

1989

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMMUNITY SERVICES AND HEALTH LEGISLATION AMENDMENT BILL (NO 2) 1989

EXPLANATORY MEMORANDUM

LIBRARY

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

**COMMUNITY SERVICES AND HEALTH LEGISLATION AMENDMENT BILL (NO2)
1989**

GENERAL OUTLINE

The main purpose of the Bill is to amend the Aged or Disabled Persons Homes Act 1954 and the National Health Act 1953 to enable residents' rights initiatives to be implemented in nursing homes and hostels. The initiatives are based on recommendations arising from the Report "Residents' Rights in Nursing Homes and Hostels".

The major effects of the legislation will be:

- (a) to enable contractual arrangements to be entered into between hostel and nursing home residents and proprietors as a condition of recurrent funding or in the absence of contracts, minimum conditions which proprietors must comply with;
- (b) to provide for a Charter of Residents' Rights and Responsibilities to be formulated by the Minister,
- (c) to establish as a condition of recurrent funding that nursing homes and hostels are to provide access to their facilities, to authorised persons including access to patients, staff and documents; and
- (d) to provide for the Minister to publish relevant information about the performance of nursing homes and hostels in complying with outcome standards for residents in order that individuals have comparative information when making such decisions as which particular facility to enter.

The Bill will also make three amendments to the First Home Owners Act 1983:

- (i) to amend the definition of dependant child
- (ii) to remove anomalies in the current legislation in respect of persons purchasing a home under a terms purchase contract
- (iii) to impose a 12 months residency requirement for recent arrivals before they can qualify for assistance.

The Bill also seeks to amend the Aged or Disabled Persons Homes Amendment Act 1989 to correct the subsection relating to the commencement of Section 11(c) of that Act.

The Bill will also make amendments to the Health Insurance Act 1973 to :

- (i) insert a new definition of 'eligible overseas representative' to tighten the medicare eligibility requirements applying to foreign diplomats residing in Australia;
- (ii) re-define the meaning of the term 'proprietor of a pathology laboratory to render the administration of the pathology services scheme more efficient;
- (iii) remove an unnecessary requirement that approved dental practitioners must render certain oral surgical services in the operating theatre of a hospital for the services to attract Medicare benefits; and
- (iv) insert a definition of the term 'officer of the Commission' to streamline certain procedures involved in the administration of the pathology services scheme.

The Bill also contains an amendment to the Health Insurance Act 1973 to amend provisions relating to the administration of the Vocational Register of General Practitioners.

This Bill as it relates to the pharmaceutical benefits scheme makes technical amendments with relation to the secrecy provisions of both the National Health Act 1953 and the Health Insurance Act 1973 and the special patient contributions. The amendments to allow persons receiving the Formal Training Allowance to receive a Health Care Card follows the general policy of non discrimination and administration efficiencies. The granting of refunds to person who through no fault of their own fail to establish an entitlement is seen as equitable.

The Bill also seeks to further amend the National Health Act 1953 in several ways -

- (a) To require all approvals for admission to a nursing home, including admissions for short-term respite care, to be made under Section 40AB of the Act.
- (b) To make a provision of a medical certificate optional rather than mandatory for the purposes of considering an application for nursing home admission. However if a medical certificate is provided it must be taken into account when making a decision on an application for nursing home admission.
- (c) To allow the Secretary the discretion to approve an application for Domiciliary Nursing Care Benefit from a date prior to its receipt by the Department.
- (d) To require all proprietors of nursing homes are approved persons for the purpose of having the responsibility for the care and accommodation of nursing home residents.

The Bill also seeks to amend the Nursing Homes Assistance Act 1974 to introduce lodgement fees prior to the making of appeals against levels of operating budgets and deficits and to introduce an appeal processing fee based on the time used by an independent Nursing Homes Advisory Committee to consider that appeal.

FINANCIAL IMPACT STATEMENT

The arrangements for residents' rights, consequential upon amendments to the Aged or Disabled Persons Homes Act 1954 and the National Health Act 1953, are expected to cost an estimated \$0.89m in 1989-90, \$1.58m in 1990-91 and \$1.75m in 1991-92. Expenditures would be incurred in relation to honoraria payable to community visitors costs relating to the preparation of statements on standards and funding for advocacy services.

Consequent upon the amendment to subsection 58E(6) of the National Health Act 1953 there may be a small additional cost (estimated \$10,000 in 1989-90 and \$20,000 annually thereafter) arising from Domiciliary Nursing Care benefits being payable from a date earlier than the date of receipt of the application to eligible applicants whose applications have been lost or delayed through no fault of the applicants. These payments are no more than those to which the applicants are entitled under the eligibility criteria in the existing legislation.

