may be amended or replaced by Ministerial determination only following a recommendation from the Pathology Services Advisory Committee. The Royal College of Pathologists of Australasia has withdrawn its nominees, rendering the Committee inoperative. As a result, the Minister has no mechanism in place to amend or replace the table.

New subsection 4A(1) provides that regulations may vary the pathology services table -

- (a) by omitting an item or a rule of interpretation from the table;
- (b) by inserting an item or a rule of interpretation in the table; or
- (c) by substituting another amount for an amount set out in the table.

New subsection 4A(2) provides that the regulations may prescribe a pathology services table in accordance with the form of table set out in Schedule 1A to the Principal Act.

New subsection 4A(3) provides for the manner in which a new pathology services table, prescribed pursuant to new subsection 4A(2), replaces an existing pathology services table. A new

table will have effect as if it were set out in Schedule 1A to the Principal Act in place of the existing table, and in consequence the existing table will cease to have effect.

New subsection 4A(4) provides that the regulations may amend a table that has effect by virtue of new subsection 4A(3) and, on the commencement of the amendment, the table as so amended has effect in place of the previous table.

New subsection 4A(5) provides that a reference to a table of pathology services is to be read as including a reference to rules for the interpretation of that table.

New subsection 4A(6) provides for the duration of regulations made pursuant to new subsection 4A(1) or 4A(2). Unless they are repealed sooner, these regulations will cease to be in force on the day next following the fifteenth sitting day of the House of Representatives after the expiration of a period of 12 months commencing on the day on which the regulations are notified in the Gazette. When this occurs, the regulations will be deemed to have been repealed on that day.

These arrangements replace the existing section 4A of the Principal Act, which provides that the pathology services table may be amended or replaced by disallowable Ministerial determination.

Clause 12 : Multiple pathology services

This clause amends subsection 4B(2) of the Principal Act to change a reference to a "determination" to a reference to a "regulation". This amendment is consequent upon the change from the making of determinations to the making of regulations which is effected in clause 11 (the amendment to section 4A).

Clause 13 : Manner of making determinations under sections 4BA and 4BB

This clause amends subsection 4BC(1) of the Principal Act by removing a reference to section 4A. Section 4BC deals with the manner of making of determinations, and the amendment is consequent upon the change from the making of determinations to the making of regulations which is effected in clause 10 (the amendment to section 4A).

Clause 14 : Increased fee in complex cases

This clause amends section 11 of the Principal Act, which sets out a procedure for the determination of increased fees for the provision of medical or pathology services of unusual length or complexity.

In the case of a pathology service, this procedure is at present conducted with the assistance of the Pathology Services Advisory Committee. As a consequence of the termination of that Committee (clause 16), this procedure will, in future, be conducted with the assistance of the Medicare Benefits Advisory Committee (which is established pursuant to section 66 of the Principal Act). This clause amends subsections 11(2) and 11(3) and repeals subsection 11(2A) of the Principal Act to effect this change.

Clause 15 : Appeal from decision on increased fee

This clause amends section 12 of the Principal Act, which sets out a procedure for the determination of appeals against decisions affecting increased fees for the provision of medical or pathology services of unusual length or complexity.

In the case of a pathology service, this procedure is at present conducted by the Pathology Services Advisory Committee. As a consequence of the termination of that Committee (clause 16), this procedure will, in future, be conducted by the Medicare

Benefits Advisory Committee (which is established pursuant to section 66 of the Principal Act). This clause amends subsections 12(2), 12(3), 12(4) and 12(6) and repeals subsection 12(8) of the Principal Act to effect this change.

Clause 16 : Repeal of provisions establishing the
Pathology Services Advisory Committee

This clause repeals Division 2A of Part V of the Principal Act (sections 78A to 78L inclusive), which establishes and sets out details of the operation of the Pathology Services Advisory Committee.

Clause 17 - Prohibition of certain medical insurance

This clause amends section 126 of the Principal Act which in general terms has the effect of prohibiting contracts of insurance whereby the insurer undertakes liability to indemnify a person in respect of loss arising out of liability to pay medical expenses in respect of the rendering of a professional service for which medicare benefit is payable. The section makes it an offence for the insurer to enter into such a contract and implies a condition in any such contract excluding the relevant liability. Excepted from the operation of the section are contracts by registered organisations in respect of benefits in accordance with a basic table under the National Health Act 1953. The amendment is intended to close a loophole whereby the section does not extend to liability not amounting to the indemnification referred to therein. Accordingly the clause amends section 126 to refer to liability to "make a payment in the event of" the incurring by the insured of the relevant liability to pay medical expenses.

Clause 18 : Repeal of Schedule 1A and substitution
of new Schedule

This clause repeals Schedule 1A to the Principal Act and provides for the insertion of a new Schedule, which is set out in the Schedule to this Act.

The new Schedule 1A is a new pathology services table, which replaces the pathology services table which came into operation on 1 August 1986. The 1 August 1986 table does not appropriately reflect current pathology practice, whereas the new table addresses anomalies identified in the Joint Parliamentary Committee of Public Accounts Report Number 236.

PART 4 - AMENDMENTS TO THE NATIONAL HEALTH ACT 1953

Clause 19 : Principal Act

This clause cites the National Health Act 1953 as the Principal Act for the purpose of Part II of this Bill.

Clause 20 : Interpretation

This clause amends section 4 of the Principal Act by inserting the following definitions -

- . "Council" means the Private Health Insurance Administration Council established by section 82B;
- . "Council's rules" means rules made by the Council in the performance of its functions under paragraph 82G(r).

New Part VIAA, to be inserted by clause 45 of this Bill establishes the Private Health Insurance Administration Council.

This clause also amends the definition of "basic private table" or "basic table" in section 4 of the Principal Act. Under the Act, a registered health benefits organisation is required as a condition of its registration to permit any contributor to a health benefits fund conducted by it to contribute for benefits in accordance with a basic table. The amendments will permit greater flexibility in the determination of benefits under the basic table in relation to treatment in a hospital or day hospital facility not requiring an overnight stay. The amendments also will permit a greater ability to specify by determination the kinds of professional attention which for benefits purposes under a basic table are required or permitted to be provided in a hospital involving an overnight stay, in a hospital not involving an overnight stay, or in a day hospital facility.

Paragraph (a) substitutes a new paragraph (a) in the definition of "basic private table" or "basic table" (defined in the Clause as the "relevant definition").

New paragraph (a) provides in relation to benefits for hospital treatment provided for a period that includes part of an overnight stay to patients in a hospital who are not nursing-home type patients. It will require that the hospital treatment be for the purposes of permitting the provision of professional attention which is either "type-A professional attention" (as defined in the new definition inserted by paragraph (k) of this clause) or is professional attention which is the subject of a certificate by a medical practitioner under new subsection 4C(1). The level of benefits will remain the standard hospital fees declared in relation to the State or Territory. The new provision does not require that the person receiving hospital treatment be an "in-patient" thereby removing the present requirement for occupancy of a hospital bed.

