



Health Legislation Amendment Act (No. 2) 1983

No. 139 of 1983

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Health Legislation Amendment Act (No. 2) 1983

No. 139 of 1983

An Act to amend the *Health Insurance Act 1973*, the *Medical Research Endowment Act 1937*, the *National Health Act 1953* and the *Nursing Homes Assistance Act 1974*, and for related purposes

[Assented to 22 December 1983]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Health Legislation Amendment Act (No. 2) 1983*.

Commencement

2. (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Sub-section 4 (2) and sections 25 and 52 shall come into operation, or shall be deemed to have come into operation, as the case requires, on 1 December 1983.

(3) The amendments made by sub-section 5 (1) shall be deemed to have taken effect on 15 October 1982.

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(4) The amendment made by sub-section 5 (2) shall be deemed to have taken effect on 1 April 1983.

(5) Sub-section 5 (3) shall come into operation on 1 May 1984.

(6) Sub-sections 6 (1) and (3) and 7 (1) and (3) shall come into operation, or shall be deemed to have come into operation, as the case requires, on 14 November 1983.

(7) Sub-sections 6 (2) and (4), 7 (2) and (4), sections 8, 9 and 12 and sub-sections 28 (2) and (8) shall come into operation on 1 February 1984.

(8) Sections 10 and 11 shall be deemed to have come into operation on 1 October 1983.

(9) Part III, section 34, sub-sections 35 (3), (4), (9), (10) and (11), 36 (2), 38 (2), 40 (2), (3) and (4) and 41 (2), section 48, sub-sections 50 (2), 54 (2), (3) and (5) and 55 (2), section 60, sub-sections 61 (3), (8), (9) and (10), 62 (2), 66 (2), 69 (2) and (3) and 72 (2) and section 74 shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation.

(10) Sub-sections 35 (1) and 62 (1) shall be deemed to have come into operation on 1 January 1975.

(11) The amendment made by sub-section 61 (1) shall be deemed to have taken effect on 13 December 1974.

**PART II—AMENDMENTS OF THE HEALTH INSURANCE ACT
1973**

Principal Act

3. The *Health Insurance Act 1973*¹ is in this Part referred to as the Principal Act.

Interpretation

4. (1) Section 3 of the Principal Act is amended—

(a) by inserting after the definition of “practitioner” in sub-section (1) the following definition:

“ ‘prescribed dental patient’ means a person—

(a) in respect of whom there is issued a certificate in accordance with the approved form by a medical practitioner or a dental practitioner who is approved by the Minister in writing for the purposes of this definition stating that the person is suffering from a cleft lip or cleft palate condition; and

(b) who has not attained the age of 22 years;”;

(b) by omitting “referred” from paragraph (ba) of the definition of “professional service” in sub-section (1) and substituting “prescribed”; and

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(c) by omitting from sub-section (1) the definitions of “referred dental patient” and “referring practitioner”.

(2) Section 3 of the Principal Act is amended by inserting in paragraph (a) of the definition of “eligible pensioner” in sub-section (1) “a spouse carer’s pension,” after “invalid pension,”.

(3) Section 3 of the Principal Act is amended by inserting after sub-section (3) the following sub-section:

“(3A) A reference in this Act to an agreement entered into between a medical practitioner and a recognized hospital shall, in a case where the recognized hospital is situated in the Australian Capital Territory (including the Jervis Bay Territory), be read as a reference to an agreement entered into between a medical practitioner and the Capital Territory Health Commission.”.

(4) An approval of a form in force immediately before the date of commencement of sub-section (1) of this section for the purposes of the definition of “referred dental patient” in sub-section 3 (1) of the Principal Act has effect, on and after that date, as if it were an approval of the form for the purposes of the definition of “prescribed dental patient” in sub-section 3 (1) of the Principal Act as amended by this Act.

(5) A certificate in force in respect of a person immediately before the date of commencement of sub-section (1) of this section for the purposes of the definition of “referred dental patient” in sub-section 3 (1) of the Principal Act has effect, on and after that date, as if it were a certificate in respect of the person for the purposes of the definition of “prescribed dental patient” in sub-section 3 (1) of the Principal Act as amended by this Act.

(6) An approval of a medical practitioner or a dental practitioner in force immediately before the date of commencement of sub-section (1) of this section for the purposes of the definition of “referring practitioner” in sub-section 3 (1) of the Principal Act has effect, on and after that date, as if it were an approval of the medical practitioner or the dental practitioner for the purposes of the definition of “prescribed dental patient” in sub-section 3 (1) of the Principal Act as amended by this Act.

Disadvantaged persons, being persons on low incomes

5. (1) Section 5B of the Principal Act is amended—

(a) by omitting from sub-section (12) the definition of “child” and substituting the following definition:

“ ‘child’, in relation to a person, means a child (whether or not under the age of 16 years) in respect of whom family allowance under Part VI of the *Social Security Act 1947* is payable to the person or to the spouse of the person otherwise than by virtue of the operation of section 6B of that Act;” and

(b) by omitting “child endowment” from paragraph (a) of the definition of “income” in sub-section (12) and substituting “family allowance”.

(2) Section 5B of the Principal Act is amended by omitting sub-section (14).

(3) Section 5B of the Principal Act is amended by inserting in paragraph (a) of the definition of "income" in sub-section (12) "remote area allowance," after "payment of".

Disadvantaged persons, being persons in receipt of unemployment benefit

6. (1) Section 5D of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-sections:

“(1) Where—

(a) at any time on or after 14 November 1983, following an investigation of the income of an eligible person during a period, 1 or more instalments of unemployment benefit are paid to the person;

(b) the Director-General of Social Security is satisfied that, in respect of the period of 2 weeks ending on the expiration of that first-mentioned period, the person is not a prescribed person within the meaning of section 83CA of the *Social Security Act 1947*; and

(c) there is no declaration in force under this section in respect of the person,

the Director-General shall declare the person to be a disadvantaged person within the meaning of this section in respect of a period specified in the declaration, being a period of 12 weeks commencing on the last day of the first-mentioned period.

“(1A) Where—

(a) a declaration under this section is in force in respect of a person;

(b) following an investigation of the income of the person during a period of 2 weeks expiring during, or upon the expiration of, the period of 2 weeks immediately preceding the expiration of the period specified in the declaration, a determination is made to pay unemployment benefit to the person; and

(c) the Director-General of Social Security is satisfied that, in respect of the first-mentioned period, the person is not a prescribed person within the meaning of section 83CA of the *Social Security Act 1947*,

the Director-General shall declare the person to be a disadvantaged person within the meaning of this section in respect of a period specified in the declaration, being a period of 12 weeks commencing on the expiration of the period specified in the first-mentioned declaration.”;

(b) by inserting in sub-sections (2), (3) and (7) “or (1A)” after “sub-section (1)”; and

(c) by omitting sub-section (5) and substituting the following sub-section:

“(5) Where, on a consideration, at any time, of the application of sub-section (1) or (1A) to a person, the Director-General of Social Security is not satisfied that, in respect of the relevant period for the purposes of sub-section (1) or (1A), as the case may be, the person was not a prescribed person within the meaning of section 83CA of the *Social Security Act 1947*, the Director-General shall record a decision accordingly.”.

(2) Section 5D of the Principal Act is amended by omitting sub-section (4).

(3) Where, before the date of commencement of sub-section (1), a person was declared under section 5D of the Principal Act to be a disadvantaged person within the meaning of that section of that Act in respect of a period expiring after that date, the declaration has effect, on and after that date, as if it were a declaration under section 5D of the Principal Act as amended by sub-section (1).

(4) Where, but for the amendment made by sub-section (2) of this section, a period specified in a declaration under section 5D of the Principal Act as amended by sub-section (1), would be extended to a date preceding 1 February 1984, sub-section 5D (4) of the Principal Act continues in force in relation to that declaration as if that amendment had not been made.

Disadvantaged persons, being persons in receipt of special benefit

7. (1) Section 5E of the Principal Act is amended—

(a) by omitting from sub-section (1) “1 September 1981” and substituting “14 November 1983”;

(b) by omitting from paragraph (1) (a) “and”;

(c) by inserting after paragraph (1) (a) the following paragraph:

“(aa) there is no declaration in force under this section in respect of the person; and”;

(d) by omitting from sub-section (1) “3 weeks” and substituting “12 weeks”;

(e) by omitting sub-sections (3) and (4) and substituting the following sub-section:

“(3) Where—

(a) a declaration under this section is in force in respect of a person;

(b) following an investigation of the income of the person during a period of 2 weeks expiring during, or upon the expiration of, the period of 2 weeks immediately preceding the expiration of the period specified in the declaration, a determination is made to pay special benefit to the person; and

(c) the Director-General of Social Security is satisfied that, in respect of the first-mentioned period, the person is not a

prescribed person within the meaning of section 83CA of the *Social Security Act 1947*,

the Director-General shall declare the person to be a disadvantaged person within the meaning of this section in respect of a period specified in the declaration, being a period of 12 weeks commencing on the expiration of the period specified in the first-mentioned declaration.”;

- (f) by omitting from sub-section (5) “1 September 1981” and substituting “14 November 1983”;
- (g) by omitting from sub-section (5) “that ended a week before the date of the payment” and substituting “immediately preceding the period referred to in paragraph (a)”;
- (h) by omitting from sub-section (5) “3 weeks” and substituting “12 weeks”;
- (j) by omitting from sub-sections (6), (7) and (11) “, (4)” (wherever occurring);
- (k) by omitting sub-section (8);
- (m) by omitting paragraphs (9) (b) and (c) and substituting the following word and paragraph:
 - “or (b) on a consideration, at any time, of the application of sub-section (3) or (5) to a person of the kind referred to in that sub-section,”; and
- (n) by omitting from sub-section (9) “, (4)” (last occurring).

(2) Section 5E of the Principal Act is amended by omitting sub-section (2).

(3) Where, before the date of commencement of sub-section (1), a person was declared under section 5E of the Principal Act to be a disadvantaged person within the meaning of that section of that Act in respect of a period expiring after that date, the declaration has effect, on and after that date, as if it were a declaration under section 5E of the Principal Act as amended by sub-section (1).

(4) Where, but for the amendment made by sub-section (2) of this section, a period specified in a declaration under section 5E of the Principal Act as amended by sub-section (1) would be extended to a date preceding 1 February 1984, sub-section 5E (2) of the Principal Act continues in force in relation to that declaration as if that amendment had not been made.

Medicare benefit not payable in respect of certain medical expenses

8. Section 17 of the Principal Act is amended by omitting from sub-sub-paragraph (1) (aa) (iii) (B) “he”.

Issue of certificates relating to approval and categorization

9. Section 25 of the Principal Act is amended by omitting from sub-section (2) “the approval of premises as a private hospital has been revoked under section 29,”.

Review of decisions

10. (1) Section 38 of the Principal Act is amended by adding at the end of sub-section (1) the following definition:

“‘decision’ has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.”.

(2) The reference in sub-section (1) of this section to section 38 of the Principal Act is a reference to the section numbered 38 that was inserted in the Principal Act by section 45 of the *Health Legislation Amendment Act 1983*.

Advances

11. (1) Section 38 of the Principal Act is renumbered as section 38B.

(2) The reference in sub-section (1) of this section to section 38 of the Principal Act is a reference to the section that was substituted for a repealed section of the Principal Act by section 27 of the *Health Insurance Amendment Act (No. 2) 1978*.

Appointment to vacant office

12. Section 73 of the Principal Act is amended by adding at the end of sub-section (2) “and such other organizations and associations as the Minister considers appropriate”.

13. (1) Section 120 of the Principal Act is repealed and the following section is substituted:

No costs in proceedings before tribunal

“120. Costs shall not be allowed in respect of proceedings before a Tribunal.”.

(2) Notwithstanding the repeal of section 120 of the Principal Act by sub-section (1), that section of that Act continues in force, on and after the date of commencement of this section, in relation to proceedings before a Tribunal instituted by a request made under section 114 of the Principal Act before that date, as if that repeal had not been made.

Costs of applications

14. (1) Section 123A of the Principal Act is repealed.

(2) Notwithstanding the repeal of section 123A of the Principal Act by sub-section (1), that section of that Act continues in force, on and after the date of commencement of this section, in relation to proceedings in a prescribed Court instituted by an application lodged under section 122 of the Principal Act before that date, as if that repeal had not been made.

Prosecutions

15. (1) Section 129AC of the Principal Act is repealed.

(2) Notwithstanding the repeal of section 129AC of the Principal Act by sub-section (1) of this section, that section of that Act continues in force, in

relation to a person charged with an offence referred to in sub-section (1) of that section before the commencement of this section, as if that repeal had not been effected.

16. After section 130 of the Principal Act the following section is inserted:

Prosecution of offences

“130AA. (1) Subject to sub-section (2), an offence against sub-section 129 (1), (1A) or (2) or section 129AA or 129AAA is an indictable offence.

“(2) A court of summary jurisdiction may hear and determine proceedings in respect of an offence referred to in sub-section (1) if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

“(3) Where, in accordance with sub-section (2), a court of summary jurisdiction convicts a person of an offence referred to in that sub-section, the penalty that the court may impose is a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months.”.

Statement to be furnished concerning disadvantaged person, &c., when required

17. Section 130A of the Principal Act is amended by omitting from sub-section (2) “continuation in force” and substituting “making of, or the continuation in force of,”.

