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1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HEALTH AND COMMUNITY SERVICES LEGISLATION AMENDMENT BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Aged, Family  
and Health Services the Honourable Peter Staples, MP)





## HEALTH AND COMMUNITY SERVICES LEGISLATION AMENDMENT BILL 1991

### GENERAL OUTLINE

A major purpose of this Bill is to implement decisions in the area of aged care announced by the Government in the 1991-92 Budget.

The Bill would amend the Aged or Disabled Persons Homes Act 1954 to allow for financial assistance to be paid to organisations providing community aged care services packages to aged or disabled persons not living in institutions. Community aged care services packages will provide a level of care services comparable to that provided by hostels for their more frail residents.

Other amendments to the Aged or Disabled Persons Homes Act allow for restructuring of the Personal Care Subsidy paid to hostels providing care to eligible aged persons. Under existing subsidy arrangements there is only one level of Personal Care subsidy payable for a very wide range of care needs. Restructuring of this subsidy is essential in order to better target funding to those residents with high levels of physical frailty and those suffering from dementia.

Furthermore, under existing arrangements there is no incentive for hostels to admit more frail residents. This is essential if the planning arrangements introduced in 1986 as part of the Aged Care Reform process are to be successfully implemented.

The Bill also contains provisions to amend the Aged or Disabled Persons Homes Act to enable some control to be exerted over the quality of persons operating hostels approved under that Act. The proposed amendments will provide that it is a condition of a hostel's approval that the person operating, or proposing to operate, a hostel be approved as an Approved Operator. Where a hostel is in breach of this condition, the Commonwealth will be under no obligation to sustain financial assistance by way of recurrent subsidy.

The decision to approve or refuse an applicant, or to revoke the approval of an existing Approved Operator, will be based on consideration of a person's ability to satisfy certain criteria. Broadly, these will include relevant experience, honesty, efficiency, and history in the aged care industry.

It is also proposed in the Bill to amend the National Health Act 1953, the Nursing Homes Assistance Act 1974, and the Aged or Disabled Persons Homes Act 1954 to revoke approvals to the 17 remaining nursing homes for people with disabilities and 3 remaining hostels for people with disabilities at the time the existing Commonwealth/State Disability Agreements come into full operation in each State.

These amendments are necessary to allow these remaining nursing homes and hostels for people with disabilities to be included in the transfer of administrative responsibility for all Commonwealth funded disability accommodation services to the States as the Commonwealth/State Disability Agreements, entered into between the Commonwealth and all States and Territories on 30 July 1991, come into full operation.

The Bill also contains amendments to the Health Insurance Act 1973 relating to the payment of Medicare benefits for R-type or referred diagnostic imaging services designed to enable the payment of benefits of certain imaging services requested by physiotherapists. The services for which physiotherapists are to be formally recognised as requesters are X-rays of spine and pelvic area. This amendment gives physiotherapists the same recognition in the ordering of imaging services as chiropractors. The amendment acknowledges that spinal X-rays are important in determining whether spinal manipulation can be performed safely.

The Bill also contains minor consequential amendments to the Health Insurance Act to allow a Medical Services Committee of Inquiry to examine cases relating to the rendering of excessive pathology services.

The Bill also contains a minor amendment to repeal a number of redundant provisions contained in the Health Legislation Amendment Act 1982.

The Bill also remedies deficiencies in the coverage of the transitional provisions in section 71 of the National Food Authority Act 1991 in respect of food standards matters in process before the commencement of that Act.

The Bill amends the definition of "basic private table" or "basic table" in the National Health Act 1953 to extend the definition to cover Type-C professional attention at a day hospital facility for the purposes of a benefit determined by the Minister to be payable for hospital treatment.

A further purpose of this Bill is to make a number of amendments to the National Health Act in relation to nursing home matters.

The first of these amendments, relating to an application by a nursing home proprietor for the classification of a patient, will ensure that the further classification of a patient who has been on hospital leave is based on an appropriate period of assessment after the patient has been re-admitted to the nursing home. The amendments will ensure that the nursing home is not disadvantaged financially if the application is submitted after the previous classification expires.

Further amendments providing for a temporary classification for a new nursing home patient are in response to a request from the nursing home industry that nursing homes receive an interim level of funding for new patients, at the lowest level of classification, pending assessment of the patient's care needs and a decision on the nursing home's subsequent application for the patient's classification.

Following upon the recently completed review of nursing home infrastructure funding, the Government has introduced provisions to enable additional funding for isolated homes, and for homes caring for residents who receive nasogastric feeding or continuous oxygen. It has also introduced provisions to enable supplementary recurrent funding for proprietors who build new homes without receiving capital grants. The Bill contains amendments to the National Health Act which will implement these new provisions.

The Bill also introduces an offence in the National Health Act for furnishing information that is false or misleading in support of an application for approval as an Approved Operator of nursing homes. This is an important deterrent, given that the information contained in an application is necessary to consider the suitability of a person to be the proprietor of an approved nursing home and therefore to provide adequate care to frail aged residents.

The Bill also amends the levels of various penalties contained in the National Health Act relating to the administration of the Commonwealth's nursing home recurrent funding program. The reason for increasing the penalties is to ensure that they provide both effective deterrents and appropriate sanctions in respect of the matters to which they relate. In view of the time elapsed since the original penalties were introduced, they no longer do this.

#### FINANCIAL IMPACT STATEMENT

The amendments to the Aged or Disabled Persons Homes Act to provide for community aged care services packages will cost \$24.73 million over four years, divided as follows:

1991-92	1992-93	1993-94	1994-95
\$m	\$m	\$m	\$m
1.22	3.84	7.04	12.63

The cost is totally off-set by savings made through the reduction in the number of intended hostel places.

