

1984

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HEALTH LEGISLATION AMENDMENT

BILL 1984

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Health)

This explanatory memorandum replaces that issued
on 13 September 1984.

OUTLINE

The purpose of the Bill is to amend:

- (i) the Epidemiological Studies (Confidentiality) Act 1981 to allay any doubts that the Act applies equally to data relating to the affairs of both living persons and deceased persons.

- (ii) the Health Insurance Act 1973 to -
 - . put beyond doubt the fact that the term 'in-patient' as used in the definition of 'basic private table' in sub-section 4(1) of the National Health Act 1953 includes patients in recognised or public hospitals as well as private hospitals.

 - . authorise the payment of medicare benefits in respect of services which are not specifically listed in the Medical Benefits Schedule.

- (iii) the National Health Act 1953 to -
 - . provide for the Commonwealth to continue to pay nursing home benefits (and, where applicable,

extensive care benefits) for up to 28 days in a twelve month period in respect of qualified nursing home patients in an approved nursing home who, under an agreement with the proprietor, have temporarily vacated the home.

- . provide for 'short-term respite care patients' to temporarily occupy a bed in an approved nursing home temporarily vacated by a qualified or Repatriation nursing home patient under an agreement with the proprietor.

- . make provision for the Minister to arrange for the repair and maintenance of, and the supply of parts (including batteries) for, hearing aids acquired by persons in accordance with section 9A of the National Health Act 1953 or otherwise.

- . make provision for the Minister to enter into arrangements with the States, Territories and certain bodies corporate for the supply and distribution of medical and surgical aids to those persons requiring them and for the carrying out of modifications to buildings, vehicles or equipment for the disabled and sick.

. make the Health Benefits Reinsurance Trust Fund a Trust Account for the purposes of the Audit Act 1901.

(iv) the Tuberculosis Act 1948 to make provision for the phasing out of the tuberculosis allowance.

PART 1 - PRELIMINARY

Clause 1: Short Title

The amending Act may be cited as the Health Legislation Amendment Act 1984.

Clause 2: Commencement

This clause provides for the commencement of the various provisions of the Bill.

PART II - AMENDMENTS OF THE EPIDEMIOLOGICAL
STUDIES (CONFIDENTIALITY) ACT 1981

Clause 3: Principal Act

This clause identifies the Epidemiological Studies (Confidentiality) Act 1981 as the Principal Act for the purposes of Part II.

Clause 4: Interpretation

This clause introduces new sub-section 3(4) into the Principal

Act to resolve any doubts that the Principal Act applies equally to the affairs of living persons and deceased persons. The need for the amendment arose out of a suggestion that the references to "population" and "persons" in paragraph (a) of the definition of an "epidemiological study" in sub-section 3(1) of the Principal Act might be construed so as to exclude the affairs of deceased persons from the scope of the Principal Act. The proposed amendment is intended to resolve any possible doubts for the future and is not seen to effect an alteration in the law.

New sub-section 3(4) - provides that, except where a contrary intention is to be found, a reference in the Principal Act to information or documents relating to the affairs of a person includes a reference to information or documents relating to the affairs of a deceased person.

Clause 5: Publication of results of studies, etc

The amendment proposed by this clause is consequential to the amendment at clause 4.

Consistent with clause 4, this clause is intended to ensure that the identity of deceased persons in respect of whom information has been collected in the course of an epidemiological study, is accorded the same degree of confidentiality as is the identity of a living person.

PART III - AMENDMENTS OF THE HEALTH

INSURANCE ACT 1973

Clause 6: Principal Act

This clause identifies the Health Insurance Act 1973 as the Principal Act for the purposes of Part III.

Clause 7: Interpretation

The purpose of this clause is to put beyond any doubt that the term 'in-patient' as used in the definition of 'basic private table' contained in sub-section 4(1) of the National Health Act 1953 applies to patients occupying beds in recognised (public) hospitals as well as private hospitals.