**PART III—AMENDMENTS OF THE MEDICAL RESEARCH
ENDOWMENT ACT 1937**

Principal Act

18. The *Medical Research Endowment Act 1937*² is in this Part referred to as the Principal Act.

Interpretation

19. Section 2 of the Principal Act is amended—

(a) by omitting “the seventeenth day of September, One thousand nine hundred and thirty-six” from the definition of “the Council” and substituting “17 September 1936”;

(b) by inserting after the definition of “the Council” the following definition:

“ ‘the former Fund’ means the Medical Research Endowment Fund that was established by this Act on 3 July 1937;”;

(c) by adding at the end thereof the following definition:

“ ‘the proclaimed date’ means the date of commencement of Part III of the *Health Legislation Amendment Act (No. 2) 1983*.”.

20. Sections 3, 4 and 5 of the Principal Act are repealed and the following sections are substituted:

Medical Research Endowment Fund

“3. (1) There is established by this sub-section a fund, to be known as the Medical Research Endowment Fund.

“(2) Income received from the investment of moneys standing to the credit of the Fund forms part of the Fund.

“(3) The Fund is a Trust Account for the purposes of section 62A of the *Audit Act 1901*.”

Payments into Fund

“4. There shall be paid into the Fund—

- (a) such amounts as are appropriated from time to time by the Parliament;
- (b) such amounts, being gifts or bequests, as are given or made for the purposes of the Fund; and
- (c) the amount standing to the credit of the former Fund immediately before the proclaimed date.”

Application of Fund

21. Section 6 of the Principal Act is amended by omitting from sub-section (2) “the last preceding sub-section” and substituting “sub-section (1)”.

22. Sections 7, 8 and 9 of the Principal Act are repealed and the following sections are substituted:

Application of gifts or bequests

“7. (1) Notwithstanding anything in this Act (other than sub-section (2) of this section) or the *Audit Act 1901* (other than section 62B of that Act) any moneys held by the Minister for Finance upon trust for the purposes of the Fund, or accepted by the Minister for Finance for the purposes of the Fund subject to a condition, shall not be dealt with except in accordance with the obligations of the Minister for Finance as trustee of the trust or as the person who has accepted the money subject to the condition, as the case may be.

“(2) Separate accounts shall be kept of moneys standing to the credit of the Fund representing amounts to which sub-section (1) applies.

Moneys repaid to Commonwealth

“8. Moneys repaid to the Commonwealth in accordance with a condition determined under sub-section 6 (2) shall be paid into the Fund.

Annual reports

“9. (1) The Minister shall, as soon as practicable after 31 December in each year and, in any event, before the 30 September next following that

31 December, cause to be prepared a report on the administration of this Act during the first-mentioned year.

“(2) The Minister shall cause a copy of a report prepared under sub-section (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the preparation of that report is completed.

“(3) A report under sub-section (1) in respect of a year shall set out details of—

- (a) the moneys paid into and out of the Fund during that year; and
- (b) the medical research carried out with the assistance of moneys paid out of the Fund during that year.”.

Transitional

23. (1) The moneys and investments of the former Fund shall, upon the commencement of this Part, be vested in the Minister for Finance.

(2) Any investments of the former Fund made before the proclaimed date by the Minister for Health under section 5 of the Principal Act shall be treated, on and after that date, as if they were investments of the Fund and had been made by the Minister for Finance under and in accordance with section 62B of the *Audit Act 1901*.

(3) Where, immediately before the proclaimed date, moneys were held by the Minister for Health upon trust for the purposes of the former Fund, or accepted by the Minister for Health for the purposes of the former Fund subject to a condition, section 7 of the *Medical Research Endowment Act 1937* applies, on and after that date, in relation to so much of the Fund as represents those moneys or the income derived from the investment of those moneys as if those moneys were held by the Minister for Finance upon trust for the purposes of the Fund or had been accepted by the Minister for Finance for the purposes of the Fund subject to that condition.

(4) Notwithstanding the repeal of section 9 of the Principal Act by this Part, that section of that Act continues in force on and after the proclaimed date in relation to a year ending before the proclaimed date as if that repeal has not been made.

(5) Where the proclaimed date is not a 1 January in any year, section 9 of the *Medical Research Endowment Act 1937* applies in relation to the year in which the proclaimed date is included as if a reference in sub-section (3) of that section to the Fund included a reference to the former Fund.

PART IV—AMENDMENTS OF THE NATIONAL HEALTH ACT 1953

Principal Act

24. The *National Health Act 1953*³ is in this Part referred to as the Principal Act.

Interpretation

25. Section 4 of the Principal Act is amended by inserting in paragraph (a) of the definition of “pensioner” in sub-section (1) “a spouse carer’s pension,” after “invalid pension,”.

26. (1) Section 6 of the Principal Act is repealed and the following section is substituted in Part I:

Delegation

“6. (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person (including the Permanent Head) all or any of his powers under this Act or the regulations, other than—

- (a) this power of delegation; or
- (b) his powers under section 95.

“(2) A power so delegated under sub-section (1), when exercised by the delegate, shall, for the purposes of this Act or the regulations, be deemed to have been exercised by the Minister.

“(3) A delegate under sub-section (1) is, in the exercise of a power so delegated, subject to the directions (if any) of the Minister.

“(4) A delegation under sub-section (1) does not prevent the exercise of a power by the Minister.

“(5) The Permanent Head may, either generally as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person all or any of his powers under this Act or the regulations other than—

- (a) this power of delegation; or
- (b) his powers under section 95.

“(6) A power so delegated under sub-section (5), when exercised by the delegate, shall, for the purposes of this Act or the regulations, be deemed to have been exercised by the Permanent Head.

“(7) A delegate under sub-section (5) is, in the exercise of a power so delegated, subject to the directions (if any) of the Permanent Head.

“(8) A delegation under sub-section (5) does not prevent the exercise of a power by the Permanent Head.”.

(2) Notwithstanding the repeal of section 6 of the Principal Act by sub-section (1), a delegation in force under that section immediately before the commencement of this section continues in force as if it had been made under section 6 of the Principal Act as amended by this Act.

Interpretation

27. Section 12 of the Principal Act is amended by omitting from sub-section (1) the definition of “referring medical or dental practitioner” and substituting the following definition:

“ ‘referring practitioner’, in relation to a patient, means—

- (a) in the case of a patient to whom an application under sub-section (1) of section 13 relates—the medical practitioner, optometrist or dental practitioner who made the reference referred to in that application;
- (b) in the case of a patient to whom an application under sub-section (1A) of section 13 relates—the medical practitioner or dental practitioner who made the reference referred to in that application; or
- (c) in the case of a prescribed dental patient to whom an application under sub-section (1C) of section 13 relates—the medical practitioner or dental practitioner who made the reference referred to in that application;”.

Approved patient

28. (1) Section 13 of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-section:

“(1) Where a person who resides in an isolated area—

- (a) has been referred by a medical practitioner to a specialist or a consultant physician;
- (b) has been referred by an optometrist to a specialist, being an ophthalmologist; or
- (c) has, arising out of the rendering to the person of a dental service by a dental practitioner, been referred by the dental practitioner to a specialist or a consultant physician,

for the rendering to the person of a professional service by the specialist or consultant physician in the practice of his speciality, an application, in accordance with a form approved by the Minister, may be made to the Permanent Head by, or on behalf of, the person for the approval by the Permanent Head of the person as an approved patient in relation to the rendering of the professional service.”;

(b) by omitting sub-section (1C) and substituting the following sub-section:

“(1C) Where a person who is a prescribed dental patient and who resides in an isolated area has been referred by a medical practitioner or a dental practitioner for the rendering to the person by an accredited dental practitioner of a service that, by virtue of paragraph (ba) of the definition of “professional service” in sub-section (1) of section 3 of the *Health Insurance Act 1973*, is a professional service for the purposes of that Act, an application, in accordance with a form approved by the Minister, may be made to the Permanent Head by, or on behalf of, the

person for the approval by the Permanent Head of the person as an approved patient in relation to the rendering of that professional service.”;

(c) by inserting before sub-section (2) the following sub-sections:

“(1D) Where—

- (a) a person who resides in an isolated area is referred as mentioned in sub-section (1) to a specialist or consultant physician for the rendering to the person of a professional service by the specialist or consultant physician in the practice of his speciality; and
- (b) the specialist or consultant physician determines that it is reasonably necessary for the adequate medical care of the person that the specialist or the consultant physician, as the case may be, render another such professional service, or other such professional services, to the person,

this Part applies in relation to each such other professional service as if the person had been referred, as mentioned in sub-section (1), to the specialist or consultant physician, as the case may be, for the rendering to him of the last-mentioned professional service.

“(1E) Where—

- (a) a person who resides in an isolated area is referred as mentioned in sub-section (1A) to an approved dental practitioner within the meaning of that sub-section for the rendering to the person of a professional service of the kind referred to in that sub-section; and
- (b) the approved dental practitioner determines that it is reasonably necessary for the adequate medical or dental care of the person that the approved dental practitioner render another such professional service, or other such professional services, to the person,

this Part applies in relation to each such other professional service as if the person had been referred, as mentioned in sub-section (1A), to the approved dental practitioner for the rendering to him of the last-mentioned professional service.

“(1F) Where—

- (a) a person who is a prescribed dental patient and who resides in an isolated area has been referred as mentioned in sub-section (1C) to an accredited dental practitioner for the rendering to the person of a professional service of the kind referred to in that sub-section; and
- (b) the accredited dental practitioner determines that it is reasonably necessary for the adequate medical or dental care of the person that the accredited dental practitioner render

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another such professional service, or other such professional services, to the person,

this Part applies in relation to each such other professional service as if the person had been referred, as mentioned in sub-section (1C), to the accredited dental practitioner for the rendering to him of the last-mentioned professional service.

“(1G) Nothing in this Part precludes 2 or more applications under this section from being contained in the same instrument.”; and

(d) by inserting after paragraph (2) (a) the following paragraph:

“(aa) by virtue of sub-section 19 (1), (3), (4) or (5) of the *Health Insurance Act 1973*, a Commonwealth medical benefit is not payable in respect of the professional service concerned;”.

(2) Section 13 of the Principal Act is amended by omitting from paragraph

(2) (aa) “Commonwealth medical benefit” and substituting “medicare benefit”.

(3) Subject to sub-section (4) of this section, the amendments made by paragraphs (1) (a) and (b) do not apply in relation to an application made under sub-section 13 (1) or (1C), as the case may be, of the Principal Act before the commencement of sub-section (1).

(4) Where—

(a) an application was made under sub-section 13 (1C) of the Principal Act to the Permanent Head before the date of commencement of sub-section (1) for approval of a person as an approved patient in relation to the rendering to him by the accredited dental practitioner to whom he has been referred of a service, that, by virtue of paragraph (ba) of the definition of “professional service” in sub-section 3 (1) of the *Health Insurance Act 1973* as in force immediately before that date was a professional service for the purposes of that Act as so in force; and

(b) immediately before that date, the Permanent Head had neither approved, nor refused to approve, under sub-section 13 (3) of the Principal Act, the person as an approved patient in relation to the rendering to him of the professional service,

the application has effect, in relation to a service rendered on or after that date, as if it were an application made under sub-section 13 (1C) of the Principal Act as amended by this Act for approval of the person as an approved patient in relation to the rendering to him by the accredited dental practitioner of the first-mentioned service, being a service that, by virtue of paragraph (ba) of the definition of “professional service” in sub-section 3 (1) of the *Health Insurance Act 1973* as amended by this Act, is a professional service for the purposes of that Act as so amended.

(5) An approval in force under sub-section 13 (3) of the Principal Act immediately before the date of commencement of sub-section (1) of a person as an approved patient in relation to the rendering to him by an accredited dental

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practitioner of a service, that, by virtue of paragraph (ba) of the definition of “professional service” in sub-section 3 (1) of the *Health Insurance Act 1973* as in force immediately before that date, was a professional service for the purposes of that Act as so in force, has effect, in relation to a service rendered on or after that date, as if it were an approval under sub-section 13 (3) of the Principal Act as amended by this Act of the person as an approved patient in relation to the rendering to him by the accredited dental practitioner of the first-mentioned service, being a service that, by virtue of paragraph (ba) of the definition of “professional service” in sub-section 3 (1) of the *Health Insurance Act 1973* as amended by this Act, is a professional service for the purposes of that Act as so amended.

(6) Where—

- (a) at a time before the date of commencement of sub-section (1), a service that, by virtue of paragraph (ba) of the definition of “professional service” in sub-section 3 (1) of the *Health Insurance Act 1973* as in force at that time, was a professional service for the purposes of that Act as so in force was rendered to a person, being a referred dental patient; and
- (b) immediately before that date, the Permanent Head had neither approved, nor refused to approve, under sub-section 13 (3) of the Principal Act, the person as an approved patient in relation to the rendering to him of the professional service,

the Principal Act as amended by this Act has effect, in relation to that service, as if the amendment made by paragraph (1) (b) had not been made.

(7) Where—

- (a) at a time during the period commencing on 1 January 1981 and expiring on the date of commencement of sub-section (1), a service was rendered to a person in respect of whom there was not issued a certificate of the kind referred to in paragraph (a) of the definition of “referred dental patient” in sub-section 3 (1) of the *Health Insurance Act 1973* as in force at that time, being a service that, if such a certificate in respect of the person had been issued, would have been a service that, by virtue of paragraph (ba) of the definition of “professional service” in sub-section 3 (1) of the *Health Insurance Act 1973* as so in force, was a professional service for the purposes of that Act as so in force; and
- (b) the Permanent Head is satisfied that the person was suffering from a cleft lip or cleft palate condition at that time,

the Principal Act has, and shall be deemed to have had, effect as if such a certificate in respect of the person had been issued.