The restructuring of the Personal Care subsidy under the Aged or Disabled Persons Homes Act will entail an outlay of \$3.7 million in 1991-92 and \$14.6 million in a full year. The cost will be offset by savings realised from a reduction in the number of intended hostel places.

There is no financial impact from the amendments to the Aged or Disabled Persons Homes Act relating to Approved Operators of hostels.

The proposed amendments to the National Health Act, the Nursing Homes Assistance Act, and the Aged or Disabled Persons Homes Act, regarding nursing homes and hostels for people with disabilities, will have no financial impact. These

amendments revoke approvals to nursing homes and hostels for people with disabilities at the time Commonwealth/State Disability Agreements come into operation with States, at which time the existing Commonwealth funding for the nursing homes and hostels is transferred to the State Governments.

Although it is not possible to quantify, the proposal relating to the payment of Medicare benefits for R-type or referred diagnostic imaging services should produce some savings in Medicare benefits expenditure because it removes the need for physiotherapy patients to be referred for spinal and pelvic X-rays through medical practitioners. X-ray referrals by medical practitioners generate additional benefits payments for consultations.

The amendments to the National Health Act relating to the classification of patients in nursing homes entail no additional cost to the Commonwealth, but will ensure a better cash flow to nursing homes based on an appropriate period of assessment of the nursing and personal care needs of new nursing home patients and those returning from hospital leave.

The amendments to the National Health Act which take account of the changes to nursing home infrastructure funding to provide further assistance to remote homes, newly built homes and homes caring for residents receiving nasogastric feeding or oxygen will cost \$0.61 million in 1991-92, increasing to \$1.98 million in 1994-95.

There is no financial impact from the amendments to the National Health Act covering an offence for furnishing false or misleading information in an application for approval as an Approved Operator of nursing homes, nor in relation to increasing the levels of various penalties under that Act.

The other amendments contained in this Bill have no financial impact.

**NOTES ON CLAUSES**

**PART 1 - PRELIMINARY**

**Clause 1 - Short title etc.**

This is a formal provision that specifies the short title of the Act as the Health and Community Services Legislation Amendment Act 1991.

**Clause 2 - Commencement**

This clause determines the commencement of the provisions of the new Act.

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

**Clause 3 - Principal Act**

This clause identifies the Aged or Disabled Persons Homes Act 1954 as the Principal Act for the purposes of this Part of the Bill.

**Clause 4 - Long title**

This clause amends the long title of the Principal Act to read "An Act to provide for Assistance by the Commonwealth towards the provision of Care for Aged Persons or Disabled Persons, and for other purposes" by omitting 'Homes' and substituting 'Care'. This amendment will reflect more accurately the intention of the Act which is to provide financial assistance for the care of aged or disabled persons.

**Clause 5 - Short title**

This clause changes the name by which the Principal Act may be cited to "Aged or Disabled Persons Care Act 1954".

**Clause 6 - Interpretation**

This clause amends section 2 of the Principal Act to allow for the provision of community aged care services packages.

The following definitions are amended:

- . "eligible person" - amended to include non-institutionalised aged or disabled persons who are assessed to be in need of community aged care services; and
- . "relevant period" - amended to include the relevant period for setting maximum numbers of community aged care services packages.

The following definitions, required for the community aged care services packages sections, are inserted:

- . "approved provider";
- . "community aged care services";
- . "Community Aged Care Services General Conditions";
- . "community aged care services package"; and
- . "organisation".

**Clause 7 - Purpose**

This clause amends section 3 of the Principle Act by expanding the purposes of the Principal Act to include the provision of community aged care services to eligible persons.

**Clause 8 - Approved Operators in relation to approved hostels**  
**- Revocation of approval**

This clause inserts two new sections, 10AB and 10AC, in the Principal Act:

**Section 10AB - Approved operators in relation to approved hostels.**

The purpose of new section 10AB is to enable the Minister to consider whether an organisation is suitable to operate hostels. It also provides that he or she may formulate Principles to be complied with in making a decision to approve or refuse an organisation as an approved operator. These Principles would establish honesty, efficiency, financial management skills and the ability to provide hostel care as the main criteria by which an applicant's suitability would be assessed.

The new sub-section 10AB(1) provides that an organisation may apply for approval by the Minister as an approved operator of hostels.

The new sub-section 10AB(2) provides that such an application must be in writing in a form approved by the Minister.

The new sub-section 10AB(3) provides that the Minister is to approve the organisation as an approved operator, where the Minister is satisfied that the applicant is suitable.

The new sub-section 10AB(4) provides that the Minister must comply with any principles made under the new subsection 10AB(5) in making a decision under 10AB(3).

The new sub-section 10AB(5) provides that the Minister may make principles to comply with when exercising powers under the new sub-section 10AB(3).



The new sub-section 10AB(6) provides that, where the Minister refuses an application under section 10AB, the Minister must advise the applicant of the decision and the reason for it.

The new sub-section 10AB(7) provides a transitional arrangement whereby an organisation which, prior to the commencement of these provisions, operated an approved hostel or was the holder of an approval-in-principle, is to be deemed to be an approved operator.

A decision under section 10AB is a reviewable decision under the amended section 10H of the Principal Act. As such application may be made for review initially by the Minister, and subsequently, if necessary, to the Administrative Appeals Tribunal.

#### Section 10AC - Revocation of approval.

The purpose of new section 10AC is to enable the Minister to revoke the approval of an organisation as an approved operator where he or she is of the opinion that it is no longer suitable to be the operator of an approved hostel. Such an opinion would be formed on the basis of an operator's performance against criteria embodied in Principles formulated under this section, similar to those under the new section 10AB.

The new sub-section 10AC(1) provides that the Minister may inform an organisation by notice in writing that he or she is of the opinion that it is no longer suitable to operate hostels, the reason for that opinion, and that he or she is considering revoking its approval as an approved operator as a consequence.