Consequent upon the amendment to the Nursing Homes Assistance Act 1974, the proposed lodgement fee of \$500 and an additional processing fee of \$500 per half day will yield revenue estimated at \$45,000 in 1989-90, with anticipated revenue of \$20,000 and \$5,000 in 1990-91 and 1991-92 respectively. The fees are consistent with existing provisions in the National Health Act 1953 for requests for review of nursing home fees under that legislation and will have a deterrent effect on nursing home proprietors lodging non-genuine appeals. Proprietors who have their appeal wholly or substantially upheld will have their lodgement fee refunded and no processing fee will be applied. The main Commonwealth savings will be in avoiding non-quantifiable additional costs in processing non-genuine review applications.

The amendments to the First Home Owners Act 1983 to impose a 12 month residency requirement for recent arrivals before they can qualify for assistance is expected to result in savings of \$2m in 1989-90 and \$3m in each of the three subsequent financial years. The remaining amendments to the First Home Owners Act 1983 have no financial impact.

There is no financial impact consequent upon other amendments to the National Health Act 1953, the Health Insurance Act 1973 or the Aged or Disabled Persons Homes Amendment Act 1989.

The amendments relating to pharmaceutical benefits will not result in any financial outlays.

COMMUNITY SERVICES AND HEALTH LEGISLATION AMENDMENT BILL (NO 2) 1989

PART 1 - PRELIMINARY

Clause 1: Short Title

This clause will enable this Bill, when enacted, to be cited as the Community Services and Health Legislation Amendment Act (No 2) 1989.

Clause 2: Commencement

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

Subclause 2(1) provides that subject to the other subclauses of the section, the remaining provisions of the amending Act will come into operation on the day on which the amending Act receives Royal Assent.

Subclause 2(2) provides that section 15 is to be taken to have commenced on 1 July 1988.

Subclause 2(3) provides that paragraph 14(e) commences on 1 July 1990.

Subclause 2(4) provides that section 4, paragraphs 25 (b) and (c) and sections 27 and 30 commence on 1 July 1990.

Subclause 2(5) provides that, subject to subclause 2(6), section 5, paragraphs 25(d) and (e) and sections 32, 33 and 35 will commence on a day or days to be fixed by Proclamation.

Subclause 2(6) provides that where a provision in subclause 2(5) does not commence within the period of 6 months beginning on the day on which this Act received Royal Assent, it commences at the end of that period.

PART 2 - AMENDMENTS OF THE AGED OR DISABLED PERSONS HOMES ACT 1954

Clause 3: Principal Act

This clause cites the Aged or Disabled Persons Homes Act 1954 to be the Principal Act for the purposes of this Part of the Bill.

Clause 4: Charter of Residents' Rights and Responsibilities and Agreement between proprietor and resident

This clause inserts new sections 10DA and 10DB in the Principal Act to empower the Minister to

- . formulate a statement of the rights and responsibilities to be enjoyed and met by residents of approved hostels
- . determine a common form of agreement between proprietors and residents; and

- . to prepare and publish statements of relevant information on hostels.

New section 10DA empowers the Minister to formulate a statement of the rights and responsibilities of residents of approved hostels, to be known as the Charter of Residents' Rights and Responsibilities. It also empowers the Minister to prescribe matters that may be included in the Charter, emphasising the civil and human rights of hostel residents, and will state the responsibilities that residents should meet in their daily lives.

New section 10DB empowers the Minister to determine a common form of agreement which may be entered into between the organisation operating the hostel and a resident of the hostel, and which relates to the accommodation and care of the resident. The agreement will contain, and be consistent with, the principles of the Charter.

Clause 5: Statements may be published in relation to certain hostels

This clause inserts a new section 10FB into the Principal Act.

New subsection 10FB(1) empowers the Minister, from time to time, to prepare and publish statements containing relevant information. This will usually occur in response to a request for information or following a standards monitoring visit to a hostel. Any or all of the information specified in new subsection 10FB(2) can be published either together or separately.

New subsection 10FB(2) specifies the forms of relevant information which can be published.

Paragraphs (a) and (b) relate to the outcome standards for hostels. At present reporting is in accordance with standards prescribed in Gazettes S4 and S5 of 1989 which specify standards and the level of services to be provided, among other things.

Paragraphs (c) and (d) relate to the number of approved hostel places and physical location of the hostel both in terms of size and relative location to other appropriate facilities which potential hostel residents would consider when deciding on a suitable facility.

Paragraph (e) relating to the range of services including specialist services that are provided at a hostel.

Paragraph (f) relates to the fees and charges that apply at a particular hostel for services provided at or through the hostel.

Paragraph (g) will report those activities which are regularly available at the hostel. The report will be included in the outcome standards report referred to in paragraphs (a) and (b). The standard will require that activities are developed after considering the needs, interests and capabilities of residents both individually and as a group.

New subsection 10FB(3) provides guidance as to how the reports may be published. It does not limit the publication to any specific means. The Department is to make available for perusal any published statements at the State Office of the Department. In general, statements relating to hostels in that State will be available immediately, whereas statements about hostels in other States will be available on request.

New subsection 10FB(4) ensures that the publishing of statements does not infringe on the confidentiality of individual residents of hostels. The statement provides information on the functioning of the hostel as a facility, not how it affects specific, identifiable individuals.