The clause also amends paragraph (a) of sub-section 3(2) of the Principal Act by extending its application to children occupying beds in recognised or public hospitals. It does this by deleting the expression 'approved bed' and replacing it with the term 'bed'. This paragraph currently provides that a newborn child occupying an approved bed (which can only be in a private hospital by virtue of the definition of 'approved bed' in sub-section 3(1) of the Principal Act) in an intensive care facility in that hospital shall, for the purpose of the provision of special care, be deemed to be an in-patient of the hospital.

The definition of the term 'approved bed' referred to above is itself amended by this clause to put beyond doubt the fact that it only includes beds in private hospitals within the meaning of Part III of the Principal Act (that is, approved by the Minister under that Part).

Clause 8: Certification of In-Patient as Needing Acute Care

This clause amends section 3B of the Principal Act to allow 'section 3B certificates' (certificates issued by medical practitioners stating that an in-patient of a hospital is in need of acute care for a certain period of time) to be issued up to 14 days before they come into effect. At present they can be issued up to 7 days before they come into effect.

The purpose of this amendment is to overcome difficulties encountered by patients whose certificates are reviewed by an Acute Care Advisory Committee and are revoked on a retrospective basis. The extension of the 7 day period to 14 days will help alleviate such problems by ensuring that any subsequent revocation of a certificate occurs at an earlier point of time in the certificate's currency.

The effect of a section 3B certificate is that a long-term hospital patient who is eligible for benefits from health insurance organisations registered under the National Health Act 1953 would be eligible for a higher benefit during the period of the certificate.

Clause 9: Health Services Not Specified in an Item

This clause amends the Principal Act by inserting a new section 3C. The new section essentially empowers the Minister for Health to determine that a specified health service not itself listed in the medical benefits schedule, shall be treated, for the purposes of the Principal Act, the National Health Act 1953 & Regulations made under either Act, as if it were so listed. The Minister will be authorised to, in that determination, nominate a fee which is to be applicable for Medicare benefits purposes.

New sub-section 3C (1), empowers the Minister to make such a determination.

New sub-section 3C(2) provides that such a determination by the Minister may be expressed to have taken effect from any time after 1 February 1984 up to and including the day on which it is made.

New sub-section 3C(3) provides that a determination made under sub-section (1), in respect of a service not listed in the Medical Benefits Schedule, may make provision for and in relation to a specific matter or thing by applying, adopting or incorporating, with or without modification, the provisions of the Principal Act, regulations or a determination made under section 4A of the Principal Act.

New sub-section 3C(4) provides that sections 48, 49 and 50 of the Acts Interpretation Act 1901 apply in relation to a determination made under this section as if that determination were a regulation for the purposes of the latter Act. This means that they will be required to be gazetted and laid before each House of Parliament where they will be subject to possible disallowance.

New sub-sections 3C(5) and (6) provide that sub-sections 5(3) to 5(3C) (inclusive) of the Statutory Rules Publication Act 1903 apply to a determination made under this section as if it was a statutory rule for the purposes of the latter Act. The above-mentioned sub-sections deal with the manner of notification and publication of statutory rules.

New sub-section 3C(7) provides that for the purposes of section 3C an internal Territory shall be deemed to form part of New South Wales.

New sub-section 3C(8) defines the terms "health service" and "service" for the purposes of section 3C. The term "health service" means medical, surgical, obstetric, dental or optometrical and any other prescribed service that relates to health but does not include the supply of prostheses except when supplied in connection with a "professional service" as defined in sub-section 3(1) of the Principal Act. The term "service" is defined as including the supply of goods.