The new sub-section 10AC(2) provides that an organisation receiving a notice under the new sub-section 10AC(1) may, within 14 days, submit reasons to the Minister contesting the Minister's opinion.

The new sub-section 10AC(3) enables the Minister to revoke an organisation's approval if it has submitted no reasons or, if it has but the opinion of the Minister remains unchanged.

The new sub-section 10AC(4) provides that the Minister must comply with any principles under the new sub-section 10AC(5) in making a decision under 10AC(3).

The new sub-section 10AC(5) provides that the Minister may make principles to comply with when exercising powers under the new sub-section 10AC(3).

The new sub-section 10AC(6) provides that, where the Minister revokes an organisation's approval under s10AC, the Minister must advise the organisation in writing.

A decision under section 10AC is a reviewable decision under section 10H of the Principal Act. As such, application may be made for review initially by the Minister, and subsequently, if necessary, to the Administrative Appeals Tribunal.

Clause 9 - Approval of hostels for recurrent funding purposes

This clause inserts new sub-sections 10B(3A) and 10B(3B) in the Principal Act.

The effect of new sub-section 10B(3A) is that the Minister cannot approve a hostel for recurrent funding unless the organisation operating it or proposing to operate it is an approved operator.

The new sub-section 10B(3B) provides that it is a condition of a hostel's approval that it is operated by an approved operator.

Clause 10 - Payments of financial assistance

This clause amends paragraph 10D(1)(b) and inserts a new sub-section 10D(2A) in the Principal Act.

Sub-clause 10(a) - the proposed amendment of sub-section 10D(1)(b) makes provision for the Minister to determine a rate of subsidy to be calculated according to the classification of the eligible person.

Sub-clause 10(b) - the new sub-section 10D(2A) requires that the Minister determine 3 different rates of Personal Care Subsidy taking into account the different classifications of eligible persons occupying the approved hostel place.

These amendments will become effective on 29 April 1992.

Clause 11 - General conditions of recurrent subsidies

This clause inserts a new paragraph in section 10F of the Principal Act.

The new paragraph 10F(2)(ba) provides for conditions relating to the classification of persons into 3 different classes according to the degree of their need of personal care services to be included in the General Conditions formulated under sub-section 10F(1).

Clause 12 - Revocation or suspension of approval or variation of agreement

This clause amends section 10FAA of the Principal Act.

Sub-clause 12(a) - amends sub-section 10FAA(2) to enable the Minister to consider an organisation's compliance with new conditions of funding such as approved operator status in addition to existing conditions.

Sub-clause 12(b) - amends paragraph 10FAA(2)(a) to include suspension of hostel approval in the action which may be considered by the Minister where conditions of approval are breached.

Sub-clause 12(c) - inserts a new paragraph (4)(aa) which describes a determination under sub-section (2) revoking or suspending an approval, where a condition to which financial assistance is subject has not been complied with.

Sub-clause 12(d) - omits from paragraph (4)(a) reference to a determination under sub-section (2). This is now described in the new paragraph (4)(aa).

Sub-clause 12(e) - amends sub-section (4) to include "suspended" in recognition that the Minister will be able to make a determination which does not necessarily end an approval permanently.

Sub-clause 12(f) - inserts a new sub-section (4A) which provides that where the Minister makes a determination suspending an approval, the determination must specify the period of suspension.

Sub-clause 12(g) - omits sub-sections (6) and (7). The matters that were provided for under these sub-sections are now embodied in the amended section 10H.

#### Clause 13 - Automatic revocation of approval of certain hostels

This clause inserts a new section 10FC after 10FAA of the Principal Act.

Section 10FC provides that the approvals of the hostels for disabled people listed in a new Schedule 2 to the Act, will be automatically revoked immediately before the date on which a Commonwealth/State Disability Agreement, entered into on 30 July 1991, comes into full operation with a State in which the scheduled hostel for disabled people is situated.

#### Clause 14 - Appropriation

This clause repeals section 10G of the Principal Act.

Section 10G is then replaced with the new section 10RA in Clause 19.

#### Clause 15 - PART IIIA - COMMUNITY AGED CARE SERVICES

This clause inserts a new Part IIIA in the Principal Act which allows for the approval and regulation of community aged care services packages.

The new section 10G (Object of Part) states the object of the new Part, which is to make provision for financial assistance for organisations providing community aged care services to eligible persons not living in institutions.

The new section 10GA (Minister may approve community aged care services) provides for the Minister to approve particular services as the community aged care services which will be provided to recipients of community aged care services packages. These services will be the basic services which will be available to all recipients of a package.

The new section 10GB (Minister may specify maximum number of community aged care services packages for a State or Territory) provides for the Minister to specify the maximum number of community aged care services packages for which financial assistance will be payable in each State and Territory.

The new section 10GC (Minister may approve organisations as community aged care services providers) establishes a procedure for the Minister to approve organisations as suitable community aged care services providers.

The new sub-section 10GC(1) provides for an organisation to apply to the Minister for approval as a community aged care services provider.

The new sub-section 10GC(2) provides that an organisation must make a written application in a form approved by the Minister.

The new sub-section 10GC(3) provides for the Minister to approve such applications.

The new sub-section 10GC(4) requires the Minister in exercising his or her powers to approve an organisation's application, to comply with any set of principles in force under the new sub-section 10GC(5).

The new sub-section 10GC(5) provides for the Minister to formulate principles to be complied with when exercising his or her powers to approve an organisation's application.

The new sub-section 10GC(6) requires the Minister to notify in writing an applicant whose application the Minister has refused, giving the reason for the refusal.

The new section 10GD (Minister may revoke approval as a community aged care services provider) establishes a procedure for the Minister to revoke a previous approval of an organisation as a community aged care services provider, if that organisation becomes unsuitable.