New subsection 10FB(5) allows an organisation not less than 30 days in which to provide supporting or critical comment on a statement relating to that hostel prior to it being published. This is an important step in ensuring the opportunity for natural justice is provided.

New subsection 10FB(6) ensures that where the organisation has provided information which indicates, in the opinion of the Minister (or his or her delegate) that the statement should be altered, that this occurs before the statement is published.

PART 3 - AMENDMENT OF THE AGED OR DISABLED PERSONS HOMES AMENDMENT ACT 1989

Clause 6: Principal Act

This clause cites the Aged or Disabled Persons Homes Amendment Act 1989 to be the Principal Act in this part of the Bill.

Clause 7: Commencement

This clause amends section 2 of the Principal Act by omitting "subsection 2(3)" and substituting "subsection 2(2)". The Principal Act incorrectly referred to subsection 2(3) when it should have referred to subsection 2(2).

PART 4 - AMENDMENTS OF THE FIRST HOME OWNERS ACT 1983**Clause 8: Principal Act**

This clause cites the First Home Owners Act 1983 as the Principal Act for the purpose of Part 4 of this Bill.

Clause 9: Applicants who have dependent children

Subclause 9(1) repeals section 13 of the Principal Act and substitutes a new section to provide for a person to be treated as being a dependent child of an applicant for the purposes of the Principal Act if the person is under the age of 18 at the prescribed date (the date of Home acquisition) or is born during the period commencing on that date and ending at the expiration of the first anniversary of that date. The clause further provides that such a child must be in the custody, care and control of, and ordinarily residing with, an applicant for assistance under the Principal Act at any time during the outlined period. The original provision led to anomalies in many marital separation cases where the child was a dependant and living with an applicant but family allowance assistance under the Social Security Act 1947 was paid to a non-applicant.

The object is to simplify administration of Section 13 by deleting the existing references to the Social Security Act 1947 and restricting dependent child status to persons under the age of 18 at the date of home acquisition.

Subclause 9(2) provides that section 13 in its present form continues to apply to applicants whose prescribed date is earlier than the commencement of clause 9.

Clause 10: Persons who, subject to section 15, may apply

The proposed amendment to section 14(2)(b)(ii) which relates to previous ownership of a home under a terms purchase contract, will provide for 12 months, rather than the present 3 months, as the period for which participation in a terms purchase contract will be treated as previous ownership of a dwelling. This is a consequential amendment to that proposed to section 37 of the Principal Act. The object is to overcome anomalies in the existing legislation which result in disadvantage to certain persons who purchase their homes under a terms purchase contract.

Clause 11: Assistance not payable unless certain conditions satisfied

The proposed amendment to section 17 which prescribes certain conditions to be satisfied before assistance is payable, will require at least one person involved in each application for assistance under the Act to have had his or her principal place of residence in Australia during the period of 12 months immediately preceding the prescribed date (the date of home acquisition).

The object is to exclude from assistance under the Act persons with sufficient means or prospects to be able to embark upon home ownership soon after arrival in Australia. Those who do not acquire a home until they have resided here for a qualifying period of twelve months will continue to be eligible for assistance.

Subclause 11(2) provides that the amendment made by subclause 11(1) does not apply in relation to an applicant whose prescribed date is earlier than the commencement of clause 11.

Clause 12: Adjustment of payment of assistance

The proposed amendment omits subsection 37(6) and substitutes a new subsection 37(6). This provides that where a terms purchase contract has been entered into and that contract is discharged otherwise than by performance before the expiration of 12 months after the prescribed date, then the amount of assistance paid is to be treated for the purposes of section 37 [relating to recovery of overpayments] as if it should not have been paid. Such a provision will entitle a purchaser under a terms purchase contract to retain any amount of assistance paid if the contract runs for more than 12 months. Under the existing legislation if such a purchaser failed to complete a terms purchase contract after paying instalments of the purchase price for several years all assistance was recoverable as an overpayment.

The proposed amendment further provides that in cases where the contract is not a terms purchase contract and any of the circumstances referred to in paragraph 35(2)(a) or (b), which relate to the failure to complete a purchase or a construction of a dwelling, occur, then any assistance paid is recoverable as an overpayment. This simply restates the existing provision in subsection 37(6).

PART 3: AMENDMENTS OF THE HEALTH INSURANCE ACT 1973**Clause 13: Principal Act**

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

Clause 14: Interpretation

Paragraph (a) of this clause amends subsection 3(1) of the Principal Act by repealing the definition of 'eligible overseas representative' and replacing it with a new definition of the term. The new definition will define 'eligible overseas representative' to mean the head of an overseas diplomatic mission in Australia, a member of the staff of such a mission or a member of the family of such a person - being a person who is not an Australian citizen, and is not domiciled in Australia but who, under an agreement between his or her country and Australia, is to be treated, for the purposes of the Principal Act, as an Australian resident. If there is no such agreement in place such a person will not be an eligible overseas representative and, therefore, will not come within the definition of 'eligible person' set out in subsection 3(1) of the Principal Act. He or she will not, therefore, be entitled to Medicare Benefits.