(8) Notwithstanding the amendment made by sub-section (2) of this section, paragraph 13 (2) (aa) of the Principal Act continues in force, on and after 1 February 1984, in relation to a professional service rendered before that date, as if that amendment had not been made.

(9) Section 6 of the *National Health Act 1953* applies in relation to the powers of the Permanent Head under sub-section (7) of this section in like manner as it applies in relation to his powers under that Act.

Approved attendants and approved escorts

29. (1) Section 14 of the Principal Act is amended—

- (a) by omitting from sub-sections (1), (2) and (3) “referring medical or dental practitioner” (wherever occurring) and substituting “referring practitioner or the treating practitioner”; and
- (b) by adding at the end thereof the following sub-section:

“(6) In this section, ‘treating practitioner’, in relation to a patient, means the medical or dental practitioner who rendered, or is to render, the relevant professional service to the patient.”.

(2) The amendments made by sub-section (1) do not apply in relation to a professional service rendered before the commencement of this section.

Travel allowance

30. (1) Section 17 of the Principal Act is amended by adding at the end thereof the following sub-sections:

“(6) Where a person, being an approved patient, an approved attendant or an approved escort, commences a relevant journey and dies at a time before completing the journey, a travel allowance is payable in accordance with the preceding provisions of this section as if the person had not died at that time and—

- (a) unless paragraph (b) applies—the person had completed the relevant journey and had died immediately after so completing the journey; or
- (b) if the person was an approved patient who was accompanied by an approved attendant or an approved escort during so much of the relevant journey as was completed before that time—the person had completed the journey in the company of the approved attendant or the approved escort, as the case may be, and had died immediately after so completing the journey.

“(7) Where a person, being an approved patient, an approved attendant or an approved escort, completes a relevant journey to the place of treatment and dies at the place of treatment at a time before commencing a relevant journey from the place of treatment to the place of residence of the approved patient, a travel allowance is payable in accordance with this section as if the person had not died at that time and had, immediately after that time, undertaken a relevant journey to the place of residence of the approved patient by the approved means of travel and had died immediately after completing such a journey.”.

(2) The amendments made by sub-section (1) apply in relation to a person who dies after the commencement of this section.

Accommodation allowance

31. (1) Section 18 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-sections:

“(2) The amount of an accommodation allowance for a night is whichever is the lesser of—

- (a) the cost of the accommodation obtained for the night; or
- (b) if a determination of an amount as the maximum allowable overnight cost in relation to a class of accommodation in which the accommodation is included is in force under sub-section (2A) at the time when the cost of the accommodation is incurred—that amount.

“(2A) For the purposes of this section, the Permanent Head may, by instrument in writing published in the *Gazette*, determine an amount as the maximum allowable overnight cost in relation to a specified class of accommodation.”.

(2) The amendment made by sub-section (1) does not apply in relation to a night commencing before the commencement of this section.

32. After section 18 of the Principal Act the following section is inserted:

Advances of payments under this Part

“18A. (1) Where the Permanent Head is satisfied that, by reason of hardship or other special circumstances, it is appropriate to do so, he may, at any time during the period away from home of an approved patient, on behalf of the Commonwealth, make advances on account of a payment under this Part that may become payable to the approved patient in relation to that period to the approved patient or to another person on his behalf.

“(2) If, at the expiration of the period away from home of an approved patient, the approved patient has received an amount, by way of advances on account of a payment under this Part that may become payable to him in relation to that period, that is greater than the amount (if any) that became payable to him under this Part in relation to that period, the approved patient is liable to pay to the Commonwealth the amount of the excess.

“(3) Where a person is liable to pay an amount to the Commonwealth under this section—

- (a) the amount may be recovered, as a debt due to the Commonwealth, by action in a court of competent jurisdiction; and
- (b) the amount may be deducted from any other amount that is payable to the person under this Part, and where an amount is so deducted, the other amount shall, notwithstanding the deduction, be deemed to have been paid in full to the person.”.

Interpretation

33. (1) Section 39 of the Principal Act is amended by omitting “Permanent Head” from the definition of “authorized” and substituting “Minister”.

(2) An authorization made by the Permanent Head by virtue of the definition of “authorized” in section 39 of the Principal Act that was in force immediately before the date of commencement of sub-section (1) for the purposes of a provision of Part V of the Principal Act continues in force, on and after that date, as if it were an authorization made by the Minister by virtue of the definition of “authorized” in section 39 of the Principal Act as amended by this Act for the purposes of the corresponding provision of Part V of the Principal Act as amended by this Act.

34. After section 39 of the Principal Act the following section is inserted:

Approval in principle of nursing home, &c.

“39A. (1) Upon application made in accordance with the appropriate authorized form by a person who is, or proposes to become, the proprietor of a nursing home, the Minister may, in his discretion, by notice published in the *Gazette*, invite interested persons to apply, by such date, being a date not less than 28 days after the date of publication of the notice, as is specified in the notice, under whichever of sub-sections (2) or (3) is specified in the notice, for a certificate in respect of premises situated in an area specified in the notice.

“(2) Upon application made in accordance with the appropriate authorized form in response to an invitation under sub-section (1) by a person who is, or proposes to become, the proprietor of a nursing home, the Minister may, in his discretion, grant to the applicant a certificate in writing—

- (a) stating that if the applicant applies under sub-section 40AA (1) of this Act within the period of 12 months after the grant of the certificate for the approval of premises specified in the certificate as an approved nursing home and the premises comply, at the time of that last-mentioned application, with the specifications (if any) set out in the certificate, that last-mentioned application will not be refused under sub-section 40AA (3) or (3A) of this Act;
- (b) stating that if that approval is granted, the number of beds determined in relation to the nursing home for the purposes of paragraph 40AA (6) (a) of this Act will not be less than the number of beds specified in the certificate; and
- (c) in a case where the Minister considers it appropriate to do so—stating that if that approval is granted, the admission of persons to the nursing home as qualified nursing home patients will be in accordance with a special purpose of the nursing home specified in the certificate.

“(3) Upon application made in accordance with the appropriate authorized form in response to an invitation under sub-section (1) by the proprietor of an approved nursing home who proposes to make an alteration or addition to the premises occupied by the nursing home, the purpose of which is,

or the effect of which will be, to enable the number of beds available in the nursing home for qualified nursing home patients Repatriation nursing home patients to be increased, the Minister may, in his discretion, grant to the applicant a certificate in writing—

- (a) approving that alteration or addition;
- (b) stating that if, within the period of 12 months after the grant of the certificate, the alteration or addition so approved has been completed in accordance with the specifications (if any) set out in the certificate and the applicant applies under sub-section 40AD (1) of this Act for the Minister to alter the conditions applicable to the nursing home by substituting for the number of beds determined in relation to the nursing home for the purposes of paragraph 40AA (6) (a) of this Act a number of beds not exceeding such other number as is specified in the certificate, that last-mentioned application will not be refused; and
- (c) in a case where the Minister considers it appropriate to do—stating that if the Minister so alters the conditions applicable to the nursing home, the admission of persons to the nursing home as qualified nursing home patients (whether or not those patients occupy the beds to which the alteration or addition relates) will be in accordance with a special purpose of the nursing home specified in the certificate.

“(4) Upon application made in accordance with the appropriate authorized form by the holder of a certificate in force under sub-section (2) or (3), the Minister may, in his discretion, vary the certificate—

- (a) by deleting the period specified in the certificate (including a period substituted by virtue of a previous application or applications of this sub-section) and substituting such longer period as he determines;
- (b) by deleting the number of beds specified in the certificate (including a number substituted by virtue of a previous application or applications of this sub-section) and substituting such other number as he determines;
- (c) if specifications are set out in the certificate (including specifications substituted by virtue of a previous application or applications of this sub-section)—by deleting those specifications and, if the Minister considers it appropriate to do so, by substituting such other specifications as he determines; or
- (d) if a special purpose is specified in the certificate (including a special purpose substituted by virtue of a previous application or applications of this sub-section)—by deleting that special purpose and, if the Minister considers it appropriate to do so, by substituting such other special purpose as he determines.

“(5) The Minister, in exercising his powers under sub-section (1), (2), (3) or (4), shall comply with any relevant principles in force under sub-section (6).

“(6) The Minister may, by instrument in writing, formulate principles to be complied with by him with respect to any of his powers under sub-sections (1), (2), (3) and (4).

“(7) In formulating principles under sub-section (6), the Minister shall have regard to all matters he considers relevant, including, but without limiting the generality of the foregoing—

- (a) the suitability of an applicant for a certificate under sub-section (2) to be the proprietor of an approved nursing home;
- (b) the need to control unnecessary growth in the numbers of approved nursing homes within the meaning of this Act or the *Nursing Homes Assistance Act 1974*; and
- (c) the availability of forms of care other than nursing home care within the meaning of this Act or the *Nursing Homes Assistance Act 1974*, including domiciliary and day care and care provided by hostels, hospitals and other institutions and by community services.

“(8) A matter shall not be taken not to be a relevant matter for the purposes of sub-section (7) by reason only that it is not connected with a matter of a kind referred to in paragraph 40AA (3) (b) of this Act or in paragraph 4 (3) (b) of the *Nursing Homes Assistance Act 1974*.

“(9) An application under sub-section (2), (3) or (4) shall be accompanied by such further information and documents (if any) as are prescribed.

“(10) A certificate under this section comes into force on the day on which it is granted and remains in force until the expiration of the period specified in the certificate.

“(11) Upon application in writing by the holder of a certificate in force under this section, the Minister shall revoke the certificate.

“(12) Nothing in this Act or the *Nursing Homes Assistance Act 1974* prevents—

- (a) an application under this section and an application under section 3A of that Act; or
- (b) a certificate under this section and a certificate under section 3A of that Act,

from being contained in the same instrument.

“(13) Where the Minister makes a decision—

- (a) under sub-section (1) refusing an application; or
- (b) under sub-section (2), (3) or (4),

he shall cause to be published in the *Gazette* a notice—

- (c) that sets out such particulars in relation to the decision as he considers to be appropriate; and
- (d) that includes a statement to the effect that a person affected by the decision may, if he is dissatisfied with the decision, seek a reconsideration of the decision by the Minister in accordance with sub-section 105AAB (2A).

“(14) Where the Minister makes a decision under sub-section (1), (2), (3) or (4) refusing, or otherwise than in accordance with, an application, he shall cause to be served, either personally or by post, on the applicant, a notice in writing setting out that decision and the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for that decision.

“(15) Without limiting the generality of the special purposes that may be specified under this section, a purpose so specified may make provision for a quota or quotas of patients of a particular kind or kinds.”.

Approval of nursing home

35. (1) Section 40AA of the Principal Act is amended—

- (a) by inserting in paragraph (3) (b) “under this section and premises approved, or proposed to be approved, as nursing homes under the *Nursing Homes Assistance Act 1974*” after “approved as nursing homes”; and
- (b) by omitting from sub-section (3) all the words after “unless the applicant” and substituting “had, within the period of 12 months, or such longer period as the Permanent Head allowed, before the application is made, informed the Permanent Head, in writing, that the applicant proposed to make the application, or to make application for approval of the premises under section 4 of the *Nursing Homes Assistance Act 1974*, and the Permanent Head had informed the applicant, in writing, that the application for approval of the premises would not be refused under this sub-section, or under sub-section (3) of that section, as the case may be”.

(2) Section 40AA of the Principal Act is amended—

- (a) by omitting from sub-section (1) “premises, being a nursing home,” and substituting “a nursing home”;
- (b) by inserting in sub-section (1) “occupied by the nursing home” after “premises” (last occurring);
- (c) by inserting in sub-section (2) “occupied by” after “are”;
- (d) by omitting from sub-section (2), paragraph (3) (b), sub-sections (4) and (5) and paragraphs (6) (a) and (b) “Permanent Head” (wherever occurring) and substituting “Minister”;
- (e) by inserting after sub-section (3) the following sub-sections:

“(3A) On and after the date on which the *Health Legislation Amendment Bill (No. 2) 1983* was introduced into the House of Representatives, the Permanent Head shall not exercise his powers under sub-section (3) to inform a person that an application for approval of premises would not be refused.

“(3B) In exercising his powers under sub-section (3) of this section, as in force from time to time, to inform a person that an application for approval of premises would not be refused under that sub-section or

under sub-section 4 (3) of the *Nursing Homes Assistance Act 1974*, the Permanent Head shall be deemed always to have been required to have regard to all matters he considered relevant, including, but without limiting the generality of the foregoing—

- (a) the suitability of the person to be the proprietor of an approved nursing home;
- (b) the need to control unnecessary growth in the number of approved nursing homes within the meaning of this Act or the *Nursing Homes Assistance Act 1974*; and
- (c) the availability of forms of care other than nursing home care within the meaning of this Act or the *Nursing Homes Assistance Act 1974*, including domiciliary and day care and care provided by hostels, hospitals and other institutions and by community services.