The new sub-section 10GD(1) provides for the Minister to take action towards revoking an organisation's approval when it appears necessary, by informing the organisation in writing of the reasons that he or she is considering revoking its approval.

The new sub-section 10GD(2) provides for an organisation, within 14 days after receiving notice, to lodge a written submission to the Minister stating reasons why the approval should not be revoked.

The new sub-section 10GD(3) provides for the Minister to revoke an organisation's approval if the organisation does not make a submission, or if after considering such a submission, the Minister is still of the opinion that the organisation is no longer suitable to provide community aged care services.

The new sub-section 10GD(4) requires the Minister in exercising his or her powers to revoke an organisation's approval, to comply with any set of principles which may be in force under the new sub-section 10GD(5).

The new sub-section 10GD(5) provides for the Minister to make principles to be complied with when exercising his or her powers to revoke an organisation's approval.

The new sub-section 10GD(6) requires the Minister to notify an organisation in writing if its approval has been revoked.

The new section 10GE (How to obtain financial assistance under this Part) sets out the basic requirements for an organisation to receive financial assistance for providing community aged care services packages.

The new section 10GF (Approval of grant of financial assistance) sets out the way in which an organisation may receive approval for financial assistance in delivering community aged care services packages.

The new sub-section 10GF(1) provides for an approved provider to apply for financial assistance.

The new sub-section 10GF(2) requires the application to specify the number of community aged care services packages for which the organisation is seeking financial assistance and where the organisation will deliver these packages.

The new sub-section 10GF(3) provides for the Minister to approve an organisation's application for financial assistance, specifying the number of community aged care services packages for which financial assistance will be payable and the area in which they are to be provided.

The new sub-section 10GF(4) provides for the Minister to approve financial assistance for fewer community aged care services packages than that sought by an organisation.

The new sub-section 10GF(5) provides for the Minister to approve financial assistance for community aged care services packages in a different region to that sought by an organisation.

The new sub-section 10GF(6) requires that the Minister must comply with any principles in force under sub-section 10GF(7) before granting new approvals.

The new sub-section 10GF(7) provides for the Minister to formulate principles to be complied with when exercising his or her powers to approve applications.

The new sub-section 10GF(8) requires the Minister to notify an organisation in writing if he or she does not approve an application.

The new sub-section 10GF(9) requires the Minister to notify an organisation in writing if its application has been approved; and to inform the organisation that it is required to enter into an agreement with the Minister, under the new section 10GG, within a specified period (usually 30 days), and that it must start providing community aged care services packages before the specified day.

The new section 10GG (Organisation to enter into agreement) explains the nature of the agreement which organisations are required to enter into with the Minister to receive financial assistance.

The new sub-section 10GG(1) requires that if approval for financial assistance is given, an organisation must enter into an agreement with the Minister which: specifies, or provides for determining, the day from which financial assistance will be payable; specifies the number of community aged care services packages for which financial assistance will be payable; may specify particular categories of persons who will have access to packages and the number or proportion of the packages which will go to people in these groups; specifies the regions where the packages are to be provided; and specifies any other conditions to which financial assistance is subject.

The new sub-section 10GG(2) determines that the day specified in the agreement from which financial assistance may be paid, may not be earlier than the day on which the agreement is entered into.

The new sub-section 10GG(3) determines that any other conditions specified in the agreement under the new paragraph 10GG(1)(e) may not be inconsistent with the Community Aged Care Services General Conditions provided for under the new section 10GI.

The new sub-section 10GG(4) provides for an agreement to be varied by agreement between both parties or by the Minister alone using the powers he or she is granted under the new section 10GM.

The new sub-section 10GG(5) determines that an agreement may not specify a particular number of community aged care services packages if, as a result, the maximum number of packages which the Minister may specify under the new section 10GB, would be exceeded.

The new section 10GH (Financial assistance) sets out how much financial assistance will be paid for the provision of community aged care services packages.

The new sub-section 10GH(1) determines that financial assistance is payable to an organisation if the Minister has approved it for such assistance, and the organisation has entered into an agreement with the Minister.

The new sub-section 10GH(2) determines that financial assistance is payable to organisations at a rate determined by the Minister, for each package made available.

The new sub-section 10GH(3) provides that the Minister may determine the rate of payment by first determining a method of calculating such a rate.

The new sub-section 10GH(4) requires that payments be made in the manner and at the times determined by the Minister.

The new sub-section 10GH(5) requires that financial assistance ceases to be payable if approval is revoked under the new sections 10GK (after a review), 10GL (if the organisation applies for revocation) or 10GN (if approval is transferred).

The new section 10GI (Community Aged Care Services General Conditions of financial assistance) requires the Minister to formulate general conditions for financial assistance which specify the way in which the community aged care services packages will be delivered.

The new sub-section 10GI(1) requires the Minister to formulate the General Conditions.

The new sub-section 10GI(2) lists the matters to which the General Conditions may relate, and allows for inclusion of any matter which the Minister considers appropriate to the provision of financial assistance.

The new section 10GJ (Minister may review the payment of financial assistance to an organisation) provides for the Minister to review the payment of financial assistance to an organisation.

The new section 10GK (Minister may revoke an approval of a grant after a review) allows the Minister to revoke an organisation's approval of financial assistance where this is necessary.

The new sub-section 10GK(1) provides that the Minister may revoke an approval after a review of an organisation shows, for example, that it is no longer an approved provider, or that it has infringed the Community Aged Care Services General Conditions or its agreement with the Minister.

The new sub-section 10GR(2) requires the Minister to specify in the revocation notice the day from which the revocation is to have effect. This may not be earlier than the day on which notice is given.

The new section 10GL (Minister may revoke an approval of a grant if the organisation applies) allows organisations to request that their approval be revoked.

The new sub-section 10GL(1) provides for an organisation to apply for its approval to be revoked.