Paragraphs (b), (d), (f) and (g) remove references to "in-patient" in paragraphs (b), (c), (d) and (da) of the relevant definition. An "in-patient" is defined in subsection 3(1) of the Health Insurance Act 1973. This definition has effect for the purposes of the Principal Act by virtue of subsection 4(1). An "in-patient" is defined in terms of a person occupying a bed in a hospital. The effect of the amendments is therefore to remove the present requirement in paragraphs (b), (c), (d) and (da) of the relevant definition that the hospital treatment referred to therein be provided to a person who occupies a bed in the relevant hospital.

Paragraphs (c) and (e) are consequential to amendments made respectively by paragraphs (b) and (d).

Paragraph (h) substitutes new paragraphs (db) and (dc).

New paragraph (db) provides in relation to benefits for hospital treatment provided for a period that does not include part of an overnight stay to patients in a hospital. It will require that the hospital treatment be for the purposes of permitting the provision of "type-A professional attention", "type-B professional attention" (definitions inserted by paragraph (k)), or professional attention which is the subject of a certificate by a medical practitioner under new subsection 4C(2). The level of benefit will be that determined as payable by determination under new paragraph 4D(1)(a). The person receiving the hospital treatment will not be required, as presently, to be an in-patient and therefore to occupy a hospital bed.

New paragraph (dc) provides in relation to benefits for hospital treatment provided to a person at a day hospital facility. It will require that the professional attention be for the purposes of permitting the provision of professional attention which is not "type-C professional attention" (definition inserted by paragraph (k)). There

will be no requirement, as presently, that the person receiving the hospital treatment occupy a bed in a day hospital facility.

Paragraph (j) removes the reference to "in-patient" in paragraph (dd) of the relevant definition which provides in relation to benefits for the provision of prostheses to persons in a hospital or day hospital facility. A person to whom hospital treatment is provided will not therefore be required to occupy a bed.

Paragraph (k) inserts in subsection 4(1) of the Principal Act definitions as follows -

- . "patient" is defined similarly to "in-patient" in subsection 3(1) of the Health Insurance Act 1973 except that it does not require a person to occupy a bed in the hospital;
- . "type-A professional attention" is defined in terms of professional attention normally requiring hospital treatment in a hospital other than professional attention to which a determination under paragraph 4B(a) relates (attention requiring hospital treatment not involving part of an overnight stay);
- . "type-B professional attention" is defined as professional attention to which a determination under paragraph 4B(a) relates (attention requiring hospital treatment not including part of an overnight stay);
- . "type-C professional attention" is defined as professional attention to which a determination under paragraph 4B(b) relates (attention not normally requiring hospital treatment).

Clause 21 - Determinations - professional attention;
Certificates in respect of professional attention;
Determination - amount of benefit

This Clause inserts new sections 4B, 4C, and 4D.

New section 4B provides for the making by the Minister of determinations which will identify "type-B professional attention" and "type-C professional attention". Under paragraph 4B(a) the Minister may determine that the provision of professional attention of a specified kind normally requires hospital treatment in a hospital not requiring an overnight stay ("type-B professional attention"). Under paragraph 4B(b), the Minister may determine that the provision of professional attention of a specified kind does not normally require hospital treatment ("type-C professional attention").

New section 4C makes provision for certification by a medical practitioner in certain cases where professional attention would otherwise not be professional attention as referred to in new paragraph (a) or (db) of the basic table.

New subsection 4C(1) provides for a medical practitioner to certify in writing that because of the medical condition of the patient specified in the certificate, or because of the special circumstances specified in the certificate, it would be contrary to accepted medical practice to provide particular professional attention, not qualifying as type-A professional attention, unless the patient were given hospital treatment in the relevant hospital for a period including part of an overnight stay. Such professional attention will be taken to be professional attention to which paragraph (a) of the definition of basic table applies.

New subsection 4C(2) provides for a medical practitioner to certify in writing that because of the medical condition of the patient specified in the certificate, or because of the special circumstances specified in the certificate, it would be contrary to accepted medical practice to provide particular professional attention, not qualifying as type-A professional attention or type-B professional attention, unless the patient were given hospital treatment in the relevant hospital for a period not including part of an overnight stay. Such professional attention will be taken to be professional attention to which paragraph (db) of the definition of basic table applies.

New section 4D provides for the determination by the Minister of amounts of benefit for the purposes of paragraphs (db) and (dc) of a basic table.

New subsection 4D(1) provides for the determination by the Minister in relation to a State or Territory of the amount payable in respect of hospital treatment provided in hospitals in that State or Territory, and in respect of hospital treatment provided in day hospital facilities in that State or Territory for the purposes respectively of paragraphs (db) and (dc) of the definition of basic table.

New subsection 4D(2) provides that the Minister under subsection 4C(1) can determine different amounts in relation to different classes of professional attention, and for the purposes of paragraph (db) of the definition of a basic table, may also determine different amounts in respect of hospital treatment provided in different classes of hospital.

Clause 22 - Certain determinations to be
disallowable instruments

This clause repeals present section 5 of the Principal Act and inserts a new section 5. The present section 5 provides for determinations under a basic table to be disallowable by Parliament but does not refer to section 46A of the Acts Interpretation Act 1901.

New section 5 provides that determinations under present paragraph (dd) of the basic table, new section 4B, and new subsection 4D(1) are disallowable instruments for the purposes of section 46A of Acts Interpretation Act 1901.

Clause 23 : Interim decisions on applications
under subsection 40AD(1B)

This is a minor drafting amendment, consequential upon previous amendments to section 40AE of the Principal Act which involved a renumbering of its subsections.

Clause 24 : Application by proprietor of home for
patient classification

This clause amends section 40AFD of the Principal Act to make the requirement that the proprietor of a nursing home apply for patient classification subject to new section 40AFJ which provides that when a determination under new subsection 40AFG(2) or new subsection 40AFH(2) is in force then the body or person specified in that determination shall instead apply for patient classification.

Clause 25 : Review by Secretary of classification

This clause amends subsection 40AFE(5) of the Principal Act by expanding the requirement that the Secretary give written notice of a decision under subsection 40AFE(2) to the proprietor of the nursing home to include a requirement that the Secretary give written notice of such a decision to another person or body if that other person or body applied for the classification of the patient.

Clause 26 : Insertion of new sections 40AFG, 40AFH, 40AFJ and 40AFK

This clause inserts new sections 40AFG, 40AFH, 40AFJ and 40AFK in the Principal Act to introduce provisions relating to determinations by the Secretary concerning the classification of nursing home patients by proprietors of nursing homes.

The purpose of these provisions is to enable the Secretary to determine that an independent person or body is to apply for the classification of patients in homes where the proprietor has frequently provided inaccurate information leading to classifications of patients which, when reviewed, have had lower classifications substituted for them.