PART IV - AMENDMENTS OF THE NATIONAL

HEALTH ACT 1953

Clause 10: Principal Act

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

Clause 11: Interpretation

This clause, in combination with amendments which would be made by clauses 15 and 17, would enable the admission of persons to nursing homes on a temporary basis during the absence of permanent patients for which clause 12 makes provision. Commonwealth benefits will not, by virtue of paragraph (a) of this clause, be payable in respect of such a patient except in certain circumstances. Those circumstances would be that the patient is permanently admitted to a nursing home; or, upon the discharge or death of a permanent patient whose bed the person is occupying, the Minister determines that the person is to be treated as a permanent patient for a specified period under new provisions which would be inserted by clause 16.

Paragraph: (a) amends the definition of "qualified nursing home patient" in sub-section 4(1) of the Principal Act by excluding from its ambit, anyone who is a "short-term respite care patient" for the purpose of the Act.

Paragraph: (b) inserts into sub-section 4(1) of the Principal Act a definition of the term 'short term respite care patient'. Such a patient is defined as a person -

- (a) whose admission to an approved nursing home has been approved by the Minister under section 40ABA of the Principal Act; and
- (b) who occupies a bed in an approved nursing home temporarily vacated by either a qualified nursing home patient (pursuant to an agreement made under sub-section 4AA(2) of the Principal Act) or a Repatriation nursing home patient. The term does not however, include a Repatriation nursing home patient of the nursing home.

Clause 12: Recognized Days of Absence of
Qualified Nursing Home
Patients, etc.

The purpose of this clause is to enable qualified or Repatriation nursing home patients or their agents to enter into agreements with nursing home proprietors under which the patients will be able to temporarily vacate the approved nursing homes in which they are patients for agreed periods and retain the right to return to their beds in the nursing homes at the ends of those periods. For up to 28 days of each year Commonwealth nursing home benefits and, where applicable, extensive care benefits will continue to be paid in respect of the absent patients. The agreements can, however, provide for absences greater than 28 days. These temporary absence provisions would particularly assist patients requiring hospitalisation or seeking family reunion.

This clause amends the Principal Act by inserting a new section 4AA.

New sub-section 4AA(1) provides that, for the purposes of the Principal Act, a recognized day of absence of a qualified nursing home patient from an approved nursing home is a day on which the patient is absent from the nursing home pursuant to an agreement made under new sub-section 4AA(2) and which, for the purposes of this section, is an eligible day in relation to the patient.

New sub-section 4AA(2) provides that a qualified or Repatriation nursing home patient of an approved nursing home and the proprietor of that home may enter into an agreement, in accordance with the form authorized under new sub-section 4AA(3), with respect to the absence of the patient from the home.

New sub-section 4AA(3) allows the appropriate Minister to authorize a common form of agreement with respect to the absence from an approved nursing home of a qualified or Repatriation nursing home patient.

New sub-section 4AA(4) provides that a common form of agreement authorized by the appropriate Minister under new sub-section 4AA(3) shall make provision for such matters as the Minister considers appropriate.

New sub-section 4AA(5), without limiting the generality of sub-section 4AA(4), lists a number of matters for which a common form of agreement authorized under new sub-section 4AA(3) may make provision. These matters are:

- (a) notices to be given by, or on behalf of, the patient to the proprietor of the home in relation to the absence of the patient.

- (b) a requirement on the proprietor of the home to, upon return of the patient in circumstances specified in the agreement, allow the patient to occupy the same bed that the patient occupied immediately before his absence;
- (c) the deeming of the patient, for the purposes of this Act, to have been discharged from the nursing home in circumstances of a kind specified in the agreement;
- (d) the fees or extra charges ('bed retention fees') that may, except in the case of a Government nursing home, be charged in respect of the absence, or retention of the bed, of the patient; and
- (e) the deduction of Commonwealth nursing home benefits or other amounts from the bed retention fees.

New sub-section 4AA(6) defines, for the purposes of this section, the term "eligible day". It provides that a day on which a patient is absent from the home during a "relevant period" is an "eligible day" if the number of days of absence of the patient from that home or another approved nursing home (pursuant to an agreement made under new sub-section 4AA(2)) during the "relevant period" prior to that day does not exceed 27.