The new sub-section 10GL(2) requires the Minister to revoke the approval once the application is received.

The new sub-section 10GL(3) requires the Minister to specify the day from which the revocation will take effect. This may not be earlier than the day on which notice is given.

The new section 10GM (Minister may vary an agreement) provides for the Minister to vary an agreement after reviewing an organisation. This allows for the Minister to change an agreement where an organisation is not meeting part of its obligations.

The new sub-section 10GM(1) provides that the Minister may vary an agreement where review of that organisation shows that: it is no longer an approved provider; it has infringed the Community Aged Care Services General Conditions; it has not provided community aged care services packages before the day specified in the notice of approval of financial assistance; or it has infringed its agreement with the Minister.

The new sub-section 10GM(2) provides for the Minister to vary the agreement by reducing the number of community aged care services packages, by varying the proportion of packages allocated to persons of different categories if the agreement specifies such categories, or by changing the region where the packages are to be provided.

The new sub-section 10GM(3) requires the Minister to specify in the revocation notice, the day from which the revocation will take effect. This may not be earlier than the day on which notice is given.

The new section 10GN (Transfer of approvals) allows an organisation to request that its approval be transferred to another approved provider.

The new sub-section 10GN(1) provides for the Minister to either vary the agreement with the organisation by decreasing the number of community aged care services packages, or to revoke the approval of financial assistance made under the new section 10GG, depending on whether the organisation has requested a partial or full transfer of packages.



The new sub-section 10GN(2) requires that the organisation receiving the packages be an approved provider which has received approval for the financial assistance for the transferred packages.

The new sub-section 10GN(3) provides for the Minister to vary the receiving organisation's agreement or to enter into a new agreement with it, despite the technicality that while transferring packages there may be a temporary exceeding of the maximum number of packages set, due to both providers simultaneously having the same packages approved before the first provider has its approval varied or revoked.

#### Clause 16 - Review of decisions

This clause amends section 10H of the Principal Act which provides for applications for review by the Administrative Appeals Tribunal of a revocation of the approval of a hostel or the varying of a hostel agreement.

This amendment omits the existing sub-section (2) and replaces it with the new sub-sections (2)-(6) which extend the range of decisions subject to review to cover the introduction of approved operator status for organisations running hostels, and the introduction of community aged care services packages, both of which allow the Minister to make decisions which affect the financial well-being of organisations. It also sets out the information which must be provided to organisations affected by decisions under this new section.

The new sub-section 10H(2) lists the decisions which are subject to review.

The new sub-section 10H(3) requires the application for a review to be made within 28 days of notice of the Ministers decision.

The new sub-section 10H(4) provides for the Minister to affirm, revoke or vary a decision if the organisation applies for a review of that decision.

The new sub-section 10H(5) provides for an organisation to appeal to the Administrative Appeals Tribunal in respect of the Minister's decision under new subsection 10H(4).

The new sub-section 10H(6) describes the materials which the Minister, having made a decision under the new subsection 10H(4), must make available to organisations.

The new sub-section 10H(7) determines that failure to provide some of these materials does not affect the validity of the Minister's decision.

Clause 17 - The time when principles come into force

This clause inserts a new section 10HA in the Principal Act which sets out when any principles formulated for determining or revoking an organisation's status as an approved operator or an approved provider will come into effect.

The new sub-section 10HA(1) requires that the principles are to be laid before each House of Parliament within 15 sitting days after the principles are set out.

The new sub-section 10HA(2) requires that if notice of a motion to amend the principles is given in either House within 15 sitting days, and the principles are then subsequently approved by both Houses, with or without amendment, then the principles take effect from the day the final House gives its approval.

The new sub-section 10HA(3) require that if no notice of amendments is given in either House, then the principles take effect from the day after the final day on which such notice could have been given.

Clause 18 - Certain instruments are disallowable instruments

This clause amends section 10K of the Principal Act which lists which instruments allowed by the Act are disallowable.

The amendment to the existing section 10K extends its range to cover a number of instruments required for community aged care services packages. These are: principles covering approvals of financial assistance; instruments covering the payment of financial assistance; and the Community Aged Care Services General Conditions.

Clause 19 - Appropriation

This clause inserts a new section 10KA in the Principal Act which provides for payments of hostel recurrent subsidies and financial assistance for community aged care services packages to be appropriated from the Consolidated Revenue Fund. It replaces the existing Section 10G which appropriated funds for hostel recurrent subsidies only.

Clause 20 - Heading of Schedule

Clause 20 makes a minor technical amendment required because a further schedule is to be added to the Principal Act by clause 21.

Clause 21 - New Schedule

This clause inserts a new schedule "Schedule 2 - Hostels whose approvals are to be revoked" at the end of the Principal Act. This new schedule 2 of the Principal Act is set out in schedule 1 of this Bill. It contains the list of "scheduled hostel(s)" referred to in the new section 10FC of the Principal Act as inserted by clause 13 of this Bill.

**PART 3 - AMENDMENTS OF THE HEALTH INSURANCE ACT 1973**

**Clause 22 - Principal Act**

This clause identifies the Health Insurance Act 1973 as the Principal Act referred to in this Part of the Bill.

**Clause 23 - Interpretation**

This clause inserts a definition of "physiotherapist" in section 3 of the Principal Act, for the purposes of payment of Medicare benefits for R-type diagnostics imaging services.

**Clause 24 - Insertion of new subsection: Medicare benefits in relation to R-type diagnostic imaging services**

This clause inserts a new subsection 16B(3A) [physiotherapists may only request certain services] which provides for the payment of Medicare benefits for certain R-type (referred) imaging services rendered by medical practitioners at the request of physiotherapists. The particular services which can be requested (X-rays of the spine and pelvic area) are to be specified in regulations. This amendment will give physiotherapists the same recognition as chiropractors.