New section 40AFG empowers the Secretary to determine under paragraph (2)(c) that section 40AFD of the Principal Act shall not apply in relation to a proprietor where reviews of classifications under section 40AFE of that Act by the Secretary or reviews under section 40AFE confirmed by the Minister, have in a substantial number of cases, resulted in those classifications having been revoked on the grounds that the information given by the proprietor was inaccurate and lower classifications having been substituted for them. The Secretary is also empowered under paragraph (2)(d) to nominate a person or body who is to make application for the purposes of section 40AFD in the place of the proprietor.

New subsection (3) provides that the determination remains in force for the period specified in the determination unless it is set aside by the Minister under subsection 40AFH(2).

New subsection (4) requires the Secretary to give the proprietor written notice of the determination, the reasons for the determination and the rights of the proprietor under new section 40AFH.

New section 40AFH gives the proprietor of a nursing home who is dissatisfied with a determination under section 40AFG(2) the right to request the Minister to review the determination and provides that the request should be made in writing within 28 days of notice of the determination being given.

New subsection (2) requires the Minister to review the determination and either confirm it, set it aside or set it aside and substitute another determination.

New subsection (3) provides that a determination by the Minister remains in force for the period specified in the determination.

New subsection (4) requires the Minister to give the proprietor written notice of his or her decision under subsection (2) and if the Minister has confirmed the determination of the Secretary or substituted another determination for it, the reasons for the decision.

New section 40AFJ provides that where a determination under subsection 40AFG(2) or 40AFH(2) is in force the proprietor may not apply under section 40AFD for the classification of patients in the nursing home and that such applications shall be made by the person or body nominated for that purpose in the determination. It further provides that the Secretary shall give the proprietor notice of any classification granted on an application by the person or body and that where that application was for the renewal of a classification the classification has effect from the expiration of the previous classification of the patient.

New section 40AFK provides that the Secretary shall on request give to the proprietor of a nursing home written notice of a classification of a patient admitted to the home and its date of expiry.

Clause 27 : Injunctions for contravention of section 67

This clause inserts a new section 67A in the Principal Act which would enable the Minister, the Council, or any other person, to seek an injunction in the Federal Court in relation to conduct or proposed conduct which constitutes or would constitute a contravention of subsection 67(1) of the Principal Act.

Subsection 67(1) provides that a person (other than a registered organisation) shall not carry on health insurance business.

New subsection 67A(1) provides so that the Federal Court of Australia may, upon application of the Minister, the Council or any other person, grant an injunction in such terms as it determines to be appropriate against a person, where it is satisfied that the person has engaged, or is proposing to engage, in conduct that constitutes or would constitute a contravention of subsection 67(1).

New subsection 67A(2) provides that where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

New subsection 67A(3) provides that the Court may rescind or vary an injunction granted under subsection (1) or (2).

New subsection 67A(4) provides that the power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:

- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) whether or not the person has previously engaged in conduct of that kind.

New subsection 67A(5) provides that the power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:

- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
- (b) whether or not the person has previously refused or failed to do that act or thing.

Clause 28 : Application by organisation for registration as health benefits organisation or to carry on health insurance business

This clause amends section 68 of the Principal Act which currently provides that health benefits organisations are required to be registered separately in each State in which they wish to carry on business. The amendments to the section provide that a registered health benefits organisation may carry on business as a registered health benefits organisation in the State or States specified in either its application for registration or its successful application under the proposed new subsection 68(1D) to carry on business in a State or States not already specified in its registration application. "State" is here defined to include the Northern Territory. The amendment allows health funds under the one organisation, currently registered separately in a number of States, to have one

registration only. A registered organisation currently registered in respect of a State will be permitted to operate in other States upon successful application under new subsection 68(1D).

Subclause 28(2) is a transitional provision and provides that where before the commencement of the clause a registered health benefits organisation was registered in respect of a State or States:

- (a) the organisation shall be taken to be registered under section 68 of the Principal Act as amended; and
- (b) for the purposes of new subsection 68(1C) every State and Territory in respect of which the organisation was registered shall be taken to have been specified in the application for registration under section 68.

The clause omits subsection 68(1) and substitutes new subsections 68(1), (1A), (1B), (1C) and (1D).

New subsection 68(1) provides that a reference to a "State" includes the Northern Territory, except in some specified circumstances.

New subsection 68(1A) provides that an organisation may apply for registration as a registered organisation.

New subsection 68(1B) provides that an application shall specify the State or States in which the organisation proposes to carry on business as a registered health benefits organisation.

New subsection 68(1C) provides that it is a condition of registration of a registered health benefits organisation that it only carries on business as a registered health benefits organisation in the State or States specified in:

- (a) its application for registration; or
- (b) a successful application by it under subsection 68(1D).

New subsection 68(1D) provides that a registered health benefits organisation may apply to carry on business as a registered health benefits organisation, in a specified State, or specified States not specified in its application.

Clause 29 : Giving of information by applicant organisations

This clause amends section 69 of the Principal Act which currently provides a regulation making power in relation to the manner and form of registration applications, to extend its operation to the applications made under the proposed new subsection 68(1D) to carry on business in a specified State or States not specified in the organisation's application for registration.

Clause 30 : Application to be referred to Committee

This clause amends section 71 of the Principal Act, which currently provides that the Secretary shall refer an application for registration to the Registration Committee, to extend its operation to applications made under the new subsection 68(1D). The Registration Committee is established under section 70 of the Principal Act.

Clause 31 : Report of the Committee

This clause amends section 72 of the Principal Act, which currently provides that the Registration Committee shall recommend to the Minister that registration be granted or refused. The amendment will allow the Committee to recommend on an application made under the new subsection 68(1D).

Clause 32 : Matters to be taken into account
by Committee and by Ministers

This clause amends section 72A of the Principal Act which requires the Registration Committee and the Minister to take account of certain matters in exercising their respective functions, with respect to an application under section 68 for registration of an organisation in respect of a State. The amendment extends the operation of section 72A to applications made under subsection 68(1D).

Clause 33 : Registration and permission to carry on
business as registered health benefits organisation

This clause amends section 73 of the Principal Act which provides in relation to the granting of applications for registration and procedures for actual registration. The clause amends section 73 so that the existing provisions apply only to applications for registration. It inserts new subsections 73(9) and (10) in respect of applications to carry on business as a registered organisation in a State or the Northern Territory.

New subsection 73(9) provides that where the Minister grants an application by a registered organisation to carry on business as a registered health benefits organisation in a State or the Northern Territory, the Minister shall, within one month after the Minister has granted the application publish in the Gazette a notification to that effect setting out:

- (a) the name of the organisation; and
- (b) the name of the State or Territory.

New subsection 73(10) provides that where the Minister refuses an application by a registered organisation to carry on business as a registered health benefits organisation in a State or the Northern Territory, the Minister shall, within one month after so refusing the application publish in the Gazette a notification of the refusal.

Clause 34 : Registered organisation not to carry on
other business etc

This clause repeals section 73BAA of the Principal Act. Section 73BAA is designed to prevent registered organisations from carrying on business other than as a registered health benefits organisation unless otherwise exempted by the Minister under section 73BAC of the Principal Act. This amendment is in line with the objective of removing unnecessary regulation.