New sub-section 4AA(7) defines the term "relevant period" for the purposes of this section. It provides that subject to sub-section (8), the following periods are relevant periods in relation to qualified nursing home patients:

- (a) in the case of a person who was, on the day of commencement of this section, a qualified nursing home patient - the period of one year commencing on that day and each subsequent period of one year;
- (b) in any other case - the period of one year commencing on the day on which the patient was admitted to an approved nursing home as a qualified nursing home patient and each subsequent period of one year.

New sub-section 4AA(8) provides that where a qualified home patient is discharged from one approved nursing home and subsequently admitted to another one as a qualified nursing home patient (otherwise than by way of transfer from the first home), sub-section (7) does not apply in relation to the patient. In these circumstances the following periods are relevant periods - the period commencing on the day on which the patient was last admitted to an approved nursing home (otherwise than by way of transfer from another approved nursing home) and each subsequent period of one year.

New sub-section 4AA(9) provides that, for the purposes of sections 47, 48, 49, 59 and 60A of the Principal Act, a qualified nursing home patient shall be deemed to be

receiving nursing home care in an approved nursing home on each recognized day of absence of the patient from the home. Sections 47, 48, 49, 59 and 60A provide for payment of Commonwealth benefits in respect of the provision of nursing home care and payment of Commonwealth extensive care benefits.

The sub-section also provides that, for the purposes of sections 47, 48, 49, 59 and 60A, a reference to the fees charged in respect of nursing home care of the patient on such a day is a reference to the bed retention fees charged in respect of the patient for that day.

New sub-section 4AA(10) provides that where a qualified or Repatriation nursing home patient dies while absent from an approved nursing home pursuant to an agreement under new sub-section 4AA(2), then:

- (a) the definition of "short-term respite care patient" in sub-section 4(1), this section and sub-sections 40AA(6) and 40AB(5A) of the Principal Act have effect as if the patient -
 - (i) had been absent on each day (if any) after the patient's death and before the day on which the proprietor was informed of the death; and

(ii) had died at the end of the last of these days referred to above; and

(b) if the proprietor is not informed of the patient's death within 48 hours, he shall be taken, for the purposes of the preceding paragraph, to have been so informed at the end of this 48 hour period.

New sub-section 4AA(11) provides that a reference in sub-section (3) or (4) to the appropriate Minister means -

(a) where the term is used in relation to the absence of a qualified nursing home patient - the Minister administering this Act; or

(b) where the term is used in relation to the absence of a Repatriation nursing home patient - the Minister administering the Repatriation Act 1920.

Clause 13: Provision of medical and surgical
aids and appliances, etc. by the Commonwealth

This clause inserts new paragraph 9A(1)(aa) into the Principal Act to empower the Minister to arrange for the repair and maintenance of, and supply of parts (including batteries) for, hearing aids acquired by persons in accordance with section 9A of the Principal Act or otherwise.

This amendment is in response to a shortfall in the capacity of the Commonwealth to meet community demand for hearing aids which has resulted in individuals acquiring hearing aids from other sources. Had these hearing aids been supplied in accordance with sub-section 9A(1) of the Principal Act the Commonwealth would have been under an implicit duty to maintain, repair and supply parts for the hearing aids since such hearing aids always remain the property of the Commonwealth in accordance with sub-section 9A(2) of the Principal Act. The amendment is intended to place those persons who have acquired hearing aids otherwise than under sub-section 9A(1), in the same position in respect of repairs, maintenance and parts as they would have occupied if hearing aids had been available in accordance with sub-section 9A(1). The amendment is also intended to put the Commonwealth's power to maintain hearing aids issued under sub-section 9A(1) on an explicit basis.