**Clause 25 - Interpretation**

Clause 25 provides that, for the purposes of the prohibited diagnostic imaging services provisions of the Principal Act, a "practitioner" includes a physiotherapist.

Although it is not possible to quantify, the proposal should produce some savings in Medicare benefits expenditure because it removes the need for physiotherapy patients to be referred for spinal and pelvic X-rays through medical practitioners. X-ray referrals by medical practitioners generate additional benefits payments for consultations.

**Clause 26 - Interpretation**

This clause makes a consequential amendment to section 79 of the Principal Act to allow a Medical Services Committee of Inquiry to examine cases relating to the rendering of excessive pathology services.

**Clause 27 - Functions of Committees**

This clause makes a consequential amendment to section 82 of the Principal Act to allow a Medical Services Committee of Inquiry to examine cases relating to the rendering of excessive pathology services.

**PART 4 AMENDMENTS OF THE HEALTH LEGISLATION AMENDMENT ACT 1982****Clause 28 - Principal Act**

This clause identifies the Health Legislation Amendment Act 1982 as the Principal Act referred to in this Part of the Bill.

**Clause 29 - Repeal of sections**

Clause 29 of the Bill provides for the repeal of sections 10, 11 and 41 of the Health Legislation Amendment Act 1982 (the Act). Sections 10 and 11 of the Act provided for amendments to sections 20D and 20E of the Health Insurance Act 1973 (Principal Act), but these latter sections were repealed by section 27 of the Health Legislation Amendment Act 1983. Sections 10 and 11 of Act have not been proclaimed and are redundant.

Section 41 of the Act provided for amendments to the definition of "basic hospital benefits table" or "basic table" in subsection 4(1) of the National Health Act 1953 (Principal Act). That definition became redundant with the insertion in subsection 4(1) of the new definition of "basic private table" or "basic table" by virtue of section 89 of the Health Legislation Amendment Act 1983. The definition of "basic hospital benefits table" or "basic table" was not repealed, but has no application to any matter arising after 1 February 1984 when the changed private health insurance arrangements were introduced in conjunction with the introduction of the Medicare arrangements.

**PART 5 AMENDMENTS OF THE NATIONAL FOOD AUTHORITY ACT 1991****Clause 30 - Principal Act**

Identifies the Principal Act as the National Food Authority Act 1991

**Clause 31 - Application and Proposals continue in force**

This clause amends section 71 of the Principal Act which is a transitional provision dealing with applications under the superseded scheme for the development or variation of standards not finally dealt with before the commencement of the Principal Act. Section 71 permits the National Food Authority to treat such applications as having been made under the Principal Act and to omit any of the steps normally required under Part 3 in respect of the development or variation of standards. The amendment would overcome identified deficiencies in the coverage of section 71.

Paragraph 56(a) substitutes new paragraphs 71(1)(b),(c),(d) and (e) in the Principal Act extending the application of section 71 to applications for the development or variation of a standard where the National Health and Medical Research Council (NHMRC) had made a recommendation to the National Food Standards Council but the Council had not made a decision on the recommendation before the commencement of the Principal Act.

Paragraph 56(b) inserts a new subsection 71(1A) in the Principal Act extending the application of section 71 to proposals (as opposed to external applications) for the development or variation of a standard prepared by the NHMRC so that these can be treated under the section in same way as applications.

Paragraphs 56(c),(d),(e) and (f) make a minor technical amendment and consequential amendments to subsections 72(2) and 72(3) of the Principal Act.

## **PART 6 - AMENDMENTS OF THE NATIONAL HEALTH ACT 1953**

### **Clause 32 - Principal Act**

This clause identifies the National Health Act 1953 as the Principal Act referred to in this Part of the Bill.

### **Clause 33 - Interpretation**

Clause 33 of the Bill provides for the amendment of paragraph (dc) of the definition of "basic private table" or "basic table" in subsection 4(1) of the Principal Act.

Subparagraph (iii) of the new paragraph (dc) in the definition of "basic private table" or "basic table" extends the definition to cover Type-C professional attention at a day hospital facility for the purposes of a benefit determined by the Minister under paragraph 4D(1)(b) of the Principal Act to be payable for hospital treatment.

### **Clause 34 - Certificates in respect of professional attention**

Clause 34 inserts a new subsection (3) in section 4C of the Principal Act.

The amendment will enable patients of day hospital facilities to claim a health insurance [basic table] accommodation benefit for Type C professional attention (ie: procedures not normally requiring hospital treatment) provided on a day only basis. Such a benefit will only be payable upon certification by the admitting medical practitioner.

### **Clause 35 - Interpretation**

This clause amends section 39 of the Principal Act by adding definitions of "hospital leave" and "lowest classification".

"hospital leave"

The proposed interpretation defines the circumstances in which a patient will be considered to be on hospital leave for the purposes of this Act. This will be used in determining the funding levels for the care of a patient whose current classification expires while the patient is on hospital leave.

. "lowest classification"

The proposed interpretation defines the lowest classification of a patient in a nursing home as the classification representing the lowest degree of need for nursing and personal care, as determined by the Minister under sub-sections 40AFA(3) and (4) of the Act. It replaces current sub-section 40AFD(10).

Clause 36 - Existing patients in nursing homes containing exempt beds

This clause involves a technical amendment to sub-section 40ADB(4) of the Principal Act to omit the word "under", which is now superfluous following previous amendment of that sub-section.

Clause 37 - Application by proprietor of home for patient classification

This clause amends section 40AFD of the Principal Act which concerns applications by nursing home proprietors for the classification of patients.

Sub-clause (a) prevents a nursing home proprietor from applying for a new classification for a patient whose current classification expires while the patient is on hospital leave. The purpose of this amendment is to ensure an application for a classification is based on assessment of a resident's care needs while the resident is in the nursing home.