Clause 35 : Minimum reserves

This clause amends section 73BAB of the Principal Act in broad terms which provides that unless exempted under section 73BAC organisations shall have an excess of defined assets over liabilities of the equivalent of at least two months break even contribution income. The amendment would retain the current solvency requirement of two contribution months of break even income but would add a further requirement that this shall be a minimum in addition to other defined liabilities of not less than \$1m, or such higher amount as is prescribed. The Minister's decision on acceptable assets and liabilities may be made having regard to the advice of the Private Health Insurance Administration Council. The amendment increases the solvency requirements of registered organisations and provides better protection for insured persons.

This clause omits subsection 73BAB(1) of the Principal Act and inserts new subsections 73BAB(1), (1A) and (1B).

New subsection 73BAB(1) provides that it is a condition of registration of a registered organisation that, where it conducts only one health benefits fund, the value of the assets of that fund shall at all times exceed the sum of:

(a) whichever is the higher of:

(i) the prescribed minimum amount; or

- (ii) the amount (if any) by which the sum of the amounts debited to that fund during the last preceding prescribed period of the organisation exceeds the amount of income received during that period from assets of that fund consisting of investments;
- (b) the liabilities that are required to be met out of that fund;
- (c) the amount of any subsisting guarantee, not falling within paragraph (b), given by the organisation in relation to a prescribed company;
- (d) the sum of the amounts of payments by way of calls in respect of shares in a prescribed company, not falling within paragraph (b), that the organisation is, or could become, liable to pay; and
- (e) any other amount that the Minister, after taking into account the advice of the Council, considers should be a liability for the purposes of the subsection.

New subsection 73BAB(1A) provides in effect that it is a condition of registration of a registered health benefits organisation that, where it conducts 2 or more health benefits funds, the value of the assets of each of those funds shall at all times exceed the sum of:

- (a) the amount (if any) by which the sum of the amounts debited to that fund during the last preceding prescribed period of the organisation exceeds the amount of income received during that period from assets of that fund consisting of investments;
- (b) the liabilities that are required to be met out of that fund;

- (c) so much as the Minister, by instrument in writing, determines of the amount of any subsisting guarantee, not falling within paragraph (b), given by the organisation in relation to a prescribed company;
- (d) the amount equal to so much as the Minister, by instrument in writing, determines of the sum of the amounts of payments by way of calls in respect of shares in a prescribed company, not falling within paragraph (b), that the organisation is, or could become, liable to pay; and
- (e) any other amount that the Minister, after taking into account the advice of the Council, considers should be a liability for the purposes of this subsection.

New subsection 73BAB(1B) provides in effect that it is a condition of registration of a registered health benefits organisation that, where it conducts 2 or more health benefits funds, the value of the sum of the assets of all those funds shall exceed the sum of:

- (a) whichever is the higher of:
 - (i) the prescribed minimum amount; or
 - (ii) the amount (if any) by which the sum of the amounts debited to those funds during the last preceding prescribed period of the organisation exceeds the amount of income received during that period from assets of those funds consisting of investments;
- (b) the liabilities that are required to be met out of those funds;
- (c) the amount of any subsisting guarantee, not falling within paragraph (b), given by the organisation in relation to a prescribed company;

- (d) the sum of the amounts of payments by way of calls in respect of shares in a prescribed company, not falling within paragraph (6), that the organisation is, or could become, liable to pay; and
- (e) any other amount that the Minister, after taking into account the advice of the Council, considers should be a liability for the purposes of this subsection.

This clause inserts into subsection 73BAB(3) of the Principal Act, the following definitions:

- . "prescribed minimum amount" means \$1,000,000 or, if a higher amount is prescribed, that higher amount;
- . "property" includes an interest, power, right or privilege.

Clause 36 : Exemption from section 73BAB

This clause amends section 73BAC of the Principal Act which currently provides for exemptions from section 73BAA (to be repealed) and from the solvency requirements of section 73BAB. The amendment restricts the current exemption so that an applicant organisation for solvency exemption will be required to furnish appropriate evidence, valuations, or its assets and liabilities.

Subclause 36(2) is a transitional provision providing that an exemption which was in force immediately before the amendment of section 73BAB of the Principal Act shall be taken to be an exemption under new subsection 73BAC(1). The clause omits subsection 73BAC and substitutes new subsections 73BAC(1) and (1B).

New subsection 73BAC(1) provides that upon application in writing made to the Minister by a registered organisation, the Minister, after consulting the Council, may, by notice in writing served on the public officer of the organisation, exempt the organisation from compliance with the conditions referred to in section 73BAB.

New subsection 73BAC(1B) provides that an application by an organisation under subsection (1) shall be accompanied by such evidence, valuations or actuarial certification of the assets and liabilities of the organisation as the Minister considers appropriate.

Clause 37 - Reinsurance Account in health benefits fund

This clause amends section 73BB of the Principal Act which provides for the establishment and maintenance of reinsurance accounts by registered organisations. Section 73BB presently permits an organisation to debit to its relevant Reinsurance Account the amount of any benefits payments made under a basic table to a contributor in respect of the provision of treatment, a service or another matter on days in excess of 35 in number during a period of 12 months. The amendments make section 73BB applicable to benefits payments under a supplementary hospital table as well as under a basic table. The amendments otherwise continue the present operation of section 73BB in relation to treatment, a service or another matter provided to persons under the prescribed age, and introduce new provision where this is provided to persons over the prescribed age. In the latter case, any benefits paid in accordance with a basic table or supplementary hospital table may be debited to the Reinsurance Account. As well as several minor amendments for this purpose, the clause inserts or substitutes new subsection 73BB(9), and a definition of "prescribed age".

The amendment supports community rating and provides greater equity between health funds in sharing the liability of the aged and chronically ill.

New subsection 73BB(5) provides for the debiting to a Reinsurance Account by an organisation of the amounts of any payments of any benefits made out a health benefits fund under a basic table or supplementary hospital table to a contributor in respect of the provision of treatment, a service or another matter for a person who has reached the prescribed age.

New paragraph 73BB(7)(c) provides for the provision to the Private Health Insurance Administration Council of information from records relating to the operation of a Reinsurance Account.

New subsection 73BB(9) provides that section 73BB only applies to classes of benefits declared by the Minister, by notice published in the Gazette to be classes of benefits for the purposes of reinsurance. The present subsection 73BB(9) provides that section 73BB does not apply to benefits included in a prescribed class.

"prescribed age" is defined in subsection 73BB(11) to mean 65 years or, if another age is prescribed, that other age.

Clause 38 - Health Benefits Reinsurance Trust Fund

This clause amends section 73BC to reflect the administration of the Health Benefits Reinsurance Trust Fund by the Council. It also removes the reference in subsection 73BC(1) to the sharing by the Commonwealth of the burden of meeting any deficits in Reinsurance Accounts and limits relevant Parliamentary Appropriation to that in the year ending on 30 June 1989. The clause substitutes or inserts new paragraph 73BC(5)(a), and subsections 73BC(5B), (5C), (5D), and (5E).