The current definition means, in effect, that such diplomatic personnel and their families and staff are 'eligible overseas representatives' (and, therefore, entitled to Medicare Benefits) as long as there is an agreement between the government of their country and Australia under section 7 of the Principal Act. This is in spite of the fact that the section 7 agreement required to be in existence may not itself bestow any such rights on the diplomatic personnel of either country. Australia's diplomatic representatives in the other country concerned may not, therefore, enjoy the same privileges that the current definition gives to that country's representatives living in Australia. The new definition will include only those diplomatic representatives of a country whose government has with Australia an agreement which specifically provides that such persons are to be treated, for the purposes of the principal act, as if they were Australian residents.

Paragraph (b) of this clause amends paragraph (b) of the definition of 'professional service' in subsection 3(1) of the Principal Act by removing the requirement that an approved dental practitioner must render oral surgical services in an operating theatre of a hospital in order for those services to attract Medicare benefits. This is an unnecessary and inappropriate restriction which does not reflect standard professional practice.

Paragraph (c) of this clause amends the definition of 'proprietor' in subsection 3(1) of the Principal Act by removing its applicability to proprietors of pathology laboratories. Paragraph (e) of this clause inserts into the Principal Act a new definition of 'proprietor' which will apply in relation to proprietors of pathology laboratories.

Paragraph (d) of this clause amends subsection 3(1) of the Principal Act by inserting a new definition of the term 'officer' which will only apply in relation to officers of the Health Insurance Commission. It will define 'officer' to mean, in these circumstances, a member of the staff of the Health Insurance Commission engaged under subsection 28(1) of the Health Insurance Commission Act 1973.

Paragraph (e) of this clause amends subsection 3(1) of Principal Act by inserting a new definition of the term 'proprietor' which will apply in relation to proprietors of pathology laboratories. In such circumstances, the term will be defined to mean the person or authority having effective control of the laboratory premises (whether or not the person or authority is holder of an interest in the premises), the use of equipment in the laboratory and the employment of laboratory staff.

Clause 15: References to RACGP may be varied

This clause amends section 3H of the Principal Act so that regulations may be made declaring that references in sections 3F or 3G of the Principal Act to the Royal Australian College of General Practitioners shall be taken to be references to the body specified in the regulations. Formerly section 3H of the Principal Act provided that such references could be changed by Ministerial determination.

Clause 16: Disadvantaged persons, being persons in receipt of unemployment benefit, job search allowance or formal training allowance.

This clause amends section 5D of the Principal Act, and seeks to include persons in receipt of a formal training allowance amongst those persons who may be declared under this provision of the Principal Act as disadvantaged. These persons are then eligible to receive a Health Care card and thus pharmaceutical benefits at the concessional rate of \$2.50 for each prescription.

This amendment is being made retrospectively to 1 July 1988, the date of commencement of the Formal Training Allowance Scheme.

Clause 17: Interpretation

This clause amends the current definition of 'officer' in subsection 23DA(1) of the Principal Act, by removing its applicability to officers of the Health Insurance Commission.

Clause 14(d) will insert a new definition of the term 'officer' which will apply in relation to officers of the Health Insurance Commission.

Clause 18: Request forms and Confirmation forms

This clause amends section 23DK of the Principal Act by repealing the current subsection 23DK(3) and replacing it with a new subsection 23DK(3). The new provision will require an approved pathology practitioner, if requested to do so by the General Manager of the Health Insurance Commission, to produce to an officer of the Commission certain documents which the practitioner is required by the Principal Act to keep in his possession. Such a practitioner is currently required to produce such documents if requested to do so by 'an officer of the Commission'. The new provision will require the General Manager to make this request.

Clause 19: Claims for grants

This clause will amend section 45 of the Principal Act by repealing subsection 45(1) and replacing it with a new subsection 45(1). The new provision will provide that claims made for health program grants under Part IV of the Principal Act must be submitted to such persons, in such manner, and at such times as the Minister directs. Such claims are presently required to be lodged with the Department of Community Services and Health. That Department, however, no longer processes all such claims and the new reworded subsection 45(1) will facilitate and provide for many of these claims to be lodged in the future with the Health Insurance Commission.

Clause 20: Statements Inadmissible As Evidence

This clause amend section 129AAC of the Principal Act by omitting from subsection 129AAC(1), the term 'officer of the Commission' and replacing it with the phrase 'a person who at the time was both an officer of the Commission and a medical practitioner, a dental practitioner or an optometrist'. Section 129AAC concerns the admissibility as evidence of statements made by practitioners being counselled for the purposes of the Principal Act by 'officers of the Commission'. The term 'officer of the Commission' is considered to be too wide and general to be used in these circumstances. It is considered that any officer performing such counselling duties should also be a medical practitioner, dental practitioner or optometrist.

