



Community Services and Health Legislation Amendment Act (No. 2) 1989

No. 3 of 1990

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Community Services and Health Legislation Amendment Act (No. 2) 1989

No. 3 of 1990

An Act to amend laws relating to community services and health, and for related purposes

[Assented to 17 January 1990]

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

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Community Services and Health Legislation Amendment Act (No. 2) 1989*.

Commencement

2. (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Section 16 is to be taken to have commenced on 1 July 1988.

(3) Paragraph 14 (e) commences on 1 June 1990.

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(4) Section 4, paragraphs 26 (b) and (c) and sections 28 and 31 commence on 1 July 1990.

(5) Subject to subsection (6), section 5, paragraphs 26 (d) and (e) and sections 33, 34 and 36 commence on a day or days to be fixed by Proclamation.

(6) If a provision referred to in subsection (5) does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences at the end of that period.

**PART 2—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.

4. After section 10D of the Principal Act the following sections are inserted:

Charter of Residents’ Rights and Responsibilities

“10DA. (1) The Minister may formulate a statement of the rights and responsibilities of the residents of approved hostels.

“(2) The statement, which if approved by both Houses of the Parliament is to be known as the Charter of Residents’ Rights and Responsibilities in Approved Hostels, is to set out the rights and responsibilities of residents in relation to approved hostels as formulated by the Minister and regarded by the Minister as appropriate for inclusion in the statement.

“(3) Without limiting the generality of subsection (2), the Charter may state that the resident has:

- (a) a right to be treated as an individual; and
- (b) a right to personal independence; and
- (c) a right to privacy; and
- (d) a right of access to all documents relating to the resident; and
- (e) a responsibility to respect the rights of others.

“(4) A copy of the statement is to be laid before each House of the Parliament within 15 sitting days of that House after the statement is formulated and takes effect only as provided by the following provisions of this section.

“(5) If:

- (a) notice of a motion to amend the statement is given in either House of the Parliament within 15 sitting days after the statement has been laid before that House; and

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- (b) the statement, whether or not as amended, is subsequently approved by that House; and
- (c) the other House approves the statement in the form approved by the first-mentioned House;

the statement takes effect in the form so approved from the day on which that other House approves the statement in that form.

“(6) If no notice of a motion to amend the statement is given in the House of Representatives or the Senate within 15 sitting days of the particular House after the statement has been laid before that House, the statement takes effect from the day immediately after that 15th sitting day or, where that day differs in respect of each House, the later of those days.

Agreement between proprietor and resident

“10DB. (1) The Minister may formulate a common form of agreement that may be entered into between an eligible organisation and an eligible person, being a form of agreement relating to the accommodation and care of the person as a resident of a hostel operated by the organisation.

“(2) A form of agreement formulated by the Minister must be consistent with the statement formulated under section 10DA and may make provision in relation to such matters as the Minister considers appropriate.

“(3) Without limiting the generality of subsection (2), a form of agreement so formulated may make provision in relation to:

- (a) fees and other charges to be imposed by the organisation in respect of the provision of accommodation and care in the hostel; and
- (b) the services that are to be provided to the resident by the organisation; and
- (c) the nature of the occupancy of the resident in the hostel and the circumstances (if any) in which that occupancy may be altered or terminated by the organisation; and
- (d) participation of the resident in decision-making relating to care of residents and quality of life issues in the hostel; and
- (e) the resolution of disputes (if any) between the resident and the organisation.

“(4) A form of agreement formulated by the Minister is to be laid before each House of the Parliament within 15 sitting days of that House after it is formulated and takes effect only as provided by the following provisions of this section.

“(5) If:

- (a) notice of a motion to amend the form of agreement is given in either House of the Parliament within 15 sitting days after it has been laid before that House; and
- (b) the form of agreement, whether or not as amended, is subsequently approved by that House; and

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(c) the other House approves it in the form approved by the first-mentioned House;

the form of agreement takes effect in the form so approved from the day on which that other House approves it in that form.

“(6) If no notice of a motion to amend the form of agreement is given in the House of Representatives or the Senate within 15 sitting days of the particular House after it has been laid before that House, the form of agreement takes effect from the day immediately after that 15th sitting day or, where that day differs in respect of each House, the later of those days.”.

5. After section 10FA of the Principal Act the following section is inserted:

Statements may be published in relation to certain hostels

“10FB. (1) The Minister may, from time to time, prepare and publish a statement containing all or any of the relevant information in relation to each hostel approved by the Minister under section 10B.