“(3C) A matter shall not be taken not to have been a relevant matter for the purposes of sub-section (3B) by reason only that it was not connected with a matter of a kind referred to in paragraph (3) (b) of this section or in paragraph 4 (3) (b) of the *Nursing Homes Assistance Act 1974*.”;

- (f) by omitting paragraph (6) (d) and substituting the following paragraph:

“(d) any other conditions determined by the Minister for the purpose of—

- (i) ensuring that the needs of qualified nursing home patients or Repatriation nursing home patients in the nursing home are satisfactorily provided for; or
- (ii) otherwise protecting the welfare and interests of qualified nursing home patients or Repatriation nursing home patients in the nursing home”;

- (g) by inserting after sub-section (6A) the following sub-section:

“(6B) Without limiting the generality of sub-paragraph (6) (d) (ii), conditions determined under paragraph (6) (d) by virtue of that sub-paragraph may include conditions relating to the liability of the proprietor of a nursing home and other persons for any loss, injury or damage incurred or suffered by qualified nursing home patients or Repatriation nursing home patients in the nursing home.”;

- (h) by omitting from paragraph (8) (a) “the prior approval of the Permanent Head” and substituting “prior approval”;
- (j) by omitting from sub-section (8) “Permanent Head” (second and third occurring) and substituting “Minister”;
- (k) by omitting from sub-paragraph (8) (b) (i) “his”;
- (m) by omitting from sub-paragraph (8) (b) (ii) “he would have approved the admission” and substituting “the application would have been approved”; and

- (n) by omitting sub-section (10).
- (3) Section 40AA of the Principal Act is amended—
- (a) by omitting from sub-section (3) all the words after “unless the applicant” and substituting “is the holder of a certificate in force under sub-section 39A (2) that relates to the premises and the Minister is satisfied that the premises comply with any specifications set out in the certificate”;
- (b) by omitting sub-sections (3A), (3B) and (3C) and substituting the following sub-sections:
- “(3A) Where application is made under sub-section (1) for approval of premises as an approved nursing home and—
- (a) the applicant is not the holder of a certificate in force under sub-section 39A (2) that relates to the premises; or
- (b) the applicant is the holder of a certificate in force under sub-section 39A (2) that relates to the premises but the Minister is not satisfied that the premises comply with any specifications set out in the certificate,
- the Minister may refuse the application.
- “(3B) The Minister, in exercising his powers under sub-section (3A) to refuse an application for approval of premises as an approved nursing home, shall comply with any relevant principles in force under sub-section (3C).
- “(3C) The Minister may, by instrument in writing, formulate principles to be complied with by him with respect to his powers under sub-section (3A) to refuse an application for approval of premises as an approved nursing home.
- “(3D) In formulating principles under sub-section (3C), the Minister shall have regard to all matters he considers relevant, including, but without limiting the generality of the foregoing—
- (a) the suitability of an applicant under sub-section (1) to be the proprietor of an approved nursing home;
- (b) the need to control unnecessary growth in the numbers of approved nursing homes within the meaning of this Act or the *Nursing Homes Assistance Act 1974*; and
- (c) the availability of forms of care other than nursing home care within the meaning of this Act or the *Nursing Homes Assistance Act 1974*, including domiciliary and day care and care provided by hostels, hospitals and other institutions and by community services.”;
- (c) by omitting from paragraph (6) (a) “without the approval of the Minister” and substituting “unless the proprietor of the nursing home is the holder of a certificate in force under sub-section 39A (3) approving those alterations or additions”;

- (d) by inserting after sub-section (6) the following sub-section:

“(6AA) Where, immediately before the date on which application was made for approval of premises as an approved nursing home, the proprietor of the nursing home was the holder of a certificate in force under sub-section 39A (2) in relation to the nursing home, the Minister shall not exercise his powers under paragraph (6) (a) to determine a number of beds in relation to the nursing home in a manner inconsistent with that certificate.”; and

- (e) by omitting sub-sections (7C) to (7F) (inclusive).

- (4) Section 40AA of the Principal Act is amended—

- (a) by omitting from sub-section (6) “, except in the case of a Government nursing home,”;
- (b) by inserting in paragraph (6) (c) “, except in the case of a Government nursing home” after “a condition that”; and
- (c) by inserting in paragraph (6) (ca) “except in the case of a Government nursing home,” after “a condition that”.

- (5) Where—

- (a) an application was made to the Permanent Head under sub-section 40AA (1) of the Principal Act before the date of commencement of sub-section (2) of this section; and
- (b) immediately before that date, the Permanent Head had neither approved, nor refused to approve, the application,

the application has effect, on and after that date, as if it were an application made to the Minister under sub-section 40AA (1) of the Principal Act as amended by this Act.

(6) An approval of the Permanent Head given under sub-section 40AA (2) or paragraph 40AA (6) (a) of the Principal Act before the date of commencement of sub-section (2) of this section, has effect, on and after that date, as if it had been given by the Minister under sub-section 40AA (2) or paragraph 40AA (6) (a), as the case may be, of the Principal Act as amended by this Act.

(7) An opinion formed by the Permanent Head for the purposes of paragraph 40AA (3) (b) of the Principal Act has effect, on and after the date of commencement of sub-section (2) of this section, as if it had been formed by the Minister for the purposes of paragraph 40AA (3) (b) of the Principal Act as amended by this Act.

(8) Where, immediately before the date of commencement of sub-section (2) of this section, the approval of premises as an approved nursing home was subject to a condition determined by the Permanent Head under paragraph 40AA (6) (a) or (d) of the Principal Act (including such a condition as altered under section 40AD of that Act or deemed to have been altered by virtue of section 40AE of that Act), the condition has effect, on and after that date, as if it had been determined by the Minister under paragraph 40AA (6) (a) or (d), as the case requires, of the Principal Act as amended by this Act.

(9) The amendment made by paragraph (3) (a) of this section does not apply in relation to an application made under sub-section 40AA (1) of the Principal Act before the commencement of sub-section (3) of this section.

(10) Where—

- (a) before the date of commencement of sub-section (3) of this section, the Permanent Head had informed a person, under sub-section 40AA (3) of the Principal Act, that an application for approval of premises would not be refused under that sub-section of that Act or under sub-section 4 (3) of the *Nursing Homes Assistance Act 1974*; and
- (b) the person applies, on or after that date, under sub-section 40AA (1) of the Principal Act as amended by this Act, for approval of those premises as an approved nursing home,

then—

- (c) sub-section 40AA (3) of the Principal Act as amended by sub-section (3) of this section has effect, in relation to that application, as if the amendment made by paragraph (3) (a) of this section had not been made; and
- (d) sub-section 40AA (3A) of the Principal Act as amended by sub-section (3) of this section does not apply in relation to the application.

(11) Where, immediately before the commencement of sub-section (3) of this section, an approval of an addition to, or alteration of, premises was in force for the purposes of paragraph 40AA (6) (a) of the Principal Act, then, notwithstanding the amendment made by paragraph (3) (c) of this section, that paragraph of that Act continues to apply in relation to that addition or alteration as if that amendment has not been made.

Approval of admission of a person to an approved nursing home

36. (1) Section 40AB of the Principal Act is amended—

- (a) by omitting from sub-sections (1), (3), (4) and (4A) “Permanent Head” (wherever occurring) and substituting “Minister”;
- (b) by omitting from sub-section (3) “Where the ” and substituting “Subject to this section, where the”;
- (c) by omitting from sub-section (3) all the words after “application” (second occurring); and
- (d) by omitting sub-section (5) and substituting the following sub-sections:

“(5) Where the Minister makes a decision under this section refusing to approve an application for the admission of a person to an approved nursing home, he shall cause to be served, either personally or by post, on the applicant for that admission, a notice in writing setting out that decision.

“(6) Without limiting the generality of directions that may be given under section 6 to a delegate of a power under this section or sub-section 40AA (8), such a direction may make provision—

- (a) requiring the delegate to exercise his 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.”.

(2) Section 40AB of the Principal Act is amended by inserting after sub-section (4) the following sub-section:

“(4AA) Where, immediately before the date on which application was made for approval of premises as an approved nursing home or for an alteration of the conditions applicable to the nursing home of the kind referred to in paragraph 39A (3) (b), a certificate was in force under section 39A specifying a special purpose in relation to the nursing home, the Minister may refuse to approve an application for the admission of a person to the nursing home if he is satisfied that the admission of the person would be inconsistent with that special purpose.”.

(3) Where—

- (a) an application was made to the Permanent Head under section 40AB of the Principal Act before the date of commencement of sub-section (1) of this section; and
- (b) immediately before that date, the Permanent Head had neither approved, nor refused to approve, the application,

the application has effect, on and after that date, as if it were an application made to the Minister under section 40AB of the Principal Act as amended by this Act.

(4) An approval of the Permanent Head given under section 40AB of the Principal Act before the date of commencement of sub-section (1) of this section has effect, on and after that date, as if it had been given by the Minister under section 40AB of the Principal Act as amended by this Act.

(5) A reference in sub-section (3) or (4) of this section to section 40AB of the Principal Act or to section 40AB of the Principal Act as amended by this Act includes a reference to that section having effect by virtue of sub-section 5 (1) of the *Nursing Homes Assistance Act 1974*.

Review by Minister of refusal of approval of admission to nursing home

37. (1) Section 40AC of the Principal Act is repealed.

(2) Notwithstanding the repeal of section 40AC of the Principal Act by sub-section (1), that section continues in force, on and after the date of commencement of this section, in relation to a decision of the Permanent Head

of a kind referred to in paragraph (1) (a) or (b) of that section made before that date, as if—

- (a) sub-section (3) of that section were amended by omitting “of the Permanent Head”; and
- (b) that repeal had not been effected.

Alteration of conditions applicable to a nursing home

38. (1) Section 40AD of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-sections:

“(1) The Minister may, at any time, on application in writing made under this sub-section by the proprietor of a nursing home, alter the conditions applicable to the nursing home by substituting for the number of beds determined in relation to the nursing home for the purposes of paragraph 40AA (6) (a) such other number as is determined by the Minister.

“(1A) Where the Minister is satisfied that the average rate of utilization, by qualified nursing home patients and Repatriation nursing home patients, of the number of beds determined in relation to a nursing home for the purposes of paragraph 40AA (6) (a) is less than such rate as he determines to be the minimum acceptable rate of utilization in relation to the nursing home, the Minister may, at any time, on application in writing made under this sub-section by the proprietor of the nursing home or otherwise, alter the conditions applicable to the nursing home by substituting for the number of beds determined in relation to the nursing home for the purposes of paragraph 40AA (6) (a) such lesser number as is determined by the Minister.

“(1B) The Permanent Head may, at any time, on application in writing made under this sub-section by the proprietor of a nursing home or otherwise, alter the conditions applicable to the nursing home by substituting for the scale of fees determined in relation to the nursing home for the purposes of sub-paragraph 40AA (6) (c) (i) such other scale of fees as is determined by the Permanent Head.

“(1C) The Minister may, at any time, on application in writing made under this section by the proprietor of a nursing home or otherwise, alter the conditions applicable to the nursing home by determining conditions in relation to the nursing home under paragraph 40AA (6) (d) or by revoking or varying any conditions previously determined by him in relation to the nursing home under that paragraph.

“(1D) Where—

- (a) the proprietor of an approved nursing home applies under sub-section (1B) or (1C) to the Permanent Head or the

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Minister for the Permanent Head or the Minister to alter the conditions applicable to the nursing home;

- (b) the applicant informs the Permanent Head or the Minister, as the case may be, in writing, after the expiration of the period of 2 months after the day on which the application was made, that the applicant elects to apply this sub-section to the application; and
- (c) the Permanent Head or the Minister, as the case may be, has neither altered the conditions, whether in accordance with the application or otherwise, nor refused the application, before being so informed,

the Permanent Head or the Minister, as the case requires, shall, upon being so informed, be deemed to have refused the application.

“(1E) Where the Minister or the Permanent Head makes a decision under this section refusing an application, he shall cause to be served on the applicant, either personally or by post, a notice in writing setting out the decision.”;

- (b) by omitting from sub-section (2) “Where the Permanent Head, in pursuance of the last preceding sub-section, alters the conditions applicable to a nursing home, he” and substituting “Where, whether under this section or by virtue of the operation of law, the conditions applicable to an approved nursing home are altered, the Minister”;
- (c) by omitting from sub-section (2) “the certificate of approval in force under section forty-one of” and substituting “any certificate of approval in force under”;
- (d) by adding at the end thereof the following sub-sections:

“(3) A certificate of approval issued under sub-section (2) shall be accompanied by a notice setting out the effect of sub-section (4).

“(4) The proprietor of an approved nursing home who receives a certificate of approval under sub-section (2) shall forthwith forward any certificate previously issued in respect of the nursing home to the Minister.

Penalty for contravention of this sub-section: \$40.”

(2) Section 40AD of the Principal Act is amended—

(a) by inserting after sub-section (1C) the following sub-section:

“(1CA) If the applicant referred to in sub-section (1) of this section is the holder of a certificate in force under sub-section 39A (3), the Minister shall not exercise his powers under sub-section (1) of this section in a manner inconsistent with that certificate.”;

(b) by omitting from paragraph (1D) (a) “sub-section (1B) or (1C)” and substituting “this section”.

(3) The amendments made by paragraph (1) (a) of this section and paragraphs 39 (1) (a) and (b) of this Act do not apply in relation to an

application made under sub-section 40AD (1) of the Principal Act for an alteration of the kind referred to in paragraph (b) of that sub-section of that Act before the commencement of sub-section (1) of this section.

Review by Minister of decisions relating to scales of fees

39. (1) Section 40AE of the Principal Act is amended—

- (a) by omitting sub-section (1);
- (b) by omitting from sub-section (2) “in accordance with the application, the proprietor” and substituting “applicable to a nursing home in accordance with an application under sub-section 40AD (1B), the proprietor of the nursing home”;
- (c) by omitting from sub-section (3A) “Where a request made under sub-section (2) relates to a decision of the Permanent Head in respect of fees applicable to a nursing home, the” and substituting “The”;
- (d) by omitting from sub-section (3A) “section 40AA” and substituting “sub-section 40AA (7)”; and
- (e) by omitting from sub-section (4) “Where a request under sub-section (2) of this section relates to the fees applicable to a nursing home, the” and substituting “The”.