Clause 21: Officers to observe secrecy

This clause amends section 130 of the Principal Act and, in conjunction with the amendment at clause 38, links the secrecy provisions of the Principal Act and the National Health Act 1953 to enable a free flow of information between officers of the Department and Health Insurance Commission as a result of the transfer to the Commission of the payment functions of the Pharmaceutical Benefits Scheme.

PART 6 - AMENDMENTS OF THE NATIONAL HEALTH ACT 1953

Clause 22: Principal Act

This clause cites the National Health Act 1953 to be the Principal Act in this Part of the Bill.

Clause 23: Interpretation

This clause amends Section 4 of the Principal Act by omitting "Section 40ABA" from paragraph (a) of the definition of "short-term respite care patient" in subsection (1) and substituting "Section 40AB". The effect is to remove the requirement for separate approval for a respite patient to be admitted to a nursing home. All admissions to nursing homes will be through the same approval process.

This amendment is consequent upon the repeal of Section 40ABA in Clause 29.

Clause 24: Interpretation

This clause inserts a new definition of "approved operator" in section 39 of the Principal Act. Provisions for approval of a person as an "approved operator" of a nursing home are contained in clause 25 of the Bill as are provisions for revocation of approval.

Clause 25: Approved operators in relation to approved nursing homes and Revocation of approval

This clause inserts two new sections in the Principal Act. New section 39BA will provide for approval of a person as an "approved operator" in relation to approved nursing homes; new section 39BB will provide for revocation of approval of a person as an "approved operator".

New subsection 39BA(1) provides that a person may apply for approval by the Minister as an approved operator in relation to approved nursing homes. An application must be made in the authorised form.

New subsection 39BA(2) provides that the Minister must approve the person as an approved operator where the Minister is satisfied the applicant would be a suitable person to be the proprietor of an approved nursing home.

New subsection 39BA(3) provides that in exercising his powers to approve a person as an approved operator under new subsection 39BA(2) the Minister must comply with any principles in force under new subsection 39BA(4).

New subsection 39BA(4) enables the Minister to formulate principles with which he must comply in approving a person as an approved operator under new subsection 39BA(2).

New subsection 39BA(5) provides that if the Minister does not approve a person as an approved operator, the Minister must refuse the application and notify the applicant, in writing, of his refusal and the reasons for the Minister's decision

New subsection 39BA(6) provides that the instrument by which principles are formulated is to be a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

New subsection 39BB(1) provides that where the Minister is of the opinion an approved operator may no longer be suitable to be a nursing home proprietor, and is considering revoking the approval, the Minister may so inform the person in writing providing reasons why that opinion has been formed.

New subsection 39BB(2) provides that a person who has been informed of the Minister's opinion under new subsection 39BB(1) may within 14 days make a written submission to the Minister stating reasons why the approval of the person should not be revoked.

New subsection 39BB(3) provides that if, after considering a submission under new subsection 39BB(2), or if no submission is made, the Minister considers the person is no longer suitable to be the proprietor of an approved nursing home, the Minister may revoke the approval of the person as an approved operator.

New subsection 39BB(4) provides that the Minister in revoking an approval under with new subsection 39BB(3) must comply with any principles in force under new subsection 39BB(5).

New subsection 39BB(5) provides that the Minister may formulate principles to be complied with when revoking an approval of a person as an approved operator under new subsection 39BB(3).

New subsection 39BB(6) provides that where the Minister revokes the approval of a person as an approved operator, the person must be notified in writing of the decision.

New subsection 39BB(7) provides that the instrument by which the principles are formulated is to be a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

Subclause 25(2) is a transitional provision which confers approval as an approved operator on persons who, immediately before the commencement of the new provisions, was the proprietor of an approved nursing home, or the holder of a certificate of approval-in-principle under section 39A for a new nursing home, or under section 39B for a transfer of approved nursing home beds. Provision is also made for the Minister to revoke the approval of such a person as an approved operator under the new provisions.

Clause 26: Approval of Nursing Home

This clause amends section 40AA of the Principal Act, by adding further conditions upon which Commonwealth recurrent funding of a nursing home is dependent.

Paragraph 26(a) inserts a new paragraph (6)(ab) which provides that the approval of a nursing home is subject to the proprietor being an "approved operator" under new section 39BA of the Act, to be inserted by clause 25 of the Bill.

Paragraph 26(b) inserts new paragraphs (6)(bc) and (6)(bd). Paragraph (6)(bc) contains the condition that either an agreement (provided for by new section 40ABB in clause 28 of the Bill) must be entered into between the nursing home proprietor and each patient, or the proprietor must comply with a requirement made by the Minister in respect of patients for whom no agreement in place, and that the requirement be consistent with the Charter of Residents' Rights and Responsibilities (the Charter is provided for in clause 31 of the Bill).

New paragraph (6)(bd) requires the proprietor to comply with an agreement in force under paragraph (6)(bc).

