



Community Services and Health Legislation Amendment Act 1988

No. 79 of 1988

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Community Services and Health Legislation Amendment Act 1988

No. 79 of 1988

An Act to amend laws relating to community services and health

[Assented to 24 June 1988]

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 *Community Services and Health Legislation Amendment Act 1988*.

Commencement

2. (1) Sections 1, 2, 7, 8, 9, 10, 13, 15 and 17 and paragraph 20 (b) commence on the day on which this Act receives the Royal Assent.

(2) Section 33 shall be deemed to have commenced on 1 July 1987.

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(3) Part II commences on the day on which section 17 of the *Community Services and Health Legislation Amendment Act 1987* commences.

(4) Sections 11, 14, 16, 18, 19, 20 (except paragraph (b)), 21 to 26 (inclusive) and 31 commence on 1 July 1988.

(5) The remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

**PART II—AMENDMENTS OF THE AGED OR DISABLED
PERSONS HOMES ACT 1954**

Principal Act

3. In this Part, “Principal Act” means the *Aged or Disabled Persons Homes Act 1954*¹.

Interpretation

4. Section 10A of the Principal Act is amended:

- (a) by inserting “by written instrument” after “Minister” in the definition of “respite care bed”;
- (b) by adding “or (d)” at the end of the definition of “respite care bed”.

Payments of financial assistance

5. Section 10D of the Principal Act is amended:

- (a) by omitting from paragraph (1) (b) “and” (last occurring);
- (b) by omitting paragraph (1) (c) and substituting the following paragraphs:

“(c) in respect of each respite care bed provided by that approved organisation that is occupied by an eligible person for whom the organisation provides hostel care services—
an amount calculated at such rate as is determined by the Minister by written instrument; and

(d) in respect of each respite care bed provided by that approved organisation that is occupied by an eligible person who is assessed as requiring, and for whom the organisation provides, hostel care services and personal care services—
an amount calculated at such rate as is determined by the Minister by written instrument.”;

- (c) by adding at the end the following subsections:

“(4) An eligible person shall not be taken into account under paragraph (1) (c) or (d) in respect of a day in a benefit period if the person has already been taken into account, whether or not in relation to the same approved organisation, in respect of 63 days in the same benefit period.

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“(5) If the Minister, by written instrument, determines that another number, whether higher or lower, be substituted for the number 63 in subsection (4), that subsection has effect as if that other number were so substituted.

“(6) A benefit period, in relation to an eligible person, is a period determined by the Minister, by written instrument, to be a benefit period for the purpose of subsection (4).”.

General Conditions of recurrent grants

6. Section 10F of the Principal Act is amended by omitting from paragraph (2) (b) “(a) or (b)” and substituting “(a), (b) or (d)”.

**PART III—AMENDMENT OF THE AUSTRALIAN INSTITUTE OF
HEALTH ACT 1987**

Principal Act

7. In this Part, “Principal Act” means the *Australian Institute of Health Act 1987*².

Disclosure of interests

8. Section 14 of the Principal Act is amended by omitting from subsection (3) “or (f)” and substituting “, (f) or (h)”.

Application of Part XI of Audit Act

9. Section 24 of the Principal Act is amended by omitting subsection (3).

**PART IV—AMENDMENTS OF THE NATIONAL HEALTH ACT
1953**

Principal Act

10. In this Part, “Principal Act” means the *National Health Act 1953*³.

Interpretation

11. Section 4 of the Principal Act is amended by inserting the following definitions in subsection (1):

“‘approved nursing home patient’ means a person who is an approved nursing home patient for the purposes of Part VA by virtue of section 46A;

‘classified patient’ means an approved nursing home patient or Repatriation nursing home patient in respect of whom a classification under section 40AFA is in force;”.

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Waiting period

12. Section 4A of the Principal Act is amended by inserting in subsection (2A) “or in accordance with some other table of benefits of the organization,” after “that organization,”.

Approval in principle of nursing home etc.

13. Section 39A of the Principal Act is amended by omitting subsection (13).

Approval of nursing home

14. Section 40AA of the Principal Act is amended:

- (a) by omitting from subparagraph (6) (c) (i) “such scale of fees as is determined, subject to any principles that have been formulated under subsection (7) and that are in force,” and substituting “a scale of fees determined, in accordance with any principles in force under subsection (7),”;
- (b) by omitting from subparagraph (6) (c) (i) “in relation to the nursing home”;
- (c) by inserting after subsection (6B) the following subsection:
 - “(6C) Scales of fees may be determined under subparagraph (6) (c) (i) in relation to:
 - (a) nursing homes generally, classes of nursing homes, specified nursing homes or parts of specified nursing homes; and
 - (b) classes of nursing home patients.”;
- (d) by omitting from paragraph (7) (a) “in relation to nursing homes generally or specified classes of nursing homes”.