(2) Notwithstanding the amendments made by sub-section (1) of this section, section 40AE of the Principal Act continues in force, after the commencement of this section, in relation to a refusal of the Permanent Head of the kind referred to in sub-section 40AE (2) of that Act given before the commencement of this section, as if those amendments had not been made.

Patients requiring extensive care

40. (1) Section 40AF of the Principal Act is amended by inserting after sub-section (4) the following sub-sections:

“(4A) Where the Permanent Head makes a decision under this section refusing to approve a person as a person requiring extensive care or revoking such an approval, he shall cause to be served, either personally or by post, on the proprietor of the approved nursing home concerned, a notice in writing setting out that decision.

“(4B) Without limiting the generality of directions that may be given under section 6 to a delegate of a power under this section, such a direction may make provision—

- (a) requiring the delegate to exercise his 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.”.

(2) Section 40AF of the Principal Act is amended by omitting “Permanent Head” (wherever occurring) and substituting “Minister”.

(3) Where—

- (a) an application was made to the Permanent Head under section 40AF of the Principal Act before the date of commencement of sub-section (2) of this section; and
- (b) immediately before that date, the Permanent Head had neither approved, nor refused to approve, the application,

the application has effect, on and after that date, as if it were an application made to the Minister under section 40AF of the Principal Act as amended by this Act.

(4) An approval of the Permanent Head given under section 40AF of the Principal Act before the date of commencement of sub-section (2) of this section has effect, on and after that date, as if it had been given by the Minister under section 40AF of the Principal Act as amended by this Act.

Certificate of approval

41. (1) Section 41 of the Principal Act is amended—

- (a) by omitting “Permanent Head” (first, second and fourth occurring) and substituting “Minister”;
- (b) by omitting from sub-section (4) “, or the proprietor, or the legal personal representative of the proprietor, of an approved nursing home who gives notice to the Permanent Head in accordance with section 43,”; and
- (c) by inserting in sub-section (5) “or expires” after “revoked”.

(2) Section 41 of the Principal Act is amended by omitting from sub-section (1) “, in the case of a nursing home that is not a Government nursing home,”.

42. Section 42 of the Principal Act is repealed and the following section is substituted:

Inspection of, and of records of, approved nursing homes

“42. (1) A person authorized in writing by the Minister to act under this section may—

- (a) at any time, enter and inspect premises occupied by an approved nursing home; and
- (b) at any reasonable time—
 - (i) enter and inspect premises in respect of which an application for approval as an approved nursing home has been made; or
 - (ii) inspect, make copies of, or take extracts from, any books, documents or records on premises occupied by an approved nursing home that relate to the operation of those premises as a nursing home, including, but without limiting the generality of the foregoing, any books, documents or records kept by the proprietor of the nursing home in accordance with paragraph 40AA (6) (ca), with a condition determined under paragraph

40AA (6) (d), with sub-section 61 (1) or (1A) or with a notice under sub-section 61 (2).

“(2) The occupier of premises referred to in sub-section (1) shall provide the authorized person with all reasonable facilities and assistance for the effective exercise of his powers under this section.

Penalty: \$1,000.”.

Notice of change of proprietor of an approved nursing home, &c.

43. Section 43 of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-sections:

“(1) Where a person who is the proprietor of an approved nursing home is about to cease to be the proprietor of the nursing home and another person is about to become the proprietor of the nursing home, that other person shall, if it is practicable to do so, by notice in writing, notify the Minister accordingly not later than 1 month before so becoming the proprietor of the nursing home.

“(1A) Where a person who is the proprietor of an approved nursing home ceases to be the proprietor of the nursing home and another person becomes the proprietor of the nursing home, that other person shall, by notice in writing, notify the Minister accordingly immediately after he becomes the proprietor of the nursing home.”; and

(b) by omitting from sub-section (2) “Permanent Head” and substituting “Minister”.

Furnishing of audited accounts of proprietors of certain approved nursing homes

44. (1) Section 43A of the Principal Act is amended—

(a) by omitting from sub-sections (1) and (4) “Permanent Head” (wherever occurring) and substituting “Minister”;

(b) by omitting from sub-section (1) “records kept by him in accordance with section 61” and substituting “books, documents and other records kept by him in accordance with paragraph 40AA (6) (ca), with a condition determined under paragraph 40AA (6) (d), with sub-section 61 (1) or (1A) or with a notice under sub-section 61 (2)”;

(c) by omitting from sub-section (3) “to the Permanent Head”.

(2) A notice given by the Permanent Head under sub-section 43A (1) of the Principal Act before the date of commencement of this section has effect, on and after that date, as if it had been given by the Minister under sub-section 43A (1) of the Principal Act as amended by this Act.

(3) A period allowed by the Permanent Head under sub-section 43A (4) of the Principal Act before the date of commencement of this section has effect, on and after that date, as if it had been allowed by the Minister under sub-section 43A (4) of the Principal Act as amended by this Act.

Variation or revocation of approval

45. (1) Section 44 of the Principal Act is amended by omitting “Permanent Head” (wherever occurring) and substituting “Minister”.

(2) An opinion formed by the Permanent Head for the purposes of paragraph 44 (2) (b) of the Principal Act before the date of commencement of this section has effect, on and after that date, as if it had been formed by the Minister for the purposes of paragraph 44 (2) (b) of the Principal Act as amended by this Act.

(3) An application or notice received by the Permanent Head as mentioned in sub-section 44 (3) of the Principal Act before the date of commencement of this section shall be taken, on and after that date, to have been received by the Minister as mentioned in sub-section 44 (3) of the Principal Act as amended by this Act.

Review by Minister

46. (1) Section 45 of the Principal Act is repealed.

(2) Notwithstanding the repeal of section 45 of the Principal Act by sub-section (1), sub-sections (2) and (3) of that section continue in force, on and after the commencement of this section, in relation to a decision of the Permanent Head of a kind referred to in sub-section (2) of that section made before the commencement of this section as if that repeal had not been effected.

Revocation or extension of suspension

47. Section 45A of the Principal Act is amended by omitting “Permanent Head” (wherever occurring) and substituting “Minister”.

48. After section 45B of the Principal Act the following section is inserted in Part V:

Principles under sections 39A and 40AA

“45C. (1) In this section, ‘principles’ means principles formulated under sub-section 39A (6) or 40AA (3C) or (7).

“(2) Sections 48, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply in relation to principles as if in those sections references to regulations were references to principles, references to a regulation were references to a principle and references to a repeal were references to a revocation.

“(3) Principles shall be deemed not to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*, but sub-sections 5 (3) to (3C) (inclusive) of that Act apply in relation to principles in like manner as they apply in relation to statutory rules.

“(4) For the purposes of the application of sub-section 5 (3B) of the *Statutory Rules Publication Act 1903* in accordance with sub-section (3), the

reference in that first-mentioned sub-section to the Minister of State for Administrative Services shall be read as a reference to the Minister administering this Act.

“(5) Section 5 of the *Evidence Act 1904* applies to a principle formulated by the Minister in like manner as that section applies to an order made by the Minister.”.

Records to be kept by proprietors of approved nursing homes

49. Section 61 of the Principal Act is amended—

(a) by inserting after sub-section (1) the following sub-section:

“(1A) The proprietor of an approved nursing home shall keep records setting out such particulars in relation to the nursing home as are prescribed.

Penalty: \$1,000.”; and

(b) by omitting sub-section (5) and substituting the following sub-section:

“(5) Nothing in sub-section (1) or (2) of this section or in sub-section 40AA (6) shall be taken, by implication, to limit the generality of regulations that may be made by virtue of sub-section (1A).”.

Offences

50. (1) Section 62 of the Principal Act is amended—

(a) by omitting from paragraph (1) (b) “40AE” and substituting “40AD”;

(b) by adding at the end of paragraph (1) (c) “or”; and

(c) by omitting paragraphs (1) (d) and (e).

(2) Section 62 of the Principal Act is amended by inserting before paragraph (1) (a) the following paragraph:

“(aa) an application under section 39A;”.

Prosecutions

51. (1) Section 63 of the Principal Act is repealed.

(2) Notwithstanding the repeal of section 63 of the Principal Act by sub-section (1) of this section, that section of that Act continues in force, in relation to a person charged with an offence referred to in sub-section (1) of that section before the commencement of this section, as if that repeal had not been effected.

Interpretation

52. Section 84 of the Principal Act is amended by inserting in paragraph (a) of the definition of “concessional beneficiary” in sub-section (1) “a spouse carer’s pension,” after “invalid pension,”.

Friendly society dispensaries

53. Section 91 of the Principal Act is repealed.

54. (1) After section 105AAA of the Principal Act the following section is inserted:

Applications for review by Tribunal of certain decisions under Part V

“105AAB. (1) In this section, ‘reviewable decision’ means a decision of the Minister, or of a delegate of the Minister, under sub-section 40AA (2), (3), (4), (5), (6) or (8), section 40AB or 40AD, sub-section 41 (2) or 43A (4), section 44 or 45A or sub-section (2) of this section.

“(2) A person affected by a reviewable decision who is dissatisfied with the decision may, by notice in writing given to the Minister within the period of 28 days after the day on which the decision first comes to the notice of the person, or within such further period as the Minister (either before or after the expiration of that period), by notice in writing served, either personally or by post, on the person, allows, request the Minister to reconsider the decision.

“(3) There shall be set out in the request the reasons for making the request.

“(4) Upon the receipt of the request, the Minister shall reconsider the decision and may affirm or revoke the decision or vary the decision in such manner as he thinks fit.

“(5) Where the Minister does not affirm, revoke or vary a decision before the expiration of the period of 42 days after the day on which he received the request under sub-section (2) to reconsider the decision, he shall, upon the expiration of that period, be deemed to have affirmed the decision under sub-section (4).

“(6) Where the Minister affirms, revokes or varies a decision, he shall, by notice in writing served, either personally or by post, on the person who made the request, inform the person of the result of his reconsideration of the decision, set out the findings on material questions of fact, refer to the evidence or other material on which those findings were based and give his reasons for affirming, revoking or varying the decision, as the case may be.

“(7) Applications may be made to the Tribunal for review of—

- (a) reviewable decisions that have been affirmed or varied under sub-section (4); or
- (b) a decision under sub-section (4) to revoke a reviewable decision.

“(8) The reference in sub-section (1) to section 40AB includes a reference to that section having effect by virtue of sub-section 5 (1) of the *Nursing Homes Assistance Act 1974*.”.

(2) Section 105AAB of the Principal Act is amended—

- (a) by omitting from sub-section (1) “40AA (2), (3)” and substituting “39A (1), (2), (3) or (4), 40AA (2), (3), (3A)”;
- (b) by inserting in sub-section (2) “, not being a decision under sub-section 39A (1), (2), (3) or (4),” after “reviewable decision”;
- (c) by inserting after sub-section (2) the following sub-section:

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“(2A) A person affected by a reviewable decision, being a decision under sub-section 39A (1), (2), (3) or (4), who is dissatisfied with the decision may, by notice in writing given to the Minister within the period of 28 days after the date of publication of the notice under sub-section 39A (1) or (13) in relation to the decision, request the Minister to reconsider the decision.”; and

(d) by inserting in sub-section (5) “or (2A)” after “(2)”.

(3) Section 105AAB of the Principal Act is amended by omitting from sub-section (1) “or 40AD” and substituting “, 40AD or 40AF”.

(4) Section 105AAB of the Principal Act as amended by sub-section (1) does not apply in relation to a decision made before the commencement of sub-section (1).

(5) Section 105AAB of the Principal Act as amended by sub-section (3) does not apply in relation to a decision under section 40AF of the Principal Act made before the commencement of sub-section (3).

Statements to accompany notification of decision

55. (1) Section 105AC of the Principal Act is amended—

(a) by inserting after sub-section (1) the following sub-sections:

“(1A) Where a reviewable decision within the meaning of section 105AAB is made and notice in writing of the decision is given to a person affected by the decision, that notice shall include a statement to the effect that—

(a) the person may, if he is dissatisfied with the decision, seek a reconsideration of the decision by the Minister in accordance with sub-section 105AAB (2); and

(b) a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if he is dissatisfied with a decision made by the Minister upon that reconsideration affirming, revoking or varying the first-mentioned decision, make application to the Administrative Appeals Tribunal for review of the decision so affirmed or varied or of the decision so to revoke.

“(1B) Where the Minister affirms, revokes or varies a decision under sub-section 105AAB (4) and gives to a person notice in writing of the affirmation, revocation or variation of the decision, that notice shall include a statement to the effect that a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if he is dissatisfied with the decision so affirmed or varied or with the decision so to revoke, make application to the Administrative Appeals Tribunal for review of the decision.”; and

(b) by omitting from sub-section (2) “sub-section (1)” and substituting “sub-section (1), (1A) or (1B)”.

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(2) Section 105AC of the Principal Act is amended by inserting in paragraph (1A) (a) “or (2A), as the case may be” after “105AAB (2)”.

56. Section 135A of the Principal Act is repealed and the following sections are substituted:

Officers to observe secrecy

“135A. (1) A person shall not, directly or indirectly, except in the performance of his duties, or in the exercise of his powers or functions, under this Act, and while he is, or after he ceases to be, an officer, divulge or communicate to any person, any information with respect to the affairs of a third person acquired by him in the performance of his duties, or in the exercise of his powers or functions, under this Act.

Penalty: \$2,000 or imprisonment for 12 months.

“(2) Where the third person mentioned in sub-section (1) is a party to an action or proceeding before a court, nothing in that sub-section precludes the disclosure to the court of information with respect to the affairs of the third person.