Paragraph 26(c) replaces the existing conditions in paragraphs (6)(cb) and (6)(cc). The new conditions include paragraph (6)(bc) agreements between the proprietor and residents and notices by the Minister as documents which the proprietor must file with the records of the nursing home and must produce to an officer of the Department on written request.

Paragraph 26(d) inserts new paragraphs (6)(cf) to (6)(cj), containing additional conditions, into the Principal Act.

New paragraph (6)(cf) ensures that nursing home standards monitoring staff have access to the information and people (staff and residents) they require to make decisions about the level of compliance with nursing home standards determined under section 45D of the Act.

New paragraph (6)(cg) requires a nursing home proprietor to allow a community visitor (provided for in paragraph 26(e) of the Bill) general access to the nursing home and its patients in order to meet and talk with patients and observe the nursing home care provided to patients.

New paragraph (6)(ch) enables reviews of resident classifications to be carried out in cases where sufficient access to patients, staff and documents for the purposes of carrying out reviews would otherwise be denied. Currently, access for the review of resident classifications is not guaranteed.

New paragraph (6)(cj) requires a nursing home proprietor to allow access to a nursing home to a person approved to provide advocacy services to patients requiring such services.

Paragraph 26(e) inserts new subsections (6BA) and (6BB) in the Principal Act.

New subsection (6BA) permits a community visitor to inform the Department or a proprietor of a nursing home about matters of concern in the nursing home which they have observed or about which a resident has informed them.

New subsection (6BB) provides that a person is not to be hindered by any State law in the reasonable compliance with the section 6 conditions for recurrent funding of nursing homes.

Paragraph 26(f) omits subsection 40AA(10) consequential to the National Health (Nursing Home Respite Care) Regulations (1989, no 173). Implementation of the Regulations has the effect that subsection (10) which dealt with admission of short term respite patients to nursing homes is no longer required.

Clause 27: Approval of admission to approved nursing home

This clause amends Section 40AB of the Principal Act by omitting from subsection (2) "shall" and substituting "may" and by inserting a new subsection (2A) which requires that the Minister take into account a certificate given under subsection (2).

In consequence of these amendments the provision of a medical certificate is made optional rather than mandatory, with the qualification that if a medical certificate is provided it must be taken into account in considering an application for nursing home admission.

Clause 28: Agreement between proprietor and patient.

This clause inserts a new section 40ABB into the Principal Act.

The new subsection (1) empowers the Minister to determine a common form of agreement which may be entered into between the nursing

home proprietor and a patient of the nursing home, and which relates to the care of the patient. New subsection (2) requires the agreement to be consistent with the principles of the Charter of Residents' Rights and Responsibilities (See clause 31 below) formulated under section 45A. A similar Charter applies for hostel residents through the amendments in this bill to the Aged or Disabled Persons Homes Act 1954.

Clause 29: Repeal

This clause repeals the existing section 40ABA of the Principal Act, which provided for approval of admission as a short term respite care patient. The provisions relating to respite care in nursing homes are now covered in the National Health (Nursing Home Respite Care) Regulations (1989, no 173).

Clause 30: Statements may be published in relation to approved nursing homes.

This clause inserts new section 45DA in the Principal Act.

New subsection 45DA(1) empowers the Minister, from time to time, to prepare and publish statements containing relevant information. This will usually occur in response to a request for information or following a standards monitoring visit. Any or all of the information specified in new subsection 45DA(2) can be published either together or separately.

New subsection 45DA(2) specifies the forms of relevant information which can be published.

Paragraphs (a) and (b) relate to the outcome standards for nursing homes published in Gazette no s303 of 11 November 1987.

Paragraphs (c) and (d) relate to the number of approved hostel places and physical location of the hostel both in terms of size and relative location to other appropriate facilities which would assist potential nursing home patients deciding on a suitable facility.

Paragraph (e) relating to the range of services including specialist services that are provided at a nursing home.

Paragraph (f) relates to the fees and charges that apply at a particular nursing home for services provided at or through the home.

Paragraph (g) will report those activities which are regularly available at the nursing home. The report will be included in the outcome standards report referred to in paragraphs (a) and (b). The standard will require that activities are developed after considering the needs, interests and capabilities of residents both individually and as a group.

New subsection 45DA(3) provides guidance as to how the reports may be published and access may be obtained to them. It does not limit the publication to any specific means. The Department is to make available for perusal any published statement at the State Office of the Department. In general, reports relating to nursing homes in that State will be available immediately, whereas statements about nursing homes in other States will be available on request.

New subsection 45DA(4) ensures that the publishing of statements does not infringe the confidentiality of individual residents of nursing homes. The statement provides information on the functioning of the nursing home as a facility, not how it affects specific, identifiable individuals.

New subsection 45DA(5) allows the proprietor not less than 30 days in which to provide supporting or critical comment on a statement relating to the nursing home prior to it being published. This is an important step in ensuring the opportunity for natural justice is provided.

New subsection 45DA(6) ensures that where the proprietor has provided information which indicates, in the opinion of the Minister or his or her delegate, that the statement should be altered, that this occurs before the statement is published.