Approval of admission to approved nursing home

15. (1) Section 40AB of the Principal Act is amended by omitting subsection (3A) and substituting the following subsections:

“(3A) An approval under subsection (3) remains in force for the period specified in the instrument of approval.

“(3B) An approval under subsection (3) may be expressed to relate only to the admission of the person named in the approval to a particular nursing home, a class of nursing homes or a class of nursing homes situated in a particular region.”.

(2) Where:

- (a) an approval was granted, before the commencement of this section, under subsection 40AB (3) of the Principal Act; and
- (b) at that commencement, the period specified in the instrument of approval for the purpose of subsection 40AB (3A) of the Principal Act had not expired;

the approval remains in force until the end of that period.

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Alteration of conditions applicable to a nursing home

16. Section 40AD of the Principal Act is amended:

- (a) by omitting from subsection (1B) “the scale of fees” and substituting “a scale of fees”;
- (b) by omitting subsection (1BA) and substituting the following subsection:

“(1BA) In making a decision on an application under subsection (1B) made on or after 26 February 1988 by the proprietor of an approved nursing home (other than a transferred home), the Secretary shall not take into account:

- (a) any cost to the proprietor that arose before 1 July 1987, being a cost that was not taken into account in the determination of the scale of fees in force in relation to the home on 30 June 1987; or
- (b) any part of a cost that was taken into account in the determination of the scale of fees in force on 30 June 1987, being a part that was not taken into account in the determination of that scale;

unless the circumstances are such that, in accordance with principles formulated under subsection 40AA (7), the Secretary is satisfied that the proprietor could not reasonably be expected to have made the application before 26 February 1988.”.

17. (1) After section 40AD of the Principal Act the following section is inserted:

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

“40ADA. (1) Where an application has been made under subsection 40AD (1B), the Secretary may make interim alterations of the conditions applicable to the relevant nursing home pending the final decision on the application.

“(2) An interim alteration of the conditions applicable to a nursing home shall be such as the Secretary thinks fair and reasonable having regard to the interim nature of the alteration.

“(3) For the purposes of subsection 40AA (6), an interim alteration of the conditions applicable to a nursing home has effect as if it were the final decision on an application under subsection 40AD (1B).

“(4) Subsection 40AD (1D) does not apply to an application in relation to which an interim alteration of conditions has been made.

“(5) An interim alteration of the conditions applicable to a nursing home has effect as an alteration of those conditions for the purpose of subsection 40AD (2).

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“(6) A request may not be made under subsection 40AE (2) in respect of an interim alteration of the conditions applicable to a nursing home.”.

(2) Where, at the commencement of this section, an application under subsection 40AD (1B) of the Principal Act was awaiting a decision, subsection 40AD (1D) and section 40ADA of the Principal Act, as amended by this Act, apply as if the application had been made on the date of commencement of this section.

Patients requiring extensive care

18. Section 40AF of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) On and after 1 July 1988, ‘approved nursing home’, in subsection (1), means:

- (a) a Government nursing home; or
- (b) a nursing home for disabled people.”.

19. After section 40AF of the Principal Act the following sections are inserted:

Classification of certain patients

“40AFA. (1) Nursing home patients to whom this section applies shall be classified according to the degree of their need of nursing and personal care.

“(2) Commonwealth benefit is not payable in respect of a nursing home patient to whom this section applies who does not have a classification.

“(3) The classifications of patients, the principles by reference to which the classifications are to be given to particular patients and the period of effect of a classification given to a patient are as determined by the Minister from time to time.

“(4) A determination by the Minister under subsection (3) shall be by written instrument.

“(5) The classification to be given to a particular patient shall be determined by the Secretary according to the principles for the time being in force under subsection (3).