“(3) Notwithstanding anything in sub-section (1), the Permanent Head may—

- (a) if the Minister certifies, by instrument in writing, that it is necessary in the public interest that any information acquired by an officer in the performance of his duties, or in the exercise of his powers or functions, under this Act, should be divulged, divulge that information to such person as the Minister directs;
- (b) divulge any such information to any prescribed authority or person; or
- (c) divulge any such information to a person who, in the opinion of the Minister, is expressly or impliedly authorized by the person to whom the information relates to obtain it.

“(4) An authority or person to whom information is divulged under sub-section (3), and any person under the control of that authority or person, shall, in respect of that information, be subject to the same obligations and liabilities under sub-section (1) as if he were a person performing duties under this Act and had acquired the information in the performance of those duties.

“(5) Nothing in the preceding provisions of this section prohibits the publication of statistics by the Commonwealth or by the Australian Statistician but such statistics shall not be published in a manner that enables the identification of a particular person or organization.

“(6) Notwithstanding anything contained in sub-section (1), where—

- (a) a person has been convicted of—
 - (i) an offence against this Act; or
 - (ii) an offence against—
 - (A) section 6, 7 or 7A of the *Crimes Act 1914*; or

(B) sub-section 86 (1) of that Act by virtue of paragraph (a) of that sub-section,

being an offence that relates to an offence against this Act;

- (b) an order has been made in relation to a person under section 19B of the *Crimes Act 1914* in relation to an offence referred to in sub-paragraph (a) (i) or (ii); or
- (c) a Committee of Inquiry reports adversely on the conduct of a practitioner, pharmacist or a pharmaceutical chemist in relation to a matter upon which the Committee makes inquiry,

the Permanent Head may divulge any information acquired by an officer in the performance of his duties, or in the exercise of his powers or functions, under this Act that concerns a matter referred to in paragraph (a), (b) or (c) to—

- (d) the Director-General of Social Security;
- (e) the Secretary to the Department of Veterans' Affairs;
- (f) a person or persons who, under a law of a State or Territory that provides for the registration or licensing of hospitals, nursing homes or similar institutions, is or are, responsible for the administration of that law or who is, or are, empowered to investigate persons in connection with contraventions of that law;
- (g) a person or persons who, under a law of a State or Territory that provides for the registration or licensing of practitioners, pharmacists or pharmaceutical chemists is, or are, empowered to take disciplinary action with respect to practitioners, pharmacists or pharmaceutical chemists or to investigate practitioners, pharmacists or pharmaceutical chemists in connection with the taking of such disciplinary action;
- (h) a person or persons who, under a law of the Commonwealth, a State or a Territory relating to drugs or poisons, is, or are, responsible for the administration of that law or who is, or are, empowered to investigate persons in connection with contraventions of that law; or
- (j) a director, secretary or employee of a registered organization who is authorized by the Permanent Head, by instrument in writing, for the purposes of this sub-section.

“(7) Notwithstanding anything contained in sub-section (1), where the Minister, by instrument in writing, certifies that it is desirable for such of the following purposes as he specifies in the certificate, that is to say:

- (a) the administration of an Act administered by the Minister for Social Security;
- (b) the administration of an Act administered by the Minister for Veterans' Affairs;
- (c) the administration of a specified law of a State or Territory, being a law that provides for the registration or licensing of hospitals, nursing homes or similar institutions;
- (d) the administration of a specified law of a State or Territory, being a law that provides for the registration or licensing of practitioners, pharmacists or pharmaceutical chemists;

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- (e) the administration of a specified law of the Commonwealth, a State or a Territory relating to drugs or poisons; or
- (f) the carrying on of the business of a specified registered organization or a registered organization included in a specified class of registered organizations,

that information of a kind referred to in the certificate, being information acquired by an officer in the performance of his duties, or in the exercise of his powers or functions, under this Act, should be divulged, the Permanent Head may divulge information of that kind—

- (g) if the certificate specifies a purpose of the kind referred to in paragraph (a)—to the Director-General of Social Security;
- (h) if the certificate specifies a purpose of the kind referred to in paragraph (b)—to the Secretary to the Department of Veterans' Affairs;
- (j) if the certificate specifies a purpose in relation to a specified law of the kind referred to in paragraph (c) or (e)—to the person or persons who, under that law is, or are, responsible for the administration of that law or is, or are, empowered to investigate persons in connection with contraventions of that law;
- (k) if the certificate specifies a purpose in relation to a specified law of the kind referred to in paragraph (d)—to the person or persons who, under that law, is, or are, empowered to take disciplinary action with respect to practitioners, pharmacists or pharmaceutical chemists or to investigate practitioners, pharmacists or pharmaceutical chemists in connection with the taking of such disciplinary action; or
- (m) if the certificate specifies a purpose of the kind referred to in paragraph (f)—to a director, secretary or employee of each registered organization to which the certificate relates, being a director, secretary or employee who is authorized by the Permanent Head, by instrument in writing, for the purposes of this sub-section.

“(8) Information relating to the rendering of a medical service, a dental service, the provision of hospital treatment or nursing home care or the supply of a pharmaceutical benefit shall not be divulged in pursuance of sub-section (6) or (7) in a manner that is likely to enable the identification of the person to whom that service was rendered, that treatment or care was provided or that benefit was supplied (in this sub-section referred to as the ‘patient’) unless—

- (a) the patient—
 - (i) is a person referred to in paragraph (6) (a) or (b); or
 - (ii) consents in writing to the disclosure of the information; or
- (b) the Minister certifies that he has reasonable grounds for suspecting that the patient has committed, or is committing, an offence of the kind referred to in sub-paragraph (6) (a) (i) or (ii).

“(9) A person to whom information is divulged under sub-section (6) or (7) and any person under the control of the first-mentioned person shall not, directly or indirectly, except—

- (a) in the case of the Director-General of Social Security or a person under the control of the Director-General of Social Security—in the performance of his duties, or in the exercise of his powers or functions, under an Act administered by the Minister for Social Security;
- (b) in the case of the Secretary to the Department of Veterans’ Affairs or a person under the control of the Secretary—in the performance of his duties, or in the exercise of his powers or functions, under an Act administered by the Minister for Veterans’ Affairs;
- (c) in the case of a person or persons referred to in paragraph (6) (f), (g) or (h) or (7) (j) or (k) or a person under the control of such a person or persons—in the performance of his duties, or in the exercise of his powers or functions, under the law referred to in that paragraph; or
- (d) in the case of a director, secretary or employee of a registered organization or a person under the control of such a person—in the performance of his duties, or in the exercise of his powers or functions, in relation to the carrying on of the business of the organization,

and while he is, or after he ceases to be, such a person, divulge or communicate to any person, any information so divulged.

Penalty: \$2,000 or imprisonment for 12 months.

“(10) The powers conferred by sub-sections (6) and (7) are in addition to, and not in derogation of, the powers conferred by sub-section (3).

“(11) The powers conferred by sub-section (6) are in addition to, and not in derogation of, the powers conferred by sub-section (7).

“(12) Nothing in sub-section (3), (6) or (7) shall be taken to limit the generality of sub-section (2) or the exception referred to in sub-section (1).

“(13) In this section—

‘court’ includes a tribunal, authority or person having power to require the production of documents or the answering of questions;

‘officer’ means a person performing duties, or exercising powers or functions, under, or in relation to, this Act.

Prosecution of offences

“135B. (1) Subject to sub-section (2), an offence against section 62 or 135A is an indictable offence.

“(2) A court of summary jurisdiction may hear and determine proceedings in respect of an offence referred to in sub-section (1) if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

“(3) Where, in accordance with sub-section (2), a court of summary jurisdiction convicts a person of an offence referred to in that sub-section, the penalty that the court may impose is—

- (a) in the case of an offence against section 62—a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months; or
- (b) in the case of an offence against section 135A—a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months.”.

Exercise of Permanent Head’s powers subject to directions of Minister

57. Section 138 of the Principal Act is amended by inserting “, or a delegate of the Permanent Head,” after “Permanent Head”.

PART V—AMENDMENTS OF THE NURSING HOMES ASSISTANCE ACT 1974

Principal Act

58. The *Nursing Homes Assistance Act 1974*⁴ is in this Part referred to as the Principal Act.

Interpretation

59. (1) Section 3 of the Principal Act is amended by omitting “by the Permanent Head” from the definition of “authorized” in sub-section (1) and substituting “, in writing, by the Minister”.

(2) An authorization made by the Permanent Head by virtue of the definition of “authorized” in sub-section 3 (1) of the Principal Act in force for the purposes of a provision of the Principal Act immediately before the date of commencement of sub-section (1) continues in force, on and after that date, as if it were an authorization made by the Minister by virtue of the definition of “authorized” in sub-section 3 (1) of the Principal Act as amended by this Act for the purposes of the corresponding provision of the Principal Act as amended by this Act.

60. After section 3 of the Principal Act the following section is inserted:

Approval in principle of nursing home, &c.

“3A. (1) Upon application made in accordance with the appropriate authorized form by a person who is, or who proposes to become, the proprietor of a nursing home, the Minister may, in his discretion, by notice published in the *Gazette*, invite interested persons to apply, by such date, being not less than 28 days after the date of publication of the notice, as is specified in the notice, under whichever of sub-sections (2) or (3) is specified in the notice, for a certificate in respect of premises situated in an area specified in the notice.

“(2) Upon application made in accordance with the appropriate authorized form in response to an invitation under sub-section (1) by a person

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who is, or proposes to become, the proprietor of a nursing home, the Minister may, in his discretion, grant to the applicant a certificate in writing—

- (a) stating that if the applicant applies under sub-section 4 (1) of this Act within the period of 12 months after the grant of the certificate for the approval of premises specified in the certificate as an approved nursing home and the Minister is satisfied that the premises comply, at the time of that last-mentioned application, with the specifications (if any) set out in the certificate, that last-mentioned application will not be refused under sub-section 4 (3) or (3A) of this Act;
- (b) stating that if that approval is granted, the number of beds determined in relation to the nursing home for the purposes of paragraph 4 (6) (a) of this Act will not be less than the number of beds specified in the certificate; and
- (c) in a case where the Minister considers it appropriate to do so—stating that if that approval is granted, the admission of persons to the nursing home as qualified nursing home patients will be in accordance with a special purpose of the nursing home specified in the certificate.

“(3) Upon application made in accordance with the appropriate authorized form in response to an invitation under sub-section (1) by the proprietor of an approved nursing home who proposes to make an alteration or addition to the premises occupied by the nursing home, the purpose of which is, or the effect of which will be, to enable the number of beds available in the nursing home for qualified nursing home patients to be increased, the Minister may, in his discretion, grant to the applicant a certificate in writing—

- (a) approving that alteration or addition;
- (b) stating that if, within the period of 12 months after the grant of the certificate, the alteration or addition so approved is completed in accordance with the specifications (if any) set out in the certificate and the applicant applies under sub-section 9 (1) of this Act for the Minister to alter the conditions applicable to the nursing home by substituting for the number of beds determined in relation to the nursing home for the purposes of paragraph 4 (6) (a) of this Act a number of beds not exceeding such other number as is specified in the certificate, that last-mentioned application will not be refused; and
- (c) in a case where the Minister considers it appropriate to do—stating that if the Minister so alters the conditions applicable to the nursing home, the admission of persons to the nursing home as qualified nursing home patients (whether or not those patients occupy the beds to which the alteration or addition relates) will be in accordance with a special purpose of the nursing home specified in the certificate.

“(4) Upon application made in accordance with the appropriate authorized form by the holder of a certificate in force under sub-section (2) or (3), the Minister may, in his discretion, vary the certificate—

- (a) by deleting the period specified in the certificate (including a period substituted by virtue of a previous application or applications of this sub-section) and substituting such longer period as he determines;
- (b) by deleting the number of beds specified in the certificate (including a number substituted by virtue of a previous application or applications of this sub-section) and substituting such other number as he determines;
- (c) if specifications are set out in the certificate (including specifications substituted by virtue of a previous application or applications of this sub-section)—by deleting those specifications and, if the Minister considers it appropriate to do so, by substituting such other specifications as he determines; or
- (d) if a special purpose is specified in the certificate (including a special purpose substituted by virtue of a previous application or applications of this sub-section)—by deleting that special purpose and, if the Minister considers it appropriate to do so, by substituting such other special purpose as he determines.

“(5) The Minister, in exercising his powers under sub-section (1), (2), (3) or (4), shall comply with any relevant principles in force under sub-section (6).

“(6) The Minister may, by instrument in writing, formulate principles to be complied with by him with respect to any of his powers under sub-sections (1), (2), (3) and (4).

“(7) In formulating principles under sub-section (6), the Minister shall have regard to all matters he considers relevant, including, but without limiting the generality of the foregoing—

- (a) the suitability of an applicant for a certificate under sub-section (2) to be the proprietor of an approved nursing home;
- (b) the need to control unnecessary growth in the numbers of approved nursing homes within the meaning of this Act or the *National Health Act 1953*; and
- (c) the availability of forms of care other than nursing home care within the meaning of this Act or the *National Health Act 1953*, including domiciliary and day care and care provided by hostels, hospitals and other institutions and by community services.

“(8) A matter shall not be taken not to be a relevant matter for the purposes of sub-section (7) by reason only that it is not connected with a matter of a kind referred to in paragraph 4 (3) (b) of this Act or in paragraph 40AA (3) (b) of the *National Health Act 1953*.

“(9) An application under sub-section (2), (3) or (4) shall be accompanied by such further information and documents (if any) as are prescribed.