New paragraph 73BC(5)(a) provides for payment into the fund of such amount as is appropriated by Parliament in the financial year ending on 30 June 1989. The present provision provides for appropriation from time to time.

New subsection 73BC(5B) requires the Minister to determine principles in writing relating to the operation of the Fund.

New subsection 73BC(5C) requires such principles to deal with the payment of amounts by registered health benefits organisations into the Fund.

New subsection 73BC(5D) requires principles, and variations to these to be notified to the Council and published in the Gazette.

New subsection 73BC(5E) requires that the Council shall exercise its powers and functions in relation to the Fund in accordance with the principles.

Clause 39 - Repeal

Clause 17 repeals section 73BD of the Principal Act which provides for the remuneration and allowances of the present administrators of the Health Benefits Reinsurance Trust Fund.

Clause 40 - Conduct of health benefits funds

This clause amends section 74B of the Principal Act so that in addition to the references already contained therein, a registered organisation is also required to conduct a health benefits fund in accordance with the rules made by the Council in the performance of its functions under new paragraph 82G(r).

Clause 41 - Repeal of sections 76, 76A and 77

This clause repeals sections 76, 76A and 77 which relate to functions of the Secretary in relation to registered organisations and which are made redundant by provisions of the Bill relating to the Council.

Clause 42 - Changes of rules etc by registered organisation

This clause extensively amends section 78 of the Principal Act which presently provides for procedures, involving reference to the Registration Committee, for the approval or non-approval of changes to the constitution, articles of association, or rules of an organisation. The amendments introduce a simplified procedure whereby the onus is on organisations in satisfying the Minister to identify a change and demonstrate that it is consistent with the Act and conditions of registration of the organisation. The Minister in certain circumstances may declare the change inoperative. The clause omits present subsections 78(1A) to (11) and inserts new subsections 78(2) to (6).

New subsection 78(2) requires notification of a change to identify the change and demonstrate its consistency with the Act and conditions of registration of the organisation.

New subsection 78(3) provides that where the required notification is not given a change shall be taken not to have come into operation.

New subsection 78(4) empowers the Minister to declare in writing that a change shall not be taken to have come into effect where the Minister forms certain opinions in respect of the change. These relate to breach of the Act or conditions of registration, unreasonable or inequitable conditions affecting the rights of any contributor, and the financial stability of a health benefits fund.

New subsection 78(5) requires the Secretary to inform the Private Health Insurance Administration Council of any declaration made by the Minister under new paragraph 78(4)(c).

New subsection 78(6) requires the Secretary to inform the organisation of any declaration under new subsection 78(4).

Clause 43 - Cancellation of registration of an organisation

This clause makes consequential amendments of section 79 to take account of the registration of an organisation, as a result of amendments by the Bill, no longer being in respect of a particular State or Territory.

Clause 44 - Offences

This clause amends paragraph 82(1)(a) of the Principal Act under which it is an offence to make a false statement in, or in connexion with, or in support of, an application for registration of an organisation. The amendment extends the offence to cover an application for permission to carry on business as a registered health benefits organisation.

Clause 45 - Part VIAA - Private Health Insurance
Administration Council

The proposed establishment of Council is to enable the transfer of certain administrative health insurance functions from the Department of Community Services and Health. This follows Government decisions to substantially reduce Commonwealth involvement in the detailed administration of private health insurance.

Clause 23 inserts a new Part VIAA after Part VI in the Principal Act. Part VIAA will contain the following provisions :-

Division 1 - Preliminary

Interpretation

New section 82A provides for the following definitions of terms:

- . "Commissioner" would mean the Commissioner of Private Health Insurance Administration referred to in clause 82C;
- . "deputy" would mean a deputy of a member appointed under clause 82PD;
- . "Director" would mean the Director of the Council referred to in clause 82PH;
- . "guidelines" would mean the guidelines referred to in clause 82F;
- . "member" would mean a member of the Council and include the Commissioner.

Division 2 - Establishment and Constitution of Council

Establishment

New subsections 82B(1) and (2) respectively, provide for the establishment of a Private Health Insurance Administration Council and for it to be a body corporate with perpetual succession and common seal, and with the ability to acquire, hold and dispose of real and personal property and to sue and be sued in its corporate name.

New subsection 82B(3) provides for the Council's common seal to be kept in such custody as the Council directs and for it not to be used except as authorised by the Council.

New subsection 82B(4) provides for all courts, judges and persons acting judicially to take judicial notice of the imprint of the Council's common seal on a document and presume that it was duly affixed.

Commissioner

New subsection 82C(1) provides that there shall be a Commissioner of Private Health Insurance Administration.

New subsection 82C(2) provides that the Commissioner may perform the functions and exercise the powers of the Council and, where he or she performs such a function or exercises such a power, that function or power shall be taken to have been performed or exercised by the Council.

New subsection 82C(3) provides that the Commissioner shall, in the performance of a function or the exercise of a power of the Council, have regard, as far as is practicable, to the advice of the other members.

New subsection 82C(4) provides that the Commissioner shall be appointed by the Minister in accordance with the guidelines.

New subsection 83C(5) provides that the Commissioner shall be appointed on a full-time basis or on a part-time basis.

Constitution of Council

New subsection 82D(1) provides for the Council to consist of the Commissioner, 3 members representing registered organisations and one other member.

New subsection 82D(2) provides that the performance of the functions, or the exercise of the powers, of the Council is not affected by a vacancy or vacancies in the membership of the Council.

Appointment of Non-Commission members

New subsection 82E provides for members, excluding the Commissioner, to be appointed by the Minister in accordance with the guidelines on a part-time basis.

Guidelines

New subsection 82F(1) empowers the Minister, to make written guidelines, not inconsistent with this Part, relating to the appointment of the Commissioner, other members and deputies, the terms and conditions of their offices, and the period of their appointment. Such guidelines are disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901 (new subsection 82F(3)).

New subsection 82F(2) provides that the Minister must consult with registered organisations or associations of registered organisations, as the Minister considers appropriate, before making, varying or revoking guidelines.

Division 3 - Functions and powers of CouncilFunctions

New section 82G sets out the Council's functions. The principal functions would be -

- . to administer the Health Benefits Reinsurance Trust Fund;
- . to obtain from each registered organisation regular reports about its financial affairs, including reports supported by actuarial certification;
- . to establish uniform standards of reporting by registered organisations to the Council;
- . to examine, periodically, the financial affairs of registered organisations by inspecting and analysing the records, books and accounts of the organisations and any other relevant information;
- . to review by independent actuarial assessment, the value of the assets of each health benefit fund;
- . to determine whether a registered organisation is or is about to be, in breach of a condition referred to in section 73BAB (a minimum reserve condition);
- . where Council determines that a registered organisation is, or is about to be, in breach of a minimum reserve condition it must consult with the organisation and make recommendations to the Minister on appropriate action to be taken, and where appropriate recommend that the Minister apply under section 82Z for the judicial management or winding up of the fund concerned;

- . to impose an levies on each registered organisation, calculated on the basis of the number of members of each organisation, to meet the general administrative costs of the Council and administrative costs of reviews conducted by Acute Care Advisory Committees under section 3B of the Health Insurance Act 1973;
- . to receive applications from registered organisations for review of certificates given under subsection 3B(1) of the Health Insurance Act 1973 and refer the applications to the Secretary;
- . to make recommendations to the Minister in relation to applications by registered organisations under section 73BAC seeking exemption from minimum reserve conditions;
- . to advise the Minister about the financial operations and affairs of registered organisations;
- . functions incidental to other functions of the Council and any other functions conferred by this or any other Act.