Clause 31: Charter of Residents' Rights and Responsibilities

This clause inserts a new section 45F in the Principal Act.

New section 45F empowers the Minister to formulate a statement of the rights and responsibilities to be enjoyed and met by residents of approved nursing homes, to be known as the Charter of Residents' Rights and Responsibilities. It also empowers the Minister to prescribe the matters to be included in the Charter, emphasising the civil and human rights of nursing home residents, and will state the responsibilities they should meet in their daily lives. The Charter is to be a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

Clause 32: Approval of person as approved person in relation to a patient

This clause amends subsection 58E(6) of the Principal Act. section 58E deals with the approval of Domiciliary Nursing Care Benefits (DNCB).

Subsection 58E(6) deals with the date of effect of an approval under Section 58E of the Act. At present the date of effect of an approval under Section 58E shall not be a date earlier than the date on which the application was received.

In consequence of these amendments, the Secretary of the Department will have the discretion to approve an application for DNCB to take effect from a date prior to its receipt by the Department. This means that applicants for DNCB will no longer be disadvantaged when the application is lost or when receipt of the application is delayed by a person who has given a certificate referred to in paragraph 58E(1)(c).

Clause 33: Determination of special patient contribution in respect of certain drugs etc.

This clause amends section 85B of the Principal Act.

Paragraph (a) amends paragraph 85(1)(c) of the Principal Act to make it clear that the prices from which the special patient contribution is calculated relate to the amount of the benefit contained in the manufacturer's standard pack.

Paragraph (b) amends subsection 85B(1) and enables the price the manufacturer is claiming for sales of the drug or medicinal preparation to be determined.

Paragraph (c) omits subsection 85B(2) and inserts a new subsection 85B(2) to replace the present, limiting, provision with a provision that enables a pharmacist to readily calculate the special patient contribution for any quantity prescribed by the medical practitioner by the use of normal pricing rules.

Clause 34: Limited charges for pharmaceutical benefits

This clause amends section 87 of the Principal Act and makes a number of consequential amendments to the existing provisions of the Principal Act to take account of the new provisions relating to special patient contribution.

Clause 35: Entitlement to refund in certain circumstances

This clause adds a new section 87A to the Principal Act to provide for refunds of payments under some circumstances.

New Subsection 87A(1) identifies those persons who are charged by an approved supplier, an amount for the supply of a pharmaceutical benefit equivalent to what they would pay as a general patient when they are entitled to receive benefits at the concessional rate or free of charge.

New Subsection 87A(2) makes it conditional that the reason the full charge was made was because the entitlement number for free supply or the concessional rate was not written or marked on the prescription.

Where the Secretary to the Department of Community Services and Health is satisfied that the omission of the entitlement number was not through inadvertence, and that in the circumstances the person should be regarded as having added the relevant information, the Commonwealth will refund the amount charged.

Clause 36: Payment for supply of benefits

This clause amends section 99 of the Principal Act and makes consequential amendments to the existing provisions of the Principal Act which exclude items priced at or below the applicable patient contribution as pharmaceutical benefit supplies.

Clause 37: Application for review by Tribunal of certain decisions under Part V

This clause amends section 105AAB of the Principal Act, which deals with the review of decisions by the Administrative Appeals Tribunal, to include decisions taken under new section 39BA and 39BB, relating to the approval (or revocation of approval) of an operator of an approved nursing home (see clause 25).

Clause 38: Officers to observe secrecy

This amendment amends section 135A of the Principal Act and parallels the amendment in clause 21 of this Bill. This will enable a free flow of information between officers of the Health Insurance Commission and the Department as a result of the transfer to the Commission of the payment functions of the Pharmaceutical Benefits Scheme.

PART 7 - AMENDMENTS OF THE NURSING HOMES ASSISTANCE ACT 1974

Clause 39: Principal Act

This clause cites the Nursing Homes Assitance Act 1974 to be the Principal Act for the purposes of this Part of the Bill.

Clause 40: Interpretation

This clause amends section 3 of the Principal Act to provide a definition of "Committee processing fee" payable by a nursing home proprietor.

Clause 41: Request for Review

Clause 41 inserts new sections 15A, 15B, 15C, 15D, 15E, 15F, 15G and 15H in the Principal Act to make provision for the charging by the Commonwealth of fees in respect of appeals against decisions of the Secretary under paragraph 12(2)(a) of the Act or the amount determined by the Secretary to be the approved deficit of the proprietor in respect of a year or other period.

Subsection 14(1) of the Principal Act provides for Ministerial review of decisions of the Secretary in respect of the operating budgets and deficits for approved nursing homes, operated by charitable and religious organisations, in accordance with a Common Form of Agreement authorised under sections 12-15 of the Principal Act, between the Commonwealth and the organisation.