“(10) A certificate under this section comes into force on the day on which it is granted and remains in force until the expiration of the period specified in the certificate.

“(11) Upon application in writing by the holder of a certificate in force under this section, the Minister shall revoke the certificate.

“(12) Where the Minister makes a decision—

- (a) under sub-section (1) refusing an application; or
- (b) under sub-section (2), (3) or (4),

he shall cause to be published in the *Gazette* a notice—

- (c) that sets out such particulars in relation to the decision as he considers to be appropriate; and
- (d) that includes a statement to the effect that a person affected by the decision may, if he is dissatisfied with the decision, seek a reconsideration of the decision by the Minister in accordance with sub-section 11A (2A).

“(13) Where the Minister makes a decision under sub-section (1), (2), (3) or (4) refusing, or otherwise than in accordance with, an application, he shall cause to be served, either personally or by post, on the applicant a notice in writing setting out that decision and the findings on material questions of fact referring to the evidence or other material on which those findings were based and giving the reasons for that decision.

“(14) Without limiting the generality of the special purposes that may be specified under this section, a purpose so specified may make provision for a quota or quotas of patients of a particular kind or kinds.”.

Approval of nursing home

61. (1) Section 4 of the Principal Act is amended—

- (a) by omitting from sub-section (3) “unless the applicant has” and substituting “unless the applicant had”; and
- (b) by omitting from sub-section (3) all the words after “premises” (last occurring) and substituting “would not be refused under this sub-section or under sub-section (3) of that section, as the case may be”.

(2) Section 4 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “premises, being a nursing home to which this Act applies,” and substituting “a nursing home to which this Act applies”;
- (b) by inserting in sub-section (1) “occupied by the nursing home” after “premises” (last occurring);
- (c) by omitting from sub-section (2), paragraph (3) (b), sub-sections (4) and (5), paragraphs (6) (a) and (b) and sub-sections (7) and (10) “Permanent Head” (wherever occurring) and substituting “Minister”;

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- (d) by omitting from sub-section (3) “the Permanent Head may” and substituting “the Minister may”;
- (e) by inserting after sub-section (3) the following sub-sections:

“(3A) On and after the date on which the *Health Legislation Amendment Bill (No. 2) 1983* was introduced into the House of Representatives, the Permanent Head shall not exercise his powers under sub-section (3) to inform a person that an application for approval of premises would not be refused.

“(3B) In exercising his powers under sub-section (3) of this section, as in force from time to time, to inform the person that an application for approval of premises would not be refused under that section or under sub-section 40AA(3) of the *National Health Act 1953*, the Permanent Head shall be deemed always to have been required to have regard to all matters he considered relevant, including, but without limiting the generality of the foregoing—

- (a) the suitability of the person to be the proprietor of an approved nursing home;
- (b) the need to control unnecessary growth in the number of approved nursing homes within the meaning of this Act or the *National Health Act 1953*; and
- (c) the availability of forms of care other than nursing home care within the meaning of this Act or the *National Health Act 1953*, including domiciliary and day care and care provided by hostels, hospitals and other institutions and by community services.

“(3C) A matter shall not be taken not to have been a relevant matter for the purposes of sub-section (3B) by reason only that it was not connected with a matter of a kind referred to in paragraph (3) (b) of this section or in paragraph 40AA (3) (b) of the *National Health Act 1953*.”;

- (f) by omitting paragraph (6) (c) and substituting the following paragraph:

“(c) any other conditions determined by the Minister for the purpose of—

- (i) ensuring that the needs of qualified nursing home patients in the nursing home are satisfactorily provided for; or
- (ii) otherwise protecting the welfare and interests of qualified nursing home patients in the nursing home”;

- (g) by inserting after sub-section (6) the following sub-section:

“(6A) Without limiting the generality of sub-paragraph (6) (c) (ii), conditions determined under paragraph (6) (c) by virtue of that sub-paragraph may include conditions relating to the liability of the proprietor of a nursing home and other persons for any loss, injury

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or damage incurred or suffered by qualified nursing home patients in the nursing home.”;

- (h) by omitting from sub-paragraph (7) (b) (i) “his” and substituting “the”;
- (j) by omitting from sub-paragraph (7) (b) (ii) “his”;
- (k) by omitting from sub-paragraph (7) (b) (ii) “he would have approved the admission” and substituting “the application would have been approved”; and
- (m) by omitting sub-section (9) and substituting the following sub-section:
 - “(9) Without limiting the generality of directions that may be given under section 35 to a delegate of a power under sub-section (7) of this section, such a direction may make provision—
 - (a) requiring the delegate to exercise his 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.”.

(3) Section 4 of the Principal Act is amended—

- (a) by omitting from sub-section (3) all the words after “unless the applicant” and substituting “is the holder of a certificate in force under sub-section 3A (2) that relates to the premises and the Minister is satisfied that the premises comply with any specifications set out in the certificate”;
- (b) by omitting sub-sections (3A), (3B) and (3C) and substituting the following sub-sections:
 - “(3A) Where application is made under sub-section (1) for approval of premises other than premises referred to in paragraph (2) (a) as an approved nursing home and—
 - (a) the applicant is not the holder of a certificate in force under sub-section 3A (2) that relates to the premises; or
 - (b) the applicant is the holder of a certificate in force under sub-section 3A (2) that relates to the premises but the Minister is not satisfied that the premises comply with any specifications set out in the certificate,

the Minister may refuse the application.

“(3B) The Minister, in exercising his powers under sub-section (3A) to refuse an application for approval of premises as an approved nursing home, shall comply with any relevant principles in force under sub-section (3C).

“(3C) The Minister may, by instrument in writing, formulate principles to be complied with by him with respect to his powers under sub-section (3A) to refuse an application for approval of premises as an approved nursing home.

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“(3D) In formulating principles under sub-section (3C), the Minister shall have regard to all matters he considers relevant, including, but without limiting the generality of the foregoing

- (a) the suitability of an applicant under sub-section (1) to be the proprietor of an approved nursing home;
 - (b) the need to control unnecessary growth in the numbers of approved nursing homes within the meaning of this Act or the *National Health Act 1953*; and
 - (c) the availability of forms of care other than nursing home care within the meaning of this Act or the *National Health Act 1953*, including domiciliary and day care provided by hostels, hospitals and other institutions and by community services.”;
- (c) by omitting from paragraph (6) (a) “without the approval of the Minister” and substituting “unless the proprietor of the nursing home is the holder of a certificate in force under sub-section 3A (3) approving those alterations or additions”; and
- (d) by inserting after sub-section (6A) the following sub-section:

“(6B) Where, immediately before the date on which application was made for approval of premises as an approved nursing home, the proprietor of the nursing home was the holder of a certificate in force under sub-section 3A (2) in relation to the nursing home, the Minister shall not exercise his powers under paragraph (6) (a) to determine a number of beds in relation to the nursing home in a manner inconsistent with that certificate.”.

(4) Where—

- (a) an application was made to the Permanent Head under sub-section 4 (1) of the Principal Act before the date of commencement of sub-section (2) of this section; and
- (b) immediately before that date, the Permanent Head had neither approved, nor refused to approve, the application,

the application has effect, on and after that date, as if it were an application made to the Minister under sub-section 4 (1) of the Principal Act as amended by this Act.

(5) An approval of the Permanent Head given under sub-section 4 (2) or paragraph 4 (6) (a) of the Principal Act before the date of commencement of sub-section (2) of this section, has effect, on and after that date, as if it had been given by the Minister under sub-section 4 (2) or paragraph 4 (6) (a), as the case may be, of the Principal Act as amended by this Act.

(6) An opinion formed by the Permanent Head for the purposes of paragraph 4 (3) (b) of the Principal Act has effect, on and after the date of commencement of sub-section (2) of this section, as if it had been formed by the Minister for the purposes of paragraph 4 (3) (b) of the Principal Act as amended by this Act.

(7) Where, immediately before the date of commencement of sub-section (2) of this section, the approval of premises as an approved nursing home was subject to a condition determined by the Permanent Head under paragraph 4 (6) (a) or (c) of the Principal Act (including such a condition as altered under section 9 of that Act or deemed to have been altered by virtue of section 10 of that Act), the condition has effect, on and after that date, as if it had been determined by the Minister under paragraph 4 (6) (a) or (c), as the case requires, of the Principal Act as amended by this Act.

(8) The amendment made by paragraph (3) (a) of this section does not apply in relation to an application made under sub-section 4 (1) of the Principal Act before the commencement of sub-section (3) of this section.

(9) Where—

- (a) before the date of commencement of sub-section (3), the Permanent Head had informed a person, under sub-section 4 (3) of the Principal Act, that an application for approval of premises would not be refused under that sub-section of that Act or under sub-section 40AA (3) of the *National Health Act 1953*; and
- (b) the person applies, on or after that date, under sub-section 4 (1) of the Principal Act as amended by this Act, for approval of those premises as an approved nursing home,

then—

- (c) sub-section 4 (3) of the Principal Act as amended by sub-section (3) of this section has effect, in relation to that application, as if the amendment made by paragraph (3) (a) of this section had not been made; and
- (d) sub-section 4 (3A) of the Principal Act as amended by sub-section (3) of this section does not apply in relation to that application.

(10) Where, immediately before the commencement of sub-section (3) of this section, an approval of an addition to, or alteration of, premises was in force for the purposes of paragraph 4 (6) (a) of the Principal Act, then, notwithstanding the amendment made by paragraph (3) (c) of this section, that paragraph of that Act continues to apply in relation to that addition or alteration as if that amendment had not been made.

Application of National Health Act

62. (1) Section 5 of the Principal Act is amended by omitting sub-section (2).

(2) Section 5 of the Principal Act is amended by inserting in paragraph (1) (a) ", as if the reference in sub-section (4AA) of that section to paragraph 39A (3) (b) of that Act were a reference to paragraph 3A (3) (b) of this Act and as if the reference in sub-section (4AA) of that section to a certificate in force under section 39A of that Act were a reference to a certificate in force under section 3A of this Act" after "this Act".

Approval of additional services

63. (1) Section 6 of the Principal Act as amended by omitting “Permanent Head” (wherever occurring) and substituting “Minister”.

(2) Where—

(a) an application was made to the Permanent Head under sub-section 6 (1) of the Principal Act before the date of commencement of this section; and

(b) immediately before that date, the Permanent Head had neither approved, nor refused to approve, the application,

the application has effect, on and after that date, as if it were an application made to the Minister under sub-section 6 (1) of the Principal Act as amended by this Act.

(3) An approval or determination of the Permanent Head given under sub-section 6 (2) or (4) of the Principal Act before the date of commencement of this section (including such a determination as altered under section 9 of that Act or as deemed to have been altered under section 10 of that Act) has effect, on and after that date, as if it had been given by the Minister under sub-section 6 (2) or (4), as the case requires, of the Principal Act as amended by this Act.

(4) Where, before the date of commencement of this section, the Permanent Head informed a person under sub-section 6 (3) of the Principal Act that an application would not be refused, sub-section 6 (3) of the Principal Act has effect, on and after that date, as if the Minister had so informed the person.

(5) A period allowed by the Permanent Head under sub-section 6 (3) of the Principal Act before the date of commencement of this section has effect, on and after that date, as if it had been allowed by the Minister under sub-section 6 (3) of the Principal Act as amended by this Act.

Inspection of premises and provision of information

64. Section 7 of the Principal Act is amended by omitting “to the Permanent Head under section 4 or 6, the Permanent Head” and substituting “under section 4 or 6, the Minister”.

Certificate of approval

65. Section 8 of the Principal Act is amended—

(a) by omitting from sub-sections (1), (2) and (5) “Permanent Head” (wherever occurring) and substituting “Minister”;

(b) by omitting sub-section (4) and substituting the following sub-section:

“(4) Where the proprietor of an approved nursing home applies to the Minister for revocation of the approval of the home or of the approval relating to approved services, he shall forward the relevant certificate or certificates of approval with the application.

Penalty: \$40.”; and

- (c) by omitting from sub-section (6) “under sub-section (1)” and substituting “of approval”.

Alteration of conditions applicable to a nursing home

66. (1) Section 9 of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-sections:

“(1) The Minister may, at any time, on application in writing made under this sub-section by the proprietor of a nursing home, alter the conditions applicable to the nursing home by substituting for the number of beds determined in relation to the nursing home for the purposes of paragraph 4 (6) (a) such other number as is determined by the Minister.

“(1A) Where the Minister is satisfied that the average rate of utilization, by qualified nursing home patients, of the number of beds determined in relation to a nursing home for the purposes of paragraph 4 (6) (a) is less than such rate as he determines to be the minimum rate in relation to the nursing home, the Minister may, at any time, on application in writing made under this sub-section by the proprietor of the nursing home or otherwise, alter the conditions applicable to the nursing home by substituting for the number of beds determined in relation to the nursing home for the purposes of paragraph 4 (6) (a) such lesser number as is determined by the Minister.

“(1B) The Minister may, at any time, on application in writing made under this sub-section by the proprietor of a nursing home or otherwise, alter the conditions applicable to the approval that relates to approved services to be provided by the proprietor of the nursing home—

- (a) by substituting for the approved class of persons to whom the approval of those services relates such other class of persons as is determined by the Minister; or
- (b) by determining conditions in relation to the approval under paragraph 6 (4) (b) or by revoking or varying any condition previously determined by him in relation to that approval under that sub-section.

“(1C) The Minister may, at any time, on application in writing made under this sub-section by the proprietor of a nursing home or otherwise, alter the conditions applicable to the nursing home by determining conditions in relation to the nursing home under paragraph 4 (6) (c) or by revoking or varying any conditions previously determined by him in relation to the nursing home under that paragraph.