“(2) The following is relevant information for the purposes of subsection (1):

- (a) information relating to whether the standards to be met by the eligible organisation operating the hostel in the provision of services, being standards contained in the General Conditions in force from time to time, have been satisfied in the hostel;
- (b) the level of services provided in the hostel by reference to these standards;
- (c) the number of hostel places in the hostel and the physical size of the hostel;
- (d) the location of the hostel and its proximity to community facilities, for example, public transport, shops, libraries and community centres;
- (e) services provided in the hostel;
- (f) fees imposed, and charges made, by the eligible organisation operating the hostel;
- (g) activities at the hostel in which residents may participate;
- (h) the name of the eligible organisation operating the hostel.

“(3) Without limiting the means by which a statement may be published, a copy of the statement is to be made available for public inspection at each office of the Department.

“(4) The information contained in a statement must not be such as to enable the identification of an individual resident of a hostel.

“(5) Before publishing a statement under this section, the Minister must allow the eligible organisation operating the hostel not less than 30 days to consider the statement and to make submissions to the Minister in relation to the content of the statement.

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“(6) Where it appears to the Minister in the light of any submission made by the eligible organisation that the content of the statement should be altered, the Minister is to alter the statement accordingly before it is published.”.

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

Principal Act

6. In this Part, “Principal Act” means the *Aged or Disabled Persons Homes Amendment Act 1989*².

Commencement

7. Section 2 of the Principal Act is amended by omitting from subsection (2) “subsection 2 (3)” and substituting “subsection 2 (2)”.

**PART 4—AMENDMENTS OF THE FIRST HOME OWNERS ACT
1983**

Principal Act

8. In this Part, “Principal Act” means the *First Home Owners Act 1983*³.

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

Applicants who have dependent children

“13. A person is, for the purposes of this Act, to be treated as being a dependent child of an applicant if, and only if:

(a) the person:

(i) was born during the period commencing on the date that is the prescribed date in relation to the applicant and ending at the expiration of the first anniversary of that date; or

(ii) was under the age of 18 years on that date; and

(b) the person has at any time during that period been in the custody, care and control of, and ordinarily resident with, the applicant.”.

(2) Section 13 of the Principal Act as in force immediately before the commencement of this section continues to apply in relation to a person who is, or who becomes, an applicant and whose prescribed date is earlier than the commencement of this section.

Persons who, subject to section 15, may apply

10. Section 14 of the Principal Act is amended by omitting from subparagraph (2) (b) (ii) “3” and substituting “12”.

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Assistance not payable unless certain conditions satisfied

11. (1) Section 17 of the Principal Act is amended by inserting in subsection (4) “has had his or her principal place of residence in Australia during the period of 12 months immediately preceding his or her prescribed date and” after “one of the joint applicants”.

(2) The amendment made by subsection (1) does not apply in relation to an applicant whose prescribed date is earlier than the commencement of this section.

Adjustment of payments of assistance

12. Section 37 of the Principal Act is amended by omitting subsection (6) and substituting the following subsection:

“(6) Without limiting the generality of subsection (1), where:

(a) an amount of assistance has been paid in respect of a dwelling; and

(b) either of the following subparagraphs applies:

(i) a contract for the purchase of the dwelling was entered into by the applicant or applicants that provided for the payment of the whole or a part of the purchase price by instalments and, before the end of 12 months after the prescribed date in relation to the applicant or applicants, the contract is discharged otherwise than by performance of the contract;

(ii) a contract for the purchase of the dwelling that provided for the payment of the whole or a part of the purchase price by instalments was not entered into by the applicant or applicants but any of the circumstances referred to in paragraph 35 (2) (a) or (b) occurs;

the amount of assistance is to be treated for the purposes of this section as if it should not have been paid.”.

**PART 5—AMENDMENTS OF THE HEALTH INSURANCE ACT
1973**

Principal Act

13. In this Part, “Principal Act” means the *Health Insurance Act 1973*⁴.

Interpretation

14. Section 3 of the Principal Act is amended:

(a) by omitting from subsection (1) the definition of “eligible overseas representative” and substituting the following definition:

“‘eligible overseas representative’ means a person who is:

(a) the head of a diplomatic mission of another country, or the head of a consular post of another country, established in Australia; or

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(b) a member of the staff of such a diplomatic mission, or a member of the staff of such a consular post; or

(c) a member of the family of a person referred to in paragraph (a) or (b), being a member who forms part of the household of that person;

being a person who is neither an Australian citizen nor a person domiciled in Australia but who, under an agreement between the Government of the Commonwealth and the Government of that other country, is to be treated, for the purpose of the provision of medical, hospital and other care, as if the person were an Australian resident;”;