Patients to whom classification system to apply

“40AFB. (1) Section 40AFA applies to the following approved nursing home patients and Repatriation nursing home patients (not being patients in Government nursing homes or nursing homes for disabled people):

- (a) patients admitted to an approved nursing home on or after 1 July 1988, including patients who were so admitted without approval under section 40AB but who, because of subsection 40AA (9), are to be regarded as having been admitted with such approval;

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- (b) patients in nursing homes first approved on or after 1 July 1988;
- (c) patients in a class of patients determined by the Minister to be patients to whom section 40AFA applies.

“(2) Paragraph (1) (a) does not apply to a patient if:

- (a) the patient is admitted to an approved nursing home within 90 days after being discharged from an approved nursing home, other than a Government nursing home or a nursing home for disabled people; and
- (b) immediately before being so discharged, the patient was not a patient to whom subsection (1) applied.

“(3) Paragraphs (1) (a) and (b) do not apply to patients in a class of nursing home patients determined by the Minister to be excluded from the operation of those paragraphs.

“(4) A determination for the purpose of paragraph (1) (c) or subsection (3) shall be in writing and shall be made in accordance with any principles declared in writing by the Minister for the purposes of that paragraph or subsection, as the case may be.

Classification on application made before admission to home

“40AFC. (1) A person seeking admission to an approved nursing home or another person on behalf of the first-mentioned person may apply to the Secretary for classification in advance of admission to a home.

“(2) An application under this section may only be made if:

- (a) the person’s admission to an approved nursing home has been approved under subsection 40AB (3); and
- (b) the approval has not expired.

“(3) An application shall be in writing in accordance with the authorised form.

“(4) On the application of a person under this section, the Secretary may classify the person as if the person were a nursing home patient to whom section 40AFA applies, but the classification of the person does not take effect except as mentioned in subsection (5).

“(5) If the person to whom a classification under subsection (4) relates becomes a nursing home patient to whom section 40AFA applies before the approval under subsection 40AB (3) expires, the classification takes effect as if it were made at the time the person becomes such a patient.

Application by proprietor of home for patient classification

“40AFD. (1) When:

- (a) a person already a patient in an approved nursing home becomes a patient to whom section 40AFA applies; or

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- (b) a person in respect of whom no application has been made under section 40AFC is admitted to an approved nursing home and becomes, or is to be regarded as having become, on admission, a patient to whom section 40AFA applies;

the proprietor of the nursing home shall apply to the Secretary for classification of the patient.

“(2) The proprietor of an approved nursing home shall apply to the Secretary for the further classification of each patient in the home whose classification is about to expire.

“(3) An application under subsection (2) may not be made earlier than one month before the classification (in this section called the ‘previous classification’) of the patient expires.

“(4) An application shall be in writing in accordance with the authorised form.

“(5) A classification granted on an application under subsection (1) in respect of a patient referred to in paragraph (1) (a) shall be regarded as having taken effect on the day on which the patient became a patient to whom section 40AFA applies.

“(6) A classification granted on an application under subsection (1) in respect of a person referred to in paragraph (1) (b) shall be regarded as having taken effect on the day on which the person was admitted to the nursing home.

“(7) A classification granted on an application under subsection (2) takes effect as follows:

- (a) if the application was made before the expiration of the previous classification, the classification takes effect, or shall be regarded as having taken effect, at the expiration of the previous classification;
- (b) if the application was made after the expiration of the previous classification, the classification shall be regarded as having taken effect on the day on which the application was made.

“(8) Subject to subsection (7), if an application is made under subsection (2) before the expiration of the previous classification but the application is not determined until after that expiration, the patient shall be regarded as retaining the previous classification until the application is determined.

“(9) Subject to subsection (7), if an application is made under subsection (2) after the expiration of the previous classification, the patient shall be regarded as having the lowest classification from the expiration of the previous classification until the application is determined.

“(10) In subsection (9), ‘lowest classification’ means the classification that represents the least degree of need of nursing and personal care.

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Review by Secretary of classification

“40AFE. (1) The Secretary may, at any time, review the classification of a nursing home patient.

“(2) After reviewing the classification of a patient, the Secretary may:

- (a) confirm the classification; or
- (b) revoke the classification and substitute another classification.

“(3) If the Secretary revokes the classification and substitutes a higher classification, the revocation and substitution shall be regarded as having taken effect on such date, being a date not later than the date of the revocation, as the Secretary fixes.

“(4) If the Secretary revokes the classification and substitutes a lower classification, the revocation and substitution take effect on the date of the revocation.

“(5) The Secretary shall give to the proprietor of the nursing home written notice of his or her decision under subsection (2) and, if the decision involves the revocation of a classification, the reasons for the decision.