There are at the date of publication approximately 600 hearing aids that have been acquired outside the terms of sub-section 9A(1) the users of which will benefit from this amendment. The estimated annual cost of maintenance, repairs and parts is \$30,000. The capital cost of issuing new hearing aids under sub-section 9A(1) of the Principal Act is estimated to be \$500,000 plus the same annual maintenance, repairs and parts cost as above. It is therefore more cost effective to maintain existing hearing aids than to supply new hearing aids under sub-section 9A(1) of the Principal Act.

Paragraph (d) is consequential to the amendment at clause 14

Clause 14: Arrangements with States for provision of surgical aids and appliances, etc.

Clause 14 introduces new section 9C into the Principal Act. The intention of this amendment is to simplify the administration of existing schemes. The amendment empowers the Minister to make arrangements with the States, Territories and certain bodies corporate for the supply of a range of medical and surgical aids and for the carrying out of modifications to buildings, vehicles or equipment for the sick or disabled. The type of arrangements envisaged is that the States, Territories and bodies corporate will perform all necessary modifications with funds supplied by the Commonwealth and will acquire, own and distribute the medical and surgical aids with funds supplied by the Commonwealth. The States, Territories

and bodies corporate may be given responsibility for the day to day administration of the schemes, thus facilitating accountability, without the need for a Commonwealth infrastructure.

The powers conferred by new section 9C are not intended to detract in any way from the Minister's powers under section 9A or to give rise to any implied limitation on those powers.

New sub-section 9C(1) - empowers the Minister to enter into arrangements with the States, Territories or certain bodies corporate for the provision of the services referred to in paragraphs (a) and (b) of this sub-section.

New paragraph 9C(2)(a) provides that an arrangement may provide for the Commonwealth to meet the costs of the schemes (including the administrative costs of the States, Territories or bodies corporate to an agreed level).

New paragraph 9C(2)(b) enables an arrangement to provide that the ownership of medical and surgical aids and appliances may vest in the relevant State, Territory or body corporate. This is a practical consideration since it is envisaged that those bodies will assume responsibility for maintaining, repairing, recycling and auditing the items in question.

New sub-section 9C(3) provides that the payments made under new paragraph 9C(2)(a) above are not deemed to be capital payments for the purpose of section 137 of the Principal Act. The effect of this provision is that the payments made under the scheme can be charged against the Trust Account established under the National Welfare Fund Act 1943 and known as the National Welfare Fund. This is the fund out of which many social welfare payments are made.

New sub-section 9C(4) provides that an arrangement can be retrospective in its effect so that, for example, ownership of aids already supplied under section 9A might be transferred to the State, Territory or body corporate providing the maintenance, repairs and auditing of the aids under the relevant arrangement.

Clause 15 - Approval of Nursing Home

This clause would insert additional conditions to which the approval of nursing homes for Commonwealth benefits purposes, would be subject. These conditions would principally require a nursing home proprietor to comply with an agreement entered into with a permanent patient enabling the patient to be temporarily absent from the home and would govern the fees to be charged by the proprietor to a short-term respite care patient who occupies the bed of an absent permanent patient. The clause also provides authority for the Minister to retrospectively approve the admission of a short-term respite care patient to temporarily occupy the bed of a permanent patient in a nursing home in appropriate circumstance.

Paragraph (a) amends sub-section 40 AA(6) of the Principal Act by adding two further conditions to which the approval of premises as an approved nursing home is subject - condition (ba) and condition (bb).

Condition (ba) is that where an agreement between the proprietor and a qualified or Repatriation nursing home patient of a home is entered into under new sub-section 4AA(2) of the Principal Act, the Proprietor shall comply with that agreement.