Powers

New subsection 82H provides that the Council has the power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

Directions by Minister

New subsection 82J(1) empowers the Minister, by notice in writing to the Commissioner, to give directions with respect to the performance of the Council's functions or exercise of its powers and the Council shall comply with the directions.

New subsection 82J(2) places a duty on the Minister to consult the Council about the proposed direction before giving a direction under subclause 82I(1).

New subsection 82J(3) requires the Minister to table such directions before each House of Parliament within 15 sitting days after the direction is given.

Examination of records, books and accounts of registered organisations

New subsection 82K(1) provides that where the Commissioner is of the opinion that it is desirable for the proper performance of the Council's functions that the records, books and accounts of a registered organisation be examined, the Commissioner may, by signed instrument authorise the Director, a member of staff of the Council or a consultant engaged by the Council to examine and report on those records, books and accounts.

New subsection 82K(2) provides that the person authorised under subclause 82K(1) shall at all reasonable times have full and free access to any premises in which the records, books and accounts are kept and may take extracts from, or copies of, the records, books and accounts .

New subsection 82K(3) empowers the Commissioner, by written notice to a person who is or has been an officer, servant or agent of a registered organisation, require that person:

- . to give the Council, in the time specified in the notice, the information on the affairs of the registered organisation as is required in the notice;
- . to attend, at a time and place specified in the notice, before the Council and give evidence on the affairs of the registered organisation; or

- . to produce, at a time and place specified in the notice, all records, books and accounts in the person's custody or under the person's control on the affairs of the registered organisation.

New subsection 82K(4) empowers the Commissioner to require the information or evidence to be given on oath either orally or in writing and, for that purpose, the Commissioner or a person authorised in writing by the Commissioner to do so, may administer an oath or affirmation.

New subsection 82K(5) provides for an offence of refusing or failing to comply with a requirement in notice served under subclause 82K(3) or refusing to be sworn or make affirmation, and impose penalties of \$1000 or imprisonment for 6 months or both.

New subsection 82K(6) provides that a 'registered organisation' includes an organisation the registration of which was cancelled under section 79 within 12 months before the date of the notice under subsection (3).

Registered organisation to give information to the Council annually

New subsection 82L(1) provides that a registered organisation which makes any report to all or any of its members at any time after 30 June 1989, shall, within one month after making the report or within such further time as the Council allows, give a copy of the report to the Council.

New subsection 82L(2) provides that a registered organisation shall, within 3 months after the end of each year commencing with the year ending on 30 June 1989, or within such further time as the Council allows give to the Council:

- (a) such financial accounts and statements in respect of that year as the Council requires to be given for use in preparing the report referred to in section 82PA; and
- (b) such other statements in respect of that year as are required by the Council's rules;

certified on behalf of the organisation in accordance with the Council's rules to be true and correct.

Registered organisation to comply with Council's reporting requirements

New subsection 82M provides that it is a condition of registration of a registered organisation that the organisation comply, within a reasonable time, with such requirements as the Council, in the performance of its functions, imposes on the organisation.

Division 4 - Administration

Meetings of Council

New subsection 82N(1) provides that subject to subclause 82N(2) the Commissioner is to convene a meeting of the Council when he or she thinks it necessary for the efficient performance of the Council's functions or when so directed in writing by the Minister.

New subsections 82N(2) and (3) provide, respectively, that the Commissioner is to convene a meeting at least once every 6 months and determine the time and place at which a meeting is to be held.

New subsections 82N (4) and (5) provide, respectively, that at a meeting the commissioner and 2 other members constitute a quorum and that the Commissioner is to preside at all meetings.

New subsections 82N (6) and (7) would provide, respectively, that questions at a meeting are to be determined by the Commissioner, having regard to the advice of the members present, and that subject to this clause, the Commissioner is to determine the procedure of the meeting.

Delegation by Council

New section 82P empowers the Council, by writing under its common seal, to delegate to the Director or another member of staff of the Council all or any of the functions and powers of the Council.

Annual report by Council

New subsection 82PA(1) would provide that the Council is to give the Minister, as soon as practicable after 30 September in each year, a report on the operations of registered organisations during the year ending on 30 June in that year.

New subsection 82PA(2) provides that the report is to include, in respect of each health benefit fund conducted by a registered organisation in the year to which the report relates, information on the fund covering contributions payable to the fund, other amounts payable to the fund, fund benefits payable out of the fund, management expenses, other amounts payable out of the fund, the balance of the fund as at the end of that year, details of how the reserves of the fund have been invested and any other information which the Minister requires to be included.

New subsection 82PA(3) provides that the Minister is to lay each report under this clause before each House of Parliament within 15 sitting days of that House after it is received by the Minister.

Division 5 - Offices of Members

Validity of appointments

New section 82PB provides that the appointment of a person as Commissioner or as another member is not invalid because of a defect or irregularity in connection with the person's appointment.

Acting Commissioner

New subsection 82PC(1) empowers the Minister to appoint a person to act as Commissioner during a vacancy in the office of Commissioner (whether or not an appointment has been previously made to the office) or during any or all periods when the Commissioner is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office, subject to the condition that a person appointed to act during a vacancy cannot act for more than 12 months.

New subsection 82PC(2) provides that anything done by or in relation to a person purporting to act as Commissioner is not invalid because the occasion for the appointment had not arisen, because there was a defect or irregularity in connection with the appointment, because the appointment ceased to have effect or because the occasion for the person to act as Commissioner had not arisen or had ceased.

Deputies of members

New subsection 82PD(1) empowers the Minister to appoint a person to be the deputy of a member (other than the Commissioner) in accordance with the guidelines.

New subsection 82PD(2) provides that the deputy of a member may attend meetings of the Council that the member does not attend and that the deputy is, while attending a meeting, to be taken to be a member.

New subsection 82PD(3) provides that anything done by or in relation to a deputy purporting to act under this section is not invalid because:

- (a) there was a defect or irregularity in connection with the appointment; or
- (b) the appointment had ceased to have effect.

Division 6 - Conditions of Members

Remuneration and allowances of members

New subsection 82PE, subject to the Remuneration Tribunal Act 1973, provides for a member to be paid the remuneration determined by the Remuneration Tribunal and such allowances as are prescribed.

Resignation

New section 82PF provides that a member or deputy may resign by writing signed and given to the Minister.