“(6) For the purposes of subsections (3) and (4), a classification is lower or higher than another according as it represents a lesser or greater need of nursing and personal care.

Review by Minister of classification

“40AFF. (1) A nursing home proprietor dissatisfied with a decision of the Secretary under section 40AFE may request the Minister to review the decision.

“(2) The request shall be in writing in accordance with the authorised form and shall be made within 28 days after the day on which notice of the Secretary’s decision was given to the nursing home proprietor.

“(3) The Minister shall review the decision and may:

- (a) confirm the decision; or
- (b) set aside the decision and substitute the decision that the Minister thinks appropriate.

“(4) Until a decision is made by the Minister, the making of a request does not affect the operation of a decision by the Secretary.

“(5) Subsections 40AFE (3), (4) and (5) apply in relation to a decision on a request under this section as if references in those subsections to the Secretary were references to the Minister.”

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Standard fee for non-classified patients

20. Section 40AG of the Principal Act is amended:

(a) by omitting subsection (2) and substituting the following subsection:

“(2) The Secretary shall, by written instrument, determine the standard fee for non-classified patients in each approved nursing home in relation to a financial year.”;

(b) by omitting from paragraph (3) (b) “during a financial year whenever” and substituting “if”;

(c) by omitting from subsection (4) “scale of fees for” and substituting “scale of fees in relation to non-classified patients in”;

(d) by omitting from subsection (4) “standard ordinary care fee for a nursing home” and substituting “standard fee for the nursing home determined under subsection (2)”;

(e) by omitting from subsections (5) and (6) “ordinary care”;

(f) by omitting the formula from subsection (5) and substituting the following formula:

$$\frac{AIA}{ABD} + N$$

(g) by omitting the formula from subsection (6) and substituting the following formula:

$$SAM + N$$

(h) by omitting from subsection (7) “For the purposes of subsections (5) and (6)” and substituting “In this section”;

(j) by inserting after paragraph (7) (a) the following paragraphs:

“(aa) in relation to the financial year commencing on 1 July 1988, N equals $\frac{NPC}{ABE}$;

(ab) in relation to a financial year commencing on or after 1 July 1989, N is the amount determined by the Minister to be the daily nursing and personal care cost in relation to non-classified patients in the nursing home for that financial year”;

(k) by adding at the end of paragraph (7) (b) “and on the assumption that all patients in the home are non-classified patients”;

(m) by omitting paragraph (7) (c);

(n) by inserting in paragraph (7) (f) “for all patients, whether classified or non-classified,” after “for the nursing home”;

(o) by adding at the end the following subsection:

“(9) A determination by the Minister for the purpose of paragraph (7) (ab) shall be made in accordance with any principles declared in writing by the Minister for the purpose of that paragraph.”.

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21. After section 40AG of the Principal Act the following section is inserted:

Standard fee for classified patients

“40AGA. (1) In this section:

‘approved nursing home’ does not include a Government nursing home or a nursing home for disabled people;

‘Class 1 nursing home’ and ‘Class 2 nursing home’ have the same meaning as in section 40AG.

“(2) The Secretary shall, by written instrument, determine, in accordance with this section, the standard fee for patients included in each classification determined under subsection 40AFA (2) in each approved nursing home for a financial year.

“(3) The Secretary:

(a) shall make a determination under subsection (2) in relation to each approved nursing home to take effect at the beginning of each financial year or, where a nursing home is approved after the beginning of a financial year, shall make a determination under that subsection for that financial year as soon as practicable after the grant of approval; and

(b) may make a further determination if there has been a change of circumstances sufficient to warrant the making of a further determination.

“(4) In the determination of scales of fees in relation to classified patients in an approved nursing home for the purposes of subparagraph 40AA (6) (c) (i), the standard fees for classified patients in that nursing home shall be taken into account, in accordance with principles formulated under subsection 40AA (7), together with such other matters (if any) as the principles require.

“(5) The standard fee for a classification of patients in an approved nursing home that is a Class 1 nursing home is the amount calculated in accordance with the formula:

$$\frac{AIA}{ABD} + N$$

where:

AIA and **ABD** have the same respective meanings as in subsection 40AG (7);

N is the product of:

(a) the number of staff hours per day of nursing and personal care determined by the Minister to be the number of staff hours of such care to be taken into account for the purposes of this section in relation to patients having that classification; and

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- (b) the amount determined by the Minister to be, for that financial year, the amount to be taken into account for the purposes of this section in relation to the cost per staff hour of providing nursing and personal care in the State or Territory in which the nursing home is situated.