Condition (bb) is that where a qualified or Repatriation nursing home patient ('the permanent patient') is absent from the nursing home in accordance with an agreement entered into under new sub-section 4AA(2) of the Principal Act, the Proprietor of a home shall not -

- (i) allow the permanent patient's bed to be occupied during the absence by a person other than a person whose admission to an approved nursing home has been approved by the Minister under new section 40ABA of the Principal Act or who is a Repatriation nursing home patient; or
- (ii) except in the case of a Government nursing home, charge a short-term respite care patient who occupies the permanent patient's bed on a recognized day of absence a fee that exceeds the difference between -
 - (a) the maximum fee that, had the permanent patient been receiving on that day nursing home care in the home as a qualified nursing home patient (other than such a patient who attracts extensive care benefit), the patient could have been charged without contravening the condition set out in sub-paragraph 40AA(6)(c)(i) of the Principal Act; and
 - (b) the amount of Commonwealth benefit that, had the permanent patient been receiving nursing home care in the home on that day as a qualified nursing home patient would have been payable under section 47 of the Principal Act.

This clause also inserts new conditions (cb) and (cc) into sub-section 40AA(6).

Condition (cb) is that where the Proprietor of the home enters into an agreement under new sub-section 4AA(2) or is given a notice pursuant to such an agreement, he shall, subject to any request made pursuant to new condition (cc) (below), file the agreement or notice with other records of the home kept in compliance with section 61 of the Principal Act.

Condition (cc) is that where the Minister by notice in writing requests the Proprietor of the home to produce to a Departmental officer such documents (being agreements entered into under new sub-section 4AA(2) or notices given pursuant to such agreements) as are specified in the request, the Proprietor shall comply with the request to the extent that he is capable of so doing.

The clause also amends section 40AA by inserting at the end thereof new sub-sections (10) and (11).

New sub-section 40AA(10) provides that where a person is admitted to an approved nursing home as a short-term respite care patient without prior approval under new section 40ABA being obtained and the Minister is satisfied that in the circumstances it was not practicable to obtain such prior approval and that if an application for such approval had been made it would have been approved, the Minister shall approve the admission. If he is not so satisfied he is to refuse to approve the admission. In either case he is to notify the person, in writing, accordingly.

New sub-section 40AA(11) provides that an approval under new sub-section (10) has effect, for the purposes of this Act, as if it had been given under section 40ABA before the admission.

Clause 16 : Approval of Admission
as Qualified Nursing Home Patient

The purpose of this clause is to enable continuation of occupancy of a bed in a nursing home as a qualified nursing home patient, thus attracting Commonwealth nursing home benefits, during the period of absence of a permanent patient from a nursing home, as specified in an agreement between that patient and the proprietor of the nursing home, where the permanent patient dies or is discharged from the nursing home during the period so specified.

This clause amends section 40AB of the Principal Act by inserting new sub-sections (5A) and (5B).

New sub-section (5A) provides that where a person ceases to be a short-term respite care patient upon the death or discharge from an approved nursing home of a qualified or Repatriation nursing home patient whose bed that person is occupying, that person shall, on ceasing to be a short-term respite care patient be taken to have been admitted to the home as a qualified nursing home patient and be taken to be or to have been such a patient for such period as the Minister determines.

New sub-section (5B) provides for the notification of appropriate persons of the substance of decisions of the Minister made under sub-section (5A).

Clause 17 : Approval of Admission
as Short - Term Respite Care Patient

The purpose of this clause is to authorise the Minister or his delegate to approve the admission of a person as a "short-term respite care patient" to temporarily take the place of a permanent patient in a nursing home. The proposed section 40 ABA is similar to section 40 AB of the Principal Act that provides for the admission of permanent patients but admission under section 40 ABA will not make a "short-term respite care patient" eligible to attract Commonwealth nursing home benefit.

This clause amends the Principal Act by inserting a new section 40ABA.

New sub-section 40ABA(1) provides that a person may apply to the Minister, on the person's own behalf or on behalf of another person, for approval for the admission of himself or herself or the other person, to an approved nursing home as a short-term respite care patient.

New sub-section 40ABA(2) provides that an application made under sub-section (1) shall include a certificate by a medical practitioner stating that the person concerned has, by reason of infirmity, illness, disease, incapacity or disability, a need for nursing care.