Termination of Appointment

New subsection 82PG(1) empowers the Minister to terminate the appointment of a member or deputy for misbehaviour or physical or mental incapacity.

New subsection 82PG(2) provides that the Minister is to terminate a member's, or deputy's, appointment if -

- . a member or deputy becomes bankrupt, applies for the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or assigns his or her remuneration for their benefit; or
- . a member of the council is absent, except with the leave of the Commissioner, from 3 consecutive meetings of the Council.

Division 7 - Director and Staff

Director

New subsections 82PH(1), (3) and (4) provide, respectively, that there is to be a Director of the Council who is to be appointed by the council, that he or she is to hold office on a full-time basis and that, subject to this clause, he or she is to hold office for the period, and subject to the terms and conditions, specified in the instrument of appointment.

New subsection 82PH(2) empowers the Council to determine the terms and conditions of service of the Director in respect of matters not provided for by this Part and to terminate such an appointment at any time.

New subsection 82PH(5), (6) and (7) provide, respectively, that a person who has attained the age of 65 is not to be appointed as Director, that a person shall not be appointed as Director for a period that extends beyond the day on which the person will attain the age of 65 years and that the appointment of a person as Director is not invalid because of any defect or irregularity in connection with the person's appointment.

Duties of Director

New subsection 82PJ(1) and (2) provide, respectively, that the Director, to the extent determined by the Council, is to manage the affairs of the Council and shall, in doing so, act in accordance with the policy and any directions of the Council.

Conflict of interests

New subsections 82PK(1) and (2) provide, respectively that the Director is not to be present at a meeting of the Council when the Council is making a decision in relation to the office of Director and that where the Director has a direct or indirect pecuniary interest in a matter related to his or her duties as Director, he or she shall disclose the nature of the interest to the Commissioner as soon as possible after the relevant facts have come to his or her knowledge.

Staff and consultants

New subsections 82PL(1) and (2) respectively, empower the Council to employ such staff as it thinks necessary to assist it in performing its functions and exercising its powers and empower the Commissioner to arrange with the Secretary of a Department of

the Australia Public Service for services of officers or employees in the Department to be made available to the Council.

New subsections 82PL(3) and (4) respectively, empower the Council to engage, under agreement in writing, suitably qualified and experienced persons to perform services as consultants to the Council and empower the Council to determine from time to time the terms and conditions of staff employed, or consultants engaged, by it.

Remuneration and allowances of Director

New subsection 82PM provides, subject to the Remuneration Tribunal Act 1973, that the Director shall be paid such remuneration as is determined by the Remuneration Tribunal and such allowances as are prescribed.

Clause 46 : Investigation of organisation by inspector

This clause omits paragraph 82R(1)(a) which presently permits the Minister to serve notice on an organisation in relation to the appointment of an inspector where it appears to the Minister that the organisation is, or is about to become, unable to meet its liabilities.

Clause 47 : Application for judicial management
on winding up of a fund

This clause amends section 82Z of the Principal Act by substituting a new subsection 82Z(1). Subsection 82Z(1) currently allows the Minister after consideration of a report made under section 82W to apply to the Federal Court the placement under judicial management or for winding up of the relevant health benefits fund. Section 82W provides for an

inspector to report on his investigation of the affairs of a registered organisation. The amendment allows the Minister in addition to apply to the Court upon the recommendation of the Council.

New subsection 82Z(1) provides for the Minister where the Minister is of the opinion that it is necessary or proper to do so to apply to the Court after consideration of the report made under section 82W, or alternatively of any recommendation of the Council about the action to be taken in relation to the organisation.

Clause 48 : Merger of funds

This clause amends section 82ZP which provides for the merger of the health benefits funds conducted by 2 or more organisations in respect of a State or the Northern Territory. The amendment takes account of the fact that organisations will no longer be registered in respect of a particular State or Territory and provides for mergers between inter-State funds.

Clause 49 : Application for review by Tribunal

This clause makes consequential amendments to section 105AB of the Principal Act enabling application to be made to the Administrative Appeals Tribunal for review of decisions under amended section 73 refusing an application under amended section 68, and under new subsection 78(4) in respect of a declaration that a change to the constitution, articles of association, or rules of an organisation shall not be taken to have come into operation. The clause omits present subsections 105AB(5) and (6), relating to provisions of section 78 which are to be repealed, and substitutes a new subsection 105AB(5).

New subsection 105AB(5) provides that an application may be made to the Tribunal for review of a decision of the Minister under subsection 78(4).

Clause 50 : Officers to observe secrecy

This clause amends the secrecy provisions in section 135A of the Principal Act consequent upon the insertion of Part VIAA, establishing the Council. The clause inserts new subsections 135A(4A) and 135A(12A).

New subsection 135A(4A) enables the Council to publish under new paragraph 82G(m) statistics or financial information relating to a registered organisation or organisations.

New subsection 135A(12A) provides for the Commissioner of the Council in place of the Secretary to exercise powers under the section in relation to information acquired in the performance of functions or duties, or in the exercise of powers under new Part VIAA.

Clause 51 : Regulations

This clause amends section 140 to enable regulations under the Act to provide that a specified provision of the Act relating to the basic table does not apply, or applies with specified modifications in respect of a specified health benefits organisation either generally or in the conduct of its business in a specified State or the Northern Territory.

This will provide some flexibility for possible alternative arrangements, eg. pilot or demonstration schemes, that may advance private health insurance.

Clause 52 : Schedule

This clause amends paragraph (1) of the Conditions of Registration of an Organisation set out in the Schedule to the Principal Act. Subparagraph (1)(ii) provides for an obsolete transitional arrangement and is now omitted. Paragraph (1) otherwise provides that an organisation shall not impose a waiting period for benefits where a contributor transfers to a health benefits fund from another such fund conducted by the organisation or from a fund conducted by an organisation whose registration has been cancelled or in respect of which this is being considered by the Minister. The clause adds new subparagraph (1)(iv) and (v).

New subparagraph (1)(iv) provides that transferring contributors to which paragraph (1) applies shall only be affected by waiting periods that applied to them for the purposes of the fund from which they are transferring.

New subparagraph (1)(v) provides for such contributors to have the entitlements to benefit in the new fund that they would receive if they had been members of that fund for the period for which they were members of the fund from which they have transferred where benefits of that kind are available to members of the new fund.

This clause also amends paragraph (d) of the Conditions of Registration of an Organisation set out in the Schedule to the Principal Act. Paragraph (d) operates to prevent registered health benefits organisations from paying benefits greater than the fees or charges actually incurred in respect of certain hospital treatment referred to in the definition of a basic table. The effect of the amendment is to bring references to relevant paragraphs of the definition of basic table up to date.

Clause 53 - Saving

This clause provides for the saving of determinations made under repealed subparagraphs (db)(i) or (dc)(i) of the definition of a basic table which will continue to have effect and be able to be revoked, amended or varied as though they were respectively determinations of amounts of benefits under new paragraphs 4D(1)(a) or 4D(1)(b).