“(6) The standard fee for a classification of patients in an approved nursing home that is a Class 2 nursing home is the amount calculated in accordance with the formula:

$$\text{SAM} + \text{N}$$

where:

SAM is the standard infrastructure allowance per occupied bed per day;
and

N has the same meaning as in subsection (5).

“(7) A determination by the Minister for the purpose of subsection (5) shall be by notice published in the *Gazette*.”

22. After section 40AH of the Principal Act the following section is inserted:

Additional patient contribution

“40AI. (1) The additional patient contribution applicable to an approved nursing home patient is the amount for the time being determined by the Minister by notice published in the *Gazette*.

“(2) A determination under subsection (1) may be made in respect of a class of approved nursing home patients receiving care in a particular nursing home.

“(3) This section does not apply to a patient in a transferred home.”

Basic benefit for Government nursing homes and nursing homes for disabled people

23. Section 47 of the Principal Act is amended by omitting from subsection (1) “an approved nursing home, other than a transferred home,” and substituting “a Government nursing home or a nursing home for disabled people”.

24. After section 47 of the Principal Act the following section is inserted:

Benefit for patients in other approved nursing homes

“47A. (1) Subject to this Part and Part VC, a Commonwealth benefit is payable to the proprietor of an approved nursing home (other than a Government nursing home, a transferred home or a nursing home for disabled people) in respect of each approved nursing home patient in the home for each day on which the patient receives nursing home care in the home.

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- “(2) The benefit is equal to the difference between:
- (a) the fee payable to the proprietor for the provision of nursing home care for the patient on the relevant day; and
 - (b) the sum of:
 - (i) the amount for the time being applicable for the purpose of subparagraph 47 (2) (b) (iii); and
 - (ii) the additional patient contribution (if any) applicable to the patient.”.

Benefit for nursing home care in transferred homes

25. Section 48A of the Principal Act is amended by omitting paragraph (2) (a) and substituting the following paragraph:

- “(a) the fee payable for the care of the patient in the nursing home on the relevant day; and”.

Extensive care benefit

26. Section 49 of the Principal Act is amended by adding at the end the following subsection:

“(2) On 1 July 1988, subsection (1) ceases to apply to:

- (a) approved nursing home patients; and
- (b) Repatriation nursing home patients;

in nursing homes other than Government nursing homes and nursing homes for disabled people.”.

27. After section 49 of the Principal Act the following section is inserted:

Respite care

“49AA. (1) The regulations may make provision for the payment of benefits, in addition to those otherwise payable under this Act, to proprietors of approved nursing homes in respect of approved nursing home patients accommodated in such homes for the purpose of receiving respite care.

“(2) The provisions authorised by subsection (1) include, but are not limited to:

- (a) provisions defining the approved nursing homes or parts of such nursing homes to which the provisions apply;
- (b) provisions defining the patients in respect of whom additional benefits are payable;
- (c) provisions fixing levels of additional benefits for classes of patients;
- (d) provision for the fixing of limits on the number of days in a period for which additional benefits may be paid in respect of a patient or a class of patients;
- (e) provision for the determination of the maximum number of patients in a nursing home in respect of whom additional benefits are to be payable; and

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- (f) provisions requiring proprietors of nursing homes to give to the Secretary information or documents regarding the conduct of homes or regarding patients in homes.

“(3) Regulations made for the purpose of subsection (1) may adopt or apply, with or without modification, provisions of this Act.”.

Offences

28. Section 62 of the Principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) A person shall not furnish, for the purposes of a requirement of a regulation made by virtue of section 49AA or a requirement made under such a regulation, information or a document that is false or misleading in a material particular.

Penalty:

- (a) in the case of a natural person—\$10,000 or imprisonment for 5 years, or both; or
(b) in the case of a body corporate—\$50,000.”.

Public officer of registered organisation

29. Section 74 of the Principal Act is amended:

- (a) by omitting from subsection (5) “\$5,000” and substituting “\$10,000”;
(b) by inserting after subsection (5) the following subsection:

“(5A) A registered organisation shall not:

- (a) permit money of the organisation to be used for the payment of a fine imposed on its public officer under subsection (5);
or
(b) reimburse its public officer in respect of a fine imposed on the public officer under subsection (5).”.