“(1D) Where—

- (a) the proprietor of an approved nursing home applies under sub-section (1B) or (1C) to the Minister for the Minister to

alter the conditions applicable to the nursing home, or to approved services provided by the proprietor;

- (b) the applicant informs the Minister, in writing, after the expiration of the period of 2 months after the day on which the application was made, that the applicant elects to apply this sub-section to the application; and
- (c) the Minister has neither altered the conditions, whether in accordance with the application or otherwise, nor refused the application, before being so informed,

the Minister shall, upon being so informed, be deemed to have refused the application.

“(1E) Where the Minister makes a decision under this section refusing an application, he shall cause to be served on the applicant, either personally or by post, a notice in writing setting out that decision.”;

- (b) by omitting from sub-section (2) “Where the Permanent Head, in pursuance of sub-section (1), alters the conditions applicable to a nursing home, or to an approval that relates to approved services provided at premises by the proprietor of a nursing home, he” and substituting “Where, whether under this section or by virtue of the operation of law, the conditions applicable to an approved nursing home, or to an approval that relates to approved services provided at premises by the proprietor of a nursing home, are altered, the Minister”;
- (c) by omitting from sub-section (2) “section 8” and substituting “this Act”;
- (d) by inserting after sub-section (2) the following sub-section:

“(2A) A certificate of approval issued under sub-section (2) shall be accompanied by a notice setting out the effect of sub-section (3).”; and

- (e) by omitting from sub-section (3) “Permanent Head” and substituting “Minister”.
- (2) Section 9 of the Principal Act is amended—
- (a) by inserting after sub-section (1C) the following sub-section:

“(1CA) If the applicant referred to in sub-section (1) of this section is the holder of a certificate in force under sub-section 3A (3), the Minister shall not exercise his powers under sub-section (1) in a manner inconsistent with that certificate.”; and

- (b) by omitting from paragraph (1D) (a) “sub-section (1B) or (1C)” and substituting “this section”.

Application by proprietor of nursing home for alteration of conditions

- 67. (1)** Section 10 of the Principal Act is repealed.

(2) Notwithstanding the repeal of section 10 of the Principal Act by sub-section (1), that section of that Act continues in force, after the commencement of this section, in relation to a refusal by the Permanent Head of the kind referred to in sub-section 10 (2) of that Act given before the commencement of this section, as if that repeal had not been effected.

Variation or revocation of approval

68. (1) Section 11 of the Principal Act is amended by omitting “Permanent Head” (wherever occurring) and substituting “Minister”.

(2) An application or notice received by the Permanent Head as mentioned in sub-section 11 (3) of the Principal Act before the date of commencement of this section has effect, on and after that date, as if it had been received by the Minister under sub-section 11 (3) of the Principal Act as amended by this Act.

69. (1) After section 11 of the Principal Act the following sections are inserted:

Review of decisions

“11A. (1) In this section—

‘decision’ has the same meaning as in the *Administrative Appeals Tribunal Act 1975*;

‘reviewable decision’ means a decision of the Minister, or of a delegate of the Minister, under section 4, 6, 8, 9 or 11 or sub-section (2) of this section.

“(2) A person affected by a reviewable decision who is dissatisfied with the decision may, by notice in writing given to the Minister within the period of 28 days after the day on which the decision first comes to the notice of the person, or within such further period as the Minister (either before or after the expiration of that period), by notice in writing served, either personally or by post, on the person, allows, request the Minister to reconsider the decision.

“(3) There shall be set out in the request the reasons for making the request.

“(4) Upon the receipt of the request, the Minister shall reconsider the decision and may affirm or revoke the decision or vary the decision in such manner as he thinks fit.

“(5) Where the Minister does not affirm, revoke or vary a decision before the expiration of the period of 42 days after the day on which he received the request under sub-section (2) to reconsider the decision, he shall, upon the expiration of that period, be deemed to have affirmed the decision under sub-section (4).

“(6) Where the Minister affirms, revokes or varies a decision, he shall, by notice in writing served, either personally or by post, on the person who made the request, inform the person of the result of his reconsideration of the decision, set out the findings on material questions of fact, refer to the evidence

or other material on which those findings were based and give his reasons for affirming, revoking or varying the decision, as the case may be.

“(7) Applications may be made to the Administrative Appeals Tribunal for review of—

- (a) reviewable decisions that have been affirmed or varied under sub-section (4); or
- (b) a decision under sub-section (4) to revoke a reviewable decision.

Statements to accompany notification of decision

“11B. (1) Where a reviewable decision within the meaning of section 11A is made and notice in writing of the decision is given to a person affected by the decision, that notice shall include a statement to the effect that—

- (a) the person may, if he is dissatisfied with the decision, seek a reconsideration of the decision by the Minister in accordance with sub-section 11A (2); and
- (b) a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if he is dissatisfied with a decision made by the Minister upon that reconsideration affirming, revoking or varying the first-mentioned decision, make application to the Administrative Appeals Tribunal for review of the decision so affirmed or varied or of the decision so to revoke.

“(2) Where the Minister affirms, revokes or varies a decision under sub-section 11A (4) and gives to a person notice in writing of the affirmation, revocation or variation of the decision, that notice shall include a statement to the effect that a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if he is dissatisfied with the decision so affirmed or varied or with the decision so to revoke, make application to the Administrative Appeals Tribunal for review of the decision.

“(3) Any failure to comply with the requirements of sub-section (1) or (2) in relation to a decision shall not be taken to affect the validity of the decision.

Inspection of, and of records of, approved nursing homes

“11C. (1) A person authorized in writing by the Minister to act under this section may—

- (a) at any time, enter and inspect premises occupied by an approved nursing home; and
- (b) at any reasonable time—
 - (i) enter and inspect premises in respect of which an application for approval as an approved nursing home has been made; or
 - (ii) inspect, make copies of, or take extracts from, any books, documents or records on premises occupied by an approved nursing home that relate to the operation of those premises as a nursing home, including, but without limiting the generality of the foregoing, any books, documents or records kept by the

proprietor of the nursing home in accordance with a condition determined under paragraph 4 (6) (c) or 6 (4) (b).

“(2) The occupier of premises referred to in sub-section (1) shall provide the authorized person with all reasonable facilities and assistance for the effective exercise of his powers under this section.

Penalty: \$1,000.”.

(2) Section 11A of the Principal Act is amended—

- (a) by omitting from the definition of “reviewable decision” in sub-section (1) “section 4,” and substituting “sub-section 3A (1), (2), (3) or (4) or 4 (2), (3), (3A), (4), (5), (6), (7) or (10), section”;
- (b) by inserting in sub-section (2) “, not being a decision under sub-section 3A (1), (2), (3) or (4),” after “reviewable decision”;
- (c) by inserting after sub-section (2) the following sub-section:

“(2A) A person affected by a reviewable decision, being a decision under sub-section 3A (1), (2), (3) or (4), who is dissatisfied with the decision may, by notice in writing given to the Minister within the period of 28 days after the date of publication of the notice under sub-section 3A (1) or (12) in relation to the decision, request the Minister to reconsider the decision.”; and

- (d) by inserting in sub-section (5) “or (2A)” after “(2)”.

(3) Section 11B of the Principal Act is amended by inserting in paragraph (1) (a) “or (2A), as the case may be” after “11A (2)”.

(4) Section 11A of the Principal Act as amended by sub-section (1) does not apply in relation to a decision made before the commencement of sub-section (1).

Agreement with proprietor of nursing home

70. Section 15 of the Principal Act is amended by omitting from sub-section (1) “to the Permanent Head”.

Notice of change of proprietor of an approved nursing home, &c.

71. Section 30 of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-sections:

“(1) Where a person who is the proprietor of an approved nursing home is about to cease to be the proprietor of the nursing home and another person is about to become the proprietor of the nursing home, that other person shall, if it is practicable to do so, by notice in writing, notify the Minister accordingly not later than 1 month before so becoming the proprietor of the nursing home.

“(1A) Where a person who is the proprietor of an approved nursing home ceases to be the proprietor of the nursing home and another person becomes the proprietor of the nursing home, that other person

shall, by notice in writing, notify the Minister accordingly immediately after he becomes the proprietor of the nursing home.”; and

- (b) by omitting from sub-section (2) “Permanent Head” and substituting “Minister”.

Offences

72. (1) Section 30A of the Principal Act is amended—

- (a) by adding at the end of paragraph (1) (b) “or”;
(b) by omitting from paragraph (1) (c) “or” (last occurring); and
(c) by omitting paragraph (1) (d).

(2) Section 30A of the Principal Act is amended by inserting before paragraph (1) (a) the following paragraph:

“(aa) an application under section 3A;”.

73. (1) Section 30B of the Principal Act is repealed and the following section is substituted:

Prosecution of offences

“30B. (1) Subject to sub-section (2), an offence against section 30A is an indictable offence.

“(2) A court of summary jurisdiction may hear and determine proceedings in respect of an offence referred to in sub-section (1) if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

“(3) Where, in accordance with sub-section (2), a court of summary jurisdiction convicts a person of an offence referred to in that sub-section, the penalty that the court may impose is a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months.”.

(2) Notwithstanding the repeal of section 30B of the Principal Act by sub-section (1) of this section, that section of that Act continues in force, in relation to a person charged with an offence referred to in sub-section (1) of that section before the commencement of this section, as if that repeal had not been effected.

74. After section 31 of the Principal Act the following section is inserted:

Principles under sections 3A and 4

“31A. (1) In this section, ‘principles’ means principles formulated under sub-section 3A (6) or 4 (3C).

“(2) Sections 48, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply in relation to principles as if in those sections references to regulations were references to principles, references to a regulation were references to a principle and references to a repeal were references to a revocation.

“(3) Principles shall be deemed not to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*, but sub-sections 5 (3) to

(3C) (inclusive) of that Act apply in relation to principles in like manner as they apply in relation to statutory rules.

“(4) For the purposes of the application of sub-section 5 (3B) of the *Statutory Rules Publication Act 1903* in accordance with sub-section (3), the reference in that first-mentioned sub-section to the Minister of State for Administrative Services shall be read as a reference to the Minister administering this Act.

“(5) Section 5 of the *Evidence Act 1904* applies to a principle formulated by the Minister in like manner as that section applies to an order made by the Minister.”.

75. (1) Section 35 of the Principal Act is repealed and the following section is substituted:

Delegation

“35. (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person (including the Permanent Head) all or any of his powers under this Act or the regulations, other than this power of delegation.

“(2) A power so delegated under sub-section (1), when exercised by the delegate, shall, for the purposes of this Act or the regulations, be deemed to have been exercised by the Minister.

“(3) A delegate under sub-section (1) is, in the exercise of a power so delegated, subject to the directions (if any) of the Minister.

“(4) A delegation under sub-section (1) does not prevent the exercise of a power by the Minister.

“(5) The Permanent Head may, either generally as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person all or any of his powers under this Act or the regulations other than this power of delegation.

“(6) A power so delegated under sub-section (5), when exercised by the delegate, shall, for the purposes of this Act or the regulations, be deemed to have been exercised by the Permanent Head.

“(7) A delegate under sub-section (5) is, in the exercise of a power so delegated, subject to the directions (if any) of the Permanent Head.

“(8) A delegation under sub-section (5) does not prevent the exercise of a power by the Permanent Head.”.

(2) Notwithstanding the repeal of section 35 of the Principal Act by sub-section (1), a delegation in force under that section immediately before the commencement of this section continues in force as if it had been made under sub-section 35 (5) of the Principal Act as amended by this Act.

PART VI—SAVINGS

Savings

76. Notwithstanding anything in sub-section 83 (1) of the *Health Legislation Amendment Act 1983*, sub-section 36 (6) of the *Health Insurance Commission Act 1973* as in force immediately before 1 October 1983 continues in force, and shall be deemed to have continued in force, until 1 February 1984, but nothing in this section shall be taken, by implication, to affect the operation of the sub-section 36 (6) of the *Health Insurance Commission Act 1973* that was substituted by sub-section 83 (1) of the first-mentioned Act.

NOTES

1. No. 42, 1974, as amended. For previous amendments, see No. 58, 1975; Nos. 59, 91, 101 and 109, 1976; No. 75, 1977; Nos. 89 and 133, 1978; Nos. 53 and 123, 1979; No. 132, 1980; No. 118, 1981; Nos. 49 and 112, 1982; and No. 54, 1983.
2. No. 6, 1937.
3. No. 95, 1953, as amended. For previous amendments, see No. 68, 1955; Nos. 55 and 95, 1956; No. 92, 1957; No. 68, 1958; No. 72, 1959; No. 16, 1961; No. 82, 1962; No. 77, 1963; No. 37, 1964; Nos. 100 and 146, 1965; No. 44, 1966; Nos. 14 and 100, 1967; No. 100, 1968; No. 102, 1969; No. 41, 1970; No. 85, 1971; No. 114, 1972; Nos. 49 and 202, 1973; No. 37, 1974; Nos. 1, 13 and 93, 1975; Nos. 1, 60, 91, 99, 108, 157 and 177, 1976; Nos. 98 and 100, 1977; Nos. 36, 88, 132 and 189, 1978; Nos. 54, 91 and 122, 1979; Nos. 117 and 131, 1980; Nos. 40, 74, 118 and 176, 1981; Nos. 49 and 112, 1982; and Nos. 35 and 54, 1983.
4. No. 147, 1974, as amended. For previous amendments, see No. 91, 1976; No. 100, 1977; No. 118, 1980; No. 118, 1981; and Nos. 26 and 80, 1982.