PART 5 - AMENDMENTS OF THE NURSING HOMES ASSISTANCE ACT 1974

Clause 54 : Principal Act

This clause cites the Nursing Homes Assistance Act 1974 as the Principal Act for the purpose of this Bill.

Clause 55 : Interpretation

This clause provides for the definition of "nursing home care" to include "personal care" and for "personal care" to be defined.

Clause 56 : Approval in principle of nursing home, etc

This clause amend section 3A of the Principal Act to insert a new subsection (3A), which provides that, once the Bill has commenced, the Minister shall not give any further approvals in principle for nursing homes under the Principal Act.

Clause 57 : Approval of nursing home

Subclauses (a) and (b) of this clause amend section 4 of the Principal Act by adding to the list of conditions applicable to the approval of premises as an approved nursing home a requirement for the principles and objectives under the Disability Services Act to apply to the provision of care or services to nursing home patients, to the extent that they are applicable.

Subclause (c) of this clause provides that the Minister may not grant an approval under this section unless the applicant holds either an approval in principle or a previous approval that is still current at the time of application. The Minister may not, however, give an approval that would be valid after 30 June 1992; and any approvals previously given that would be valid after 30 June 1992 will be taken as ending on 30 June 1992.

Clause 58 : Application of National Health Act

This clause amends section 5 of the Principal Act by inserting a new paragraph 5(1)(ab) which is a requirement for a person's condition as a disabled person to be the criterion for admission to a nursing home.

The clause also inserts a new subparagraph 5(4), which provides that an application for admission to a nursing home should not be approved if the Minister is satisfied that alternative accommodation is available in which the needs of the person could be adequately and more suitably provided.

Clause 59 : Approval of additional services

Subclause (a) of this clause amends section 6 of the Principal Act by adding to the conditions applicable to the approval of additional services a requirement for the principles and objectives under the Disability Services Act to apply to the provision of additional services, to the extent that they are applicable.

Subclause (b) of this clause amends section 6 of the Principal Act by adding a provision that any approvals of additional services then in force will expire at the end of 30 June 1992.

Clause 60 : Common form of nursing home agreement

This clause amends section 12 of the Principal Act to provide for a limit on the level of funding that may be approved in relation to the adjusted deficit of a nursing home. It does not set any limit on the level of funding that may be approved in respect of those items excluded in the definition of "adjusted deficit". Subclause (a) provides definitions of "adjusted deficit", "approved expenditure" and "relevant association". The definition of "adjusted deficit" is designed to exclude those items of nursing home expenditure which are likely to vary significantly between financial year 1988-89 and any subsequent period; and which are substantially outside the control of proprietors. "Approved expenditure" means expenditure or expected expenditure that has been approved by the Secretary in accordance with the common form of nursing home agreement. The definition of "relevant association" is unchanged.

Subclause (b) deletes from subsection (4) the words "an amount" and substitutes "if subsection (4A) does not apply, the amount".

Subclause (c) inserts in subsection (4) "(including approved services)" after "other services" (first occurring).

Subclause (d) inserts after subsection (4) new subsections (4A), (4B) and (4C). Subsection (4A) provides that if the adjusted deficit of the proprietor of an approved nursing home in respect of a year or other period ending after 30 June 1989 is more than the prescribed amount determined in accordance with subsection (4B), the amount of the difference is to be deducted from the amount that is the approved deficit under subsection (4).

New subsection (4B) prescribes a maximum amount in respect of the adjusted deficit that may be paid to a proprietor of an approved nursing home in respect of a year or other period ending after 30 June 1989. Paragraph (a) provides that, if the average number of occupied nursing home beds in the year or other period ending after 30 June 1989 is no greater than the average number of occupied beds in the year 1988-89, this prescribed amount is determined in accordance with a formula that, having first isolated the costs associated with the provision of approved services, multiplies the cost per occupied nursing home bed in the year or other period ending on 30 June 1989 by the average number of beds occupied in the year or other period ending after 30 June 1989. Paragraph (b) provides that if paragraph (a) does not apply, the maximum amount is equal to the adjusted deficit for the year or other period ending on 30 June 1989.

New subsection (4C) provides that the prescribed amount determined in accordance with subsections (4A) and (4B) may be increased in accordance with a determination made by the Minister, by written notice. This provision is intended to allow the Minister to determine a national indexation figure to reimburse nursing homes for general movements in costs included in the adjusted deficit. It is not intended as an alternative means of funding increases in occupancy levels, or of otherwise circumventing the general limits on funding established by subsections (4A) and (4B).

Clause 61 : Certain notices to be subject to disallowance

This clause amends section 36A of the Principal Act by inserting in subsection (1) "12(4C) or" after "subsection". This has the effect of making any determination made by the Minister under subsection 12(4C) a disallowable instrument for the purposes of the Acts Interpretation Act 1901.

PART 6 - AMENDMENT OF THE REMUNERATION TRIBUNAL ACT 1973

Clause 62 : Principal Act

This clause cites the Remuneration Tribunal Act 1973 for the purpose of Part IV of this Bill.

Clause 63 : Inquiries and determinations by Tribunal

This clause amends section 7 of the Principal Act to provide that members of the Acute Care Advisory Committee established under amended section 3B of the Health Insurance Act 1973 be paid in accordance with the determination of the Tribunal out of funds under the control of the Council and not out of the Consolidated Revenue Fund.

Subclause 63(2) is a transitional provision applying this amendment only to Acute Care Advisory Committees established after the commencement of clause 9 of this Bill.

PART 7 - AMENDMENTS OF THE STATES GRANTS
(NURSE EDUCATION TRANSFER ASSISTANCE) ACT 1985

Clause 64 : Principal Act

This clause defines the Principal Act to mean the States Grants (Nurse Education Transfer Assistance Act) 1985.

Clause 65 : Interpretation

This clause introduces definitions of "first census day" and "second census day" to mean 31 March or any other prescribed day and 31 August or any other prescribed day.

Clause 66 : Special Nurse Education Transfer Grants

This clause provides that sub-paragraph 3(c)(i) of section 4 of the Principal Act is to be amended by substituting "the first census day" for "30 April" and that sub-paragraph 3(c)(ii) of section 4 of the Principal Act is to be amended by substituting "the second census day" for "30 September". In view of the definitions of first census day and second census day as introduced into sub-paragraphs 3(c)(i) and 3(c)(ii) of section 4 of the Principal Act by clause 2 above, the amendment has the effect that in terms of determining enrolment numbers for the purposes of sub-paragraph 3(c)(i) the first census day will be 31 March and for the purposes of sub-paragraph 3(c)(ii) the second census day will be 31 August from the time the amendment comes into effect.

Clause 67 Regulations

This clause introduces a regulation making power into the Principal Act. Should there be any changes to the census days in the future, such changes will be incorporated in regulations.

Schedule (Clause 18)

The Schedule to this Bill inserts a new Schedule 1A to the Health Insurance Act 1973. This sets out the pathology services table, including rules of interpretation. The structure of the new table is both medically relevant and reflects the changing nature of pathology practice.