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

Inducing contributors to transfer to other funds etc.

“74BA. A registered organisation shall not:

- (a) offer to a contributor to a health benefits fund conducted by the organisation an inducement or encouragement;
(b) subject, or threaten to subject, such a contributor to a penalty or disadvantage (whether financial or otherwise);
(c) refrain from offering to such a contributor a benefit; or
(d) hinder or impede the provision of a benefit to such a contributor;
for the purpose of persuading the contributor to transfer to a health benefits fund conducted by another organisation or simply to cease to contribute to the fund conducted by the first-mentioned organisation.

Penalty: \$50,000.”.

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31. Section 139B of the Principal Act is repealed and the following section is substituted:

Certain instruments subject to disallowance

“139B. (1) In this section, ‘instrument under this Act’ means:

- (a) a notice under the definition of ‘nursing home for disabled people’ in subsection 4 (1);
- (b) an instrument for the purpose of paragraph 40AA (6) (ce);
- (c) a determination of principles under subsection 40AFA (3);
- (d) a declaration of principles under subsection 40AFB (4) or 40AG (9);
- (e) a notice under subsection 40AG (8), section 40AH or 45D, subsection 47 (2B) or section 49; or
- (f) rules under subsection 99AAA (4) or 99AAB (3).

“(2) An instrument under this Act is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

Schedule

32. The Schedule to the Principal Act is amended by inserting after paragraph (1) the following paragraphs:

“(1a) For the purposes of paragraphs (1d) and (1e), a person (in this paragraph and those paragraphs called the ‘relevant person’) is a transferred contributor in relation to a benefit (in this paragraph and paragraphs (1b), (1d) and (1e) called the ‘relevant benefit’) included in a table of benefits (in this paragraph and paragraphs (1d) and (1e) called the ‘applicable table’) of the organisation if the following conditions are satisfied:

- (i) the relevant person is, in relation to the organisation, a contributor for benefits in accordance with the applicable table;
- (ii) at the time, or a time within 7 days, or such longer period as the rules of the organisation allow, before the time, of becoming such a contributor, the relevant person was, in relation to another health benefits organisation, a contributor for benefits in accordance with a table of benefits (in this paragraph and paragraphs (1c) and (1d) called the ‘comparable table’), being:
 - (A) if the applicable table is a basic table, whether or not modified by an election of the kind referred to in the condition set out in paragraph (ba)—a basic table, whether or not modified by such an election;
 - (B) if the applicable table is a supplementary hospital table—a supplementary hospital table; or

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- (C) if the applicable table is a table other than a table of a kind referred to in sub-subparagraph (A) or (B)—a table other than a table of such a kind;
- (iii) the comparable table included a benefit (in paragraphs (1b), (1c), (1d) and (1e) called the 'comparable benefit') that was comparable to the relevant benefit;
- (iv) at the time of becoming a contributor for benefits in accordance with the applicable table, the relevant person had paid all contributions due to the other organisation.
- (1b) For the purposes of paragraphs (1d) and (1e), the relevant part of the relevant benefit is:
- (i) if the relevant benefit is less than or equal to the comparable benefit—the whole of the relevant benefit;
- (ii) if the relevant benefit or the comparable benefit consists of the provision of services or treatment which provision is, because of a declaration under subsection 73D (1), treated as the payment of a benefit in respect of the services or treatment—the whole of the relevant benefit; or
- (iii) if the relevant benefit is greater than the comparable benefit and subparagraph (ii) does not apply—so much of the relevant benefit as does not exceed the comparable benefit.
- (1c) For the purposes of paragraph (1b), if the comparable benefit could consist of either:
- (i) the actual payment of a benefit; or
- (ii) the provision of services or treatment;
- it shall be assumed that the benefit could consist only of the payment of the benefit.
- (1d) If the relevant person is a transferred contributor in relation to the relevant benefit and became such a contributor on or after the commencement of this paragraph, the rules of the organisation shall not be such that there is a waiting period applicable to the entitlement of the relevant person, or of any dependant of the relevant person, to receive the relevant part of the relevant benefit except as follows:
- (i) a waiting period may be imposed in respect of the relevant part of the relevant benefit if:
- (A) had the relevant person become a contributor for benefits in accordance with the applicable table in circumstances that did not make the person a transferred contributor in relation to the relevant benefit, a waiting period would have applied in