New sub-section 40ABA(3) provides for the Minister to approve an application made under sub-section (1) where he is satisfied that the patient requires nursing care, by reason

of the patient's infirmity, illness, disease, incapacity or disability, which would warrant his or her admission to an approved nursing home as a short-term respite care patient.

New sub-section 40ABA(4) provides that for the purposes of sub-section (3) a patient shall be deemed not to require such nursing care as would justify his or her admission as a short-term respite care patient, if the Minister is satisfied that the needs of the patient would be adequately and more suitably provided for in an institution other than a nursing home and such accommodation is available to the patient.

New sub-section 40ABA(5) provides that where, immediately before an application was made for approval of premises as an approved nursing home or for an alteration of the conditions to which a home's approval is subject, a certificate was in force under section 39A of the Principal Act specifying a special purpose in relation to the home, the Minister may refuse to approve a person's admission to the home as a short-term respite care patient if he is satisfied that the admission of the person would be inconsistent with that purpose.

New sub-section 40ABA(6) provides that the Minister may refuse to approve the admission of a person as a short-term respite care patient if the admission is to take place during a period of suspension of the approval of the nursing home in question.

New sub-section 40ABA(7) requires the Minister, if he refuses to approve a person's admission to a home as a short-term respite care patient, to notify the person concerned in writing.

New sub-section 40ABA(8) provides that, without limiting the generality of directions that may be given under section 6 of the Principal Act to a delegate of a power under this section, or sub-section 40AA(10), such a direction may make provision -

- (a) requiring the delegate to exercise the delegated powers in accordance with the views of a group of persons;
- (b) for the manner in which that group is to be constituted; and
- (c) for the procedures to be followed in ascertaining the views of that group.

Clause 18 : Alteration of Conditions

Applicable to Nursing Home

The purpose of this clause is to ensure that the absences of permanent patients from nursing homes in accordance with agreements with the proprietors of the homes will not merely as a result of these absences, result in a reduction in the number of approved beds (which, when occupied by qualified nursing home patients, attract Commonwealth benefits) in the homes.

This clause would amend section 40AD of the Principal Act by inserting a new sub-section (1AA).

New sub-section (1AA) provides that, for the purposes of sub-section (1A) (which concerns bed utilization by qualified or Repatriation nursing home patients of approved nursing homes), a qualified or Repatriation nursing home patient shall be taken to have occupied a bed on each day on which he or she was absent from the home pursuant to an agreement made under sub-section 4AA(2).

Clause 19: Inspection of, and of records of, Approved
Nursing Homes

This clause makes a minor amendment to section 42 of the Principal Act consequential upon the amendments made by clause 15.

Clause 20: Furnishing of Audited Accounts of Proprietors
of Certain Approved Nursing Homes

This clause makes a minor amendment to section 43A of the Principal Act consequential upon the amendments made by clause 15.

Clause 21: Effect of Suspension of Approval of Nursing
Home

This clause provides for an amendment of section 45B of the Principal Act in consequence of an amendment which would be made by clause 17.

Clause 22: Application by Organizations for Registration
as Health Benefits Organizations

This clause amends section 68 of the Principal Act to change the reference to "Trustees" of the Health Benefits Reinsurance Trust Fund (established under section 73BC of the Principal Act) to references to "Administrators". This amendment is consequential upon the amendments made by clause 23.

Clause 23: Health Benefits Reinsurance Trust Fund

This clause amends section 73BC of the Principal Act by

repealing sub-sections(2), (3), (4) and (5) and replacing them with new sub-sections (2), (3), (4), (5), (5A), (5B), (5C) and (5D). The main change effected by these amendments is the making of the new Health Benefits Reinsurance Trust Fund ("the Fund") a Trust Account for the purposes of section 62A of the Audit Act 1901. This change is necessary to allow the accounting and auditing arrangements that were established at the commencement of the Reinsurance Scheme in 1977 to continue in operation.

New sub-section 73BC(2) establishes the new Fund.