Clause 14 of the Common Form of Agreement provides that the Minister shall, if the Proprietor so requests in writing, review -

- (a) the particulars of a budget approved by the Permanent Head in respect of the home; or
- (b) the amount determined by the Permanent Head to be the approved deficit of the Proprietor in respect of a budget period.

Under both the Principal Act and the Agreement the Minister is required to refer the matter under review to the Nursing Homes Advisory Committee established under Section 16 of the Principal Act for examination and report to him, and he must obtain and consider its report before making his decision.

The new provisions are similar to those in the National Health Act 1953 authorising the charging by the Commonwealth of lodgement and processing fees for requests for review of nursing home fee decisions under that legislation.

Request for review

New subsection 15A(1) provides that a valid request for a review referred to in subsection 14(1) shall be made on an appropriate authorised form and within 42 days of notice of the decision.

New subsection 15A(2) provides that a valid request under section 15A shall include an authorisation for a Committee processing fee for which provision is made in new section 15F and a lodgement fee of \$500 to be deducted from any amounts paid or payable under an agreement entered into under section 15 of the Principal Act or any benefits payable to the proprietor under Part VA of the National Health Act 1953. It is also provided in this section that the amount of lodgement fee may be varied by the Minister by notice published in the Gazette. Such notices will be subject to tabling in, and disallowance by, Parliament.

New subsection 15A(3) provides for the deduction of such fees from amounts payable to a proprietor where the deduction has been authorised.

Request for review may be withdrawn

New section 15B provides that a request to the Minister to review a decision may be withdrawn, at any time before the Minister has confirmed or varied the decision, by written notice signed by the proprietor and lodged with the Secretary.

Refund of lodgement fee

New section 15C provides for a refund or non-deduction of the lodgement fee where a request is withdrawn within the 42 day period provided for in new section 15A or where the decision is varied by the Minister wholly or substantially in favour of the applicant.

Referral of request to a Nursing Homes Advisory Committee

New section 15D provides for the Minister, following the expiration of the 42 day period provided for in this new section, to refer requests for review to the appropriate Nursing Homes Advisory Committee in accordance with the Agreement under Section 15 of the Principal Act. Such referral will only take place where the proprietor has provided full and detailed reasons for the request, copies of relevant documents, such information and relevant documents as the Minister has specified by Gazette Notice as necessary for the purposes of review, and such further information and documents as the Minister requires by written notice for the purposes of deciding the particular request.

Report of Committee

New section 15E provides for the report by the Committee to include a report of time taken by the Committee to examine the matter, and for specification of the Committee processing fee calculated under section 15F and payable by the proprietor.

Committee processing fee

New subsection 15F(1) provides that the Committee processing fee shall be \$500 [or another amount fixed by the Minister in accordance with the definition of "prescribed amount" in new subsection 15F(6)] for a relevant period not exceeding four hours or, for a relevant period in excess of four hours, \$500 for each period of four hours and for any additional period of less than four hours.

New subsection 15F(2) provides that a Committee processing fee shall not exceed \$1,000 per day. Provision is also made for this amount to be varied by the Minister by notice published in the Gazette. Such notices will be subject to tabling in, and possible disallowance by Parliament.

New subsections 15F (3) and (4) provide for deduction of the fee from any payments to the proprietor and recovery of the fee as a debt due and payable to the Commonwealth.

New subsection 15F(5) provides for notices under this new section to be disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901. Such notices will be subject to tabling in, and possible disallowance by, Parliament.

New subsection 15F(6) defines "relevant period" for the purposes of the section as being the period, or the aggregate of the periods, during which a Committee meets to examine a matter pursuant to new section 15A. The subsection also defines the "prescribed amount", which is the Committee processing fee, as being \$500 or another amount fixed by the Minister.

Ministerial Review of decisions

New section 15G provides that the Minister, following a review of the matter, must either confirm or vary the decision of the Secretary and advise the proprietor.

Refund of Committee processing fee etc

New section 15H provides for the non-deduction or refund of the Committee processing fees where a decision is varied in a manner wholly or substantially in favour of the proprietor.

Subclauses 41(2), (3) and (4) are transitional provisions in relation to requests made under the Common Form of Agreement and not referred to a Committee before the commencement of this provision.

Subclauses 41(2) and (3) provide that such a request shall be taken to have been withdrawn unless the proprietor authorises the Minister to proceed with the request within 28 days of notification by the Minister under this provision.

Subclause 41(4) provides that, where the proprietor authorises the Minister under subclause 41(2) to proceed with the request, it shall be taken to have been validly made under the Common Form of Agreement. Thus the new provisions apply in such a case, except that it is provided in this subclause that the Committee processing fee and an authorisation lodgement fee of \$500 for a request made on or after 24 August 1988, may be deducted from any amount or amounts payable to the proprietor under the Common Form of Agreement. Applying an authorisation lodgement fee of \$500 will place proprietors of nursing homes approved under the Principal Act in the same position as proprietors of homes approved under the National Health Act 1953 who pay a lodgement fee for requests for review of nursing home fee decisions under that legislation where such requests were made on or after 24 August 1988.