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relation to the relevant person's entitlement to receive the relevant benefit;

- (B) the relevant person, before becoming a transferred contributor in relation to the relevant benefit, was subject to a waiting period in respect of the comparable benefit, whether or not that waiting period had expired at the time the relevant person became such a contributor; and
 - (C) the relevant person, before becoming such a contributor, was notified in writing, by the organisation, that a waiting period would be imposed in respect of the relevant benefit;
- (ii) a waiting period imposed in accordance with subparagraph (i) shall not exceed a period equal to the number of days in the waiting period referred to in sub-subparagraph (i) (A) reduced by:
- (A) if the whole of the waiting period referred to in sub-subparagraph (i) (B) had expired at the time the relevant person became a transferred contributor in relation to the relevant benefit—the number of days in that waiting period; or
 - (B) in any other case—the number of days in so much of the waiting period referred to in sub-subparagraph (i) (B) as had expired at the time the relevant person became a transferred contributor in relation to the relevant benefit.

(1e) If:

- (i) the relevant person is a transferred contributor in relation to the relevant benefit and became such a contributor before the commencement of this paragraph;
- (ii) at the time of that commencement, the relevant person was subject to a waiting period in respect of the relevant benefit; and
- (iii) before becoming a transferred contributor in relation to the relevant benefit the relevant person was subject to a waiting period in respect of the comparable benefit, whether or not that waiting period had expired at the time the relevant person became such a contributor;

the rules of the organisation shall be modified so that the waiting period to which the entitlement of the relevant person, or of any dependant of the relevant person, to receive the relevant part of the relevant benefit is subject expires:

- (iv) if, had the waiting period referred to in subparagraph (ii) been shorter by a number of days equal to:

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- (A) if the whole of the waiting period referred to in subparagraph (iii) had expired at the time the relevant person became a transferred contributor in relation to the relevant benefit—the number of days in that waiting period; or
 - (B) in any other case—the number of days in so much of the waiting period referred to in subparagraph (iii) as had expired at the time the relevant person became a transferred contributor in relation to the relevant benefit;
the waiting period referred to in subparagraph (ii) would have expired on a day (in this subparagraph called the ‘notional expiration day’) after the commencement of this paragraph—on the notional expiration day; or
 - (v) in any other case—on the commencement of this paragraph.
- (1f) The rules of the organisation will not include any provision limiting a person’s entitlement to benefits in a way that has substantially the same effect as the imposition of a waiting period except where the imposition of such a waiting period would be in accordance with these conditions.”.

**PART V—AMENDMENT OF THE NURSING HOMES AND
HOSTELS LEGISLATION AMENDMENT ACT 1987**

Transitional provisions in relation to transferred homes

33. Section 31 of the *Nursing Homes and Hostels Legislation Amendment Act 1987*⁴ is amended by omitting from subsection (8) “other than patients of a nursing home” and substituting “other than patients of the nursing home”.

**PART VI—AMENDMENT OF THE STATES GRANTS (NURSE
EDUCATION TRANSFER ASSISTANCE) ACT 1985**

Special nurse education transfer grants

34. Section 4 of the *States Grants (Nurse Education Transfer Assistance) Act 1985*⁵ is amended by omitting subsection (4).

NOTES

1. No. 81, 1954, as amended. For previous amendments, see No. 47, 1957; No. 83, 1967; No. 68, 1969; No. 84, 1972; Nos. 128 and 216, 1973; No. 115, 1974; No. 91, 1976; No. 157, 1980; No. 61, 1981; No. 98, 1982; No. 69, 1983; Nos. 78, 134 and 165, 1984; Nos. 24, 95 and 127, 1985; Nos. 115 and 163, 1986; and Nos. 72 and 132, 1987.
2. No. 41, 1987.

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NOTES—continued

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, 92, 118, 163 and 176, 1981; Nos. 49, 80 and 112, 1982; Nos. 35, 54 and 139, 1983; Nos. 46, 63, 72, 120, 135 and 165, 1984; Nos. 24, 53, 65, 70, 95, 127 and 167, 1985; Nos. 28, 75, 94 and 115, 1986; and Nos. 22, 44, 72, 118, 131 and 132, 1987.
4. No. 72, 1987.
5. No. 164, 1985, as amended. For previous amendments, see No. 75, 1986; and No. 132, 1987.

*[Minister's second reading speech made in—
House of Representatives on 21 April 1988
Senate on 10 May 1988]*