New sub-section 73BC(3) provides that income received from investment of moneys standing to the credit of the Fund forms part of the Fund.

New sub-section 73BC(4) provides that the Fund is a Trust Account for the purposes of section 62A of the Audit Act 1901.

New sub-section 73BC(5) provides that there shall be paid into the Fund -

- (a) such amounts as are appropriated from time to time by the Parliament;
- (b) payments determined pursuant to sub-section 73BC(6) or (9); and
- (c) the amount standing to the credit of the former Fund (established by the former sub-section 73BC(2) immediately before the commencement of this section.

New sub-section 73BC(5A) provides that there shall be paid out of the Fund amounts determined pursuant to sub-section (12).

New sub-section 73BC(5B) provides that the Minister shall appoint such number of Administrators of the Fund as he considers necessary.

New sub-section 73BC(5C) provides that the Administrators of the Fund shall hold office at the pleasure of the Minister.

New sub-section 73BC(5D) provides that the Administrators shall exercise their powers under this section in accordance with principles determined in writing by the Minister and notified to the Administrators.

Sub-clauses (2), (3) and (4) of this clause make further minor consequential amendments to the section.

Clause 24: Remuneration and Allowances of Administrators of Health Benefits Reinsurance Trust Fund

This clause makes amendments to section 73BD of the Principal Act consequential upon the amendments made by clause 23.

Sub-clause (1) omits from sub-sections 73BD(1) and (2) the word 'Trustee' and substitutes the word 'Administrator'.

Sub-clause (2) provides that a determination made by the Remuneration Tribunal in relation to remuneration of the Trustees of the former Fund has effect, after the coming into effect of this amendment, as if it were a determination in relation to the Administrators of the present Health Benefits Reinsurance Trust Fund.

Sub-clause (3) defines, for the purposes of sub-clause (2), the term 'former Fund' to mean the Health Benefits Reinsurance Trust Fund established by the Principal Act and in existence immediately before the coming into effect of this section.

Clause 25: Powers of authorized persons

This clause repeals sub-section 104(2) of the Principal Act which prescribes offences for molesting, intimidating, bribing or influencing authorized officers. Authorized officers are basically inspectors and investigators for the purposes of the pharmaceutical benefits scheme. These offences are no longer required in the National Health Act in the light of sections 73 and 76 of the Crimes Act (Cwth).

Clause 26: Applications for review by
Tribunal of certain Decisions under Part V

This clause amends section 105AAB of the Principal Act to confer rights of application for reconsideration by the Minister and subsequently, review by the Administrative Appeals Tribunal upon persons who have not been approved by the Minister for admission to nursing homes as "short-term respite care patients" under proposed sub-section 40AA(10) or proposed section 40ABA of the Principal Act.

PART V - AMENDMENTS OF THE TUBERCULOSIS

ACT 1948

Clause 27: Principal Act

This clause identifies the Tuberculosis Act 1948 as the Principal Act for the purposes of Part V of this Bill.

Clause 28: Payments to sufferers from tuberculosis and
their dependants

The intention of this provision is to implement the government's decision to phase out special tuberculosis allowances from 1 November 1984. From that date persons suffering from tuberculosis will be treated the same way as other incapacitated sick persons in terms of social welfare entitlements. There will be a marginal saving to the Commonwealth in so far as the tuberculosis allowance is marginally higher than the corresponding social security pension. Tuberculosis Allowances will however continue to be paid to current recipients. The amendment at sub-clause 28(a) is consequential to that at sub-clause 28(b).

Sub-clause 28(b) introduces new sub-sections 9(4) and 9(5) into the Principal Act.

New sub-section 9(4) provides that no new application for a tuberculosis allowance will be granted where the application is lodged on or after 1 November 1984.

New sub-section 9(5) provides that where, as a result of the operation of new sub-section 9(4), a person suffering from tuberculosis is not entitled to a tuberculosis allowance, then neither shall a dependant of that person be so entitled.