Sub-clause (b) will apply to a new classification for a patient who is re-admitted to a nursing home following hospital leave, and whose previous classification expired during hospital leave, or shortly after return from hospital leave.

The new classification will take effect from either the date on which the patient is re-admitted (if the previous classification expired during the hospital leave), or when the previous classification expires (if this occurs after the resident is re-admitted to the nursing home).

The amendment will ensure a nursing home can comply with the normal requirement to assess a resident's care needs over a period of several weeks, before applying for a classification. It will avoid the current requirement that funding reduce to the lowest classification level for the period between the expiry of the previous classification and the date the nursing home applies for a further classification, when the application is submitted after the previous classification expires.

Sub-clause (c) ensures that the intent of sub-clause (b) will be achieved, by making inapplicable the normal provision under section 40AFD(7)(b) that a resident's classification reverts to the lowest classification level, if an application for a further classification is not made before the previous classification expires.

Sub-clause (d) applies to a patient whose classification expires within 28 days of return from hospital leave and the nursing home applies for a further classification before the previous classification expires. The new classification will be effective from the date the previous classification expires, including when the application is not determined until after the previous classification expires.

Sub-clause (e) ensures that the effect of sub-clause (d) is limited to residents whose previous classifications expire within twenty eight days of return from hospital leave .

Sub-clause (f) applies to patients whose classification expires during hospital leave. It enables a nursing home proprietor to apply for a further classification after a patient has returned from hospital leave, without being financially disadvantaged. The Bill amends the present requirement that the lowest level of classification apply from the date the previous classification expires, until the date on which the application for a further classification is determined, by providing for the new classification to take effect from the date of re-admission.

This will enable the nursing home to receive funding based on the lowest level of classification from the date the previous classification expires until the date on which the resident is re-admitted to the nursing home. The nursing home will also receive interim funding at that minimum rate from the date of re-admission until the application is determined. This will be adjusted retrospectively when the new classification has been determined.

Sub-clause (g) excludes a patient, whose classification expires within twenty eight days of return from hospital leave, from the normal requirement of reverting to the lowest level of classification between the date the classification expires and the date on which a late application for a further classification is determined. This amendment is necessary to avoid conflict with sub-clause (d).

Sub-clause (h) omits Section 10, which is no longer required as a result of including the definition of the lowest classification in section 39 of the Principal Act (clause 35 of the Bill refers).

#### Clause 38 - Automatic revocation of approval as nursing home for disabled people

This Clause inserts a new section 45 after section 44A of the National Health Act 1953.

Section 45 provides that the approvals of the nursing homes for disabled people listed in a new Schedule 4 to the Act, will be automatically revoked immediately before the date on which a Commonwealth/State Disability Agreement, entered into on 30 July 1991, comes into full operation with a State in which the scheduled nursing home is situated.

**Clause 39 - Temporary classification of patient pending determination of application**

This clause inserts a new section 40AFDA in the Principal Act to permit the temporary classification of a patient at the lowest classification level pending the determination of an application for classification.

Currently, nursing home proprietors do not receive funding for the nursing and personal care of a new patient until they submit an application and it is approved within the Department. The classification and funding then take effect from the date of admission.

The proposed amendment means that, until an application for a classification has been submitted and determined, the patient will be regarded as having the lowest classification. The nursing home will receive interim funding at this level until the application has been determined, at which time the approved classification, and the associated funding, will take effect from the date of admission.

**Clause 40 - Isolated nursing home benefit;  
- Benefit in respect of patients receiving nasogastric feeding; and  
- Benefit in respect of patients receiving oxygen**

This clause inserts three new sections, 48C, 48D and 48E, in the Principal Act:

**Section 48C - Isolated nursing home benefit**

This new section allows principles to be established to determine which homes are to be given additional funding as "isolated" nursing homes and to enable the payment to be made to these homes. It also allows the level of the payment to vary from home to home.

**Section 48D - Benefit in respect of patients receiving nasogastric feeding**

This new section allows principles to be established to determine which approved nursing homes (and proprietors) are eligible for an additional Commonwealth benefit in respect of a patient who is in need of, and is receiving, nasogastric feeding. It also allows principles for the payment of this benefit, and for different amounts to be paid in respect of different patients.

**Section 48E - Benefit in respect of patients receiving oxygen**

This new section allows principles to be established to determine what constitutes eligible oxygen treatment and which approved nursing homes (and proprietors) are eligible for an additional Commonwealth benefit in respect of a person who is in need of, and is receiving, oxygen treatment. It also allows principles for the payment of this benefit, and for different amounts to be paid in respect of different patients.



**Clause 41 - PART VAB - COMMONWEALTH BENEFIT IN RESPECT OF NEWLY BUILT NURSING HOMES**

This clause inserts a new Part VAB (new sections 52 to 57) in the Principal Act which allows for an additional Commonwealth benefit in respect of newly built nursing homes.

Sections 52 (Interpretation) and 53 (Application for Commonwealth benefit) of the new Part define which nursing homes are eligible for the additional benefit for newly built premises and the means of applying for this benefit.

Section 54 (Principles applicable for grant of Commonwealth benefit) requires the Minister to determine the principles in accordance with which a proprietor may be approved for a Commonwealth benefit in respect of a newly built nursing home, and the level of that benefit. Essentially, the Minister is to consider the honesty of the applicant, his or her likely efficiency as a proprietor, his or her prior record on such matters as adherence to nursing home standards, and whether any grant for capital works has been made for the nursing home in question.

Sections 55 (Approval of grant) and 56 (Entitlement to benefit) determine the means by which the Minister may approve a benefit for a newly built nursing home, the details of the benefit and the payment of the benefit in respect of eligible premises.

Section 57 (Appropriation) limits payments for the above to \$180,000 for 1990-91, and to the amount to be appropriated by Parliament for this purpose thereafter.

**Clause 42 - Heading to Part VC**

This is a technical amendment consequent to the creation of a new Part VAB in clause 41.

**Clause 43 - Interpretation**

This is a technical amendment consequent to the creation of a new Part VAB in clause 41.

**Clause 44 - Information to be furnished by proprietor of approved home.**

This is a technical amendment consequent to the creation of a new Part VAB in clause 41.

**Clause 45 - Offences**

This clause amends section 62 of the Principal Act to make it an offence to provide information that is false or misleading in a material particular, in support of an application under section

39BA for approval as an approved operator of approved nursing homes. Such approval is only granted to a person considered by the Minister to be suitable to be the proprietor of a nursing home. The deterrent is required to ensure that the Minister's decision in respect of an application is based on accurate and truthful information.

**Clause 46 - Application for review by Tribunal of decisions of the Pharmacy Restructuring Authority**

Clause 46 of the Bill inserts new section 105AD into the Principal Act. The purpose of this section is to enable applications to be made to the Administrative Appeals Tribunal (AAT) for review of decisions made by the Pharmacy Restructuring Authority (PRA) not to recommend the approval of a pharmacist to supply pharmaceutical benefits, the payment of an essential pharmacy allowance or a grant of financial assistance for the amalgamation or closure of a pharmacy. This change will correct an unintended effect of the current provisions of section 105AB of the Principal Act. The new section will also allow for applications to the AAT to be made retrospectively in respect of such PRA recommendations made prior to the commencement of this provision.

**Clause 47 - Repeal of Division**

This clause repeals the Division of the National Health Act which enables Medical and Hospital Benefits Committees of Inquiry to be set up in each State. The purpose of these Committees was to inquire into any matter pertaining to evidence submitted by a medical practitioner concerning a claim for Nursing Home Benefit or Domiciliary Nursing Care Benefit. The Act required members of these Committees to include 4 medical practitioners nominated by the Australian Medical Association.

The Australian Medical Association has never nominated members to these Committees and the Committees have never been established. Current arrangements have replaced the need for these Committees by providing avenues of appeal through Ministerial review or appeal to the Administrative Appeals Tribunal.

**Clause 48 - Moneys from which payments under this Act are to be made**

This clause involves a technical amendment to section 137 of the Principal Act consequential to the insertion of the new Part VAB, specifically section 57 of Part VAB concerning appropriations.

**Clause 49 - Certain instruments subject to disallowance**

This clause amends section 139B of the Principal Act to ensure that the principles to be formulated under new sections 48C (Isolated nursing home benefit), 48D (Benefit in respect of patients receiving nasogastric feeding), 48E (Benefit in respect of patients receiving oxygen) and 54 (Commonwealth benefit in respect of newly built nursing homes) are subject to Parliamentary disallowance.

**Clause 50 - Amendments of the Principal Act relating to penalties**

This clause amends the Principal Act as specified in Schedule 2 of this Bill. Schedule 2 sets out the levels of penalties for offences under Parts V, VA, VB and VC, and subsection 135B(3) of the Principal Act.

As a result of this amendment, the levels of certain penalties are specifically increased, and the way in which others are described is altered.

Penalties which are solely monetary have been doubled, except for those under section 61 of the Principal Act, which have been increased ten times. The reason for increasing the penalties is to ensure that they provide both effective deterrents and appropriate sanctions in respect of the matters to which they relate. In view of the time elapsed since the original penalties were introduced, they no longer do this. The significant increases are in line with the serious nature of the consequences of the relevant offences.

Section 61 relates to the keeping of records by proprietors of approved nursing homes. The records are used to audit nursing home financial activity, which often leads to the recovery of very substantial sums of money. By breaching section 61, nursing home proprietors may hinder proper auditing of nursing home accounts.

In the case of an offence for which both a monetary penalty and a term of imprisonment is applicable, the monetary penalty has been deleted. In these instances the monetary penalty is to be determined by reference to the Crimes Act 1914, which provides a formula for monetary penalties to be derived on the basis of the length of imprisonment applicable.

The Crimes Act 1914 further provides for a penalty for a body corporate of five times that for a natural person. Therefore, references to penalties for bodies corporate have also been deleted.

**Clause 51 - New Schedule**

This clause inserts a new schedule "Schedule 4 - Nursing Homes whose approvals as nursing homes for disabled people are to be revoked" at the end of the Principal Act. This new schedule 4 of the Principal Act is set out in schedule 3 of this Bill. It contains the list of "scheduled nursing home(s)" referred to in the new section 45 of the Principal Act as inserted by clause 38 of this Bill.

**PART 7 AMENDMENTS OF THE NURSING HOMES ASSISTANCE ACT 1974**

**Clause 52 - Principal Act**

This clause identifies the Nursing Homes Assistance Act 1974 as the Principal Act for the purposes of this Part of the Bill.

**Clause 53 - Automatic revocation of approval of certain nursing homes**

This clause inserts a new section 11AA after section 11 of the Nursing Homes Assistance Act 1974.

Section 11AA provides that the approvals of the nursing homes for disabled people listed in a new Schedule to the Act, will be automatically revoked immediately before the date on which a Commonwealth/State Disability Agreement, entered into on 30 July 1991, comes into full operation with a State in which the scheduled nursing home is situated, if that date is earlier than 1 July 1992. (Under the existing Act all remaining approvals lapse on 30 June 1992).

**Clause 54 - New Schedule**

This clause inserts a new schedule "Nursing Homes whose approvals are to be revoked" at the end of the Principal Act. This new schedule of the Principal Act is set out in schedule 4 of this Bill. It contains the list of "scheduled nursing home(s)" referred to in the new section 11AA of the Principal Act as inserted by clause 53 of this Bill.