(b) by omitting “in an operating theatre of a hospital” from paragraph (b) of the definition of “professional service” in subsection (1);

(c) by inserting “other than a pathology laboratory” after “to premises” in the definition of “proprietor” in subsection (1);

(d) by inserting in subsection (1) the following definition:

“**‘officer’**, in relation to the Commission, means a member of the staff of the Commission referred to in subsection 28 (1) of the *Health Insurance Commission Act 1973*;”;

(e) by inserting in subsection (1) the following definition:

“**‘proprietor’**, in relation to a pathology laboratory, means the person or authority having effective control of:

(a) the laboratory premises, whether or not the holder of an estate or interest in the premises; and

(b) the use of equipment used in the laboratory; and

(c) the employment of staff in the laboratory;”.

References to RACGP may be varied

15. Section 3H of the Principal Act is amended:

(a) by omitting “The Minister may, by notice published in the *Gazette*, determine” and substituting “The regulations may declare”;

(b) by omitting “determination” (wherever occurring) and substituting “declaration”.

Disadvantaged persons, being persons in receipt of unemployment benefit, job search allowance or formal training allowance

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

(a) by omitting from paragraph (1) (a) “or job search allowance” and substituting “, job search allowance or formal training allowance”;

(b) by omitting from paragraph (1A) (b) “or job search allowance” and substituting “, job search allowance or formal training allowance”;

(c) by omitting from subsection (2) “or a job search allowance” and substituting “, a job search allowance or a formal training allowance”;

(d) by omitting from paragraph (2) (b) “or the job search allowance”

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and substituting “, the job search allowance or the formal training allowance”;

(e) by inserting in subsection (8) the following definition:

“‘formal training allowance’ means payments made by the Commonwealth known as formal training allowance;”.

Interpretation

17. Section 23DA of the Principal Act is amended by inserting “other than the Commission” after “body corporate” (first occurring) in the definition of “officer” in subsection (1).

Request forms and confirmation forms

18. Section 23DK of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

“(3) An approved pathology practitioner must, if requested to do so by the General Manager of the Commission, produce to an officer of the Commission, as soon as practicable and in any case before the end of the day after the day on which the request is made by the General Manager, a written request or a written confirmation of a kind required to be retained by the approved pathology practitioner under subsection (1) or (2).”.

Claims for grants

19. Section 45 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) Claims for payments under this Part must be submitted to such persons, in such manner, and at such times, as the Minister directs.”.

Statements inadmissible as evidence

20. Section 129AAC of the Principal Act is amended by omitting from subsection (1) “an officer of the Commission” and substituting “a person who at the time was both an officer of the Commission and a medical practitioner, a dental practitioner or an optometrist”.

Officers to observe secrecy

21. Section 130 of the Principal Act is amended by inserting in subsection (1) “or for the purpose of enabling a person to perform functions under the *Health Insurance Commission Act 1973*” after “under this Act” (first occurring).

PART 6—AMENDMENTS OF THE NATIONAL HEALTH ACT 1953

Principal Act

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

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Interpretation

23. Section 4 of the Principal Act is amended by omitting “section 40ABA” from paragraph (a) of the definition of “short-term respite care patient” in subsection (1) and substituting “section 40AB”.

Interpretation

24. Section 39 of the Principal Act is amended by inserting the following definition:

“‘**approved operator**’ means a person in relation to whom an approval under section 39BA is in force;”.

25. (1) After section 39B of the Principal Act the following sections are inserted:

Approved operators in relation to approved nursing homes

“39BA. (1) A person may apply, in the authorised form, for approval by the Minister as an approved operator in relation to approved nursing homes.

“(2) Where the Minister is satisfied that the applicant would be a suitable person to be the proprietor of an approved nursing home, the Minister is to approve the person as an approved operator in relation to approved nursing homes.

“(3) The Minister, in exercising his or her powers under subsection (2), must comply with any relevant principles in force under subsection (4).

“(4) The Minister may formulate principles to be complied with by the Minister with respect to his or her powers under subsection (2).

“(5) If the Minister does not grant an approval in accordance with an application under this section, the Minister must refuse the application and notify the applicant, in writing, of the refusal and the reason for the refusal.

“(6) Principles formulated under subsection (4) are to be laid before each House of the Parliament within 15 sitting days of that House after the principles are formulated and take effect only as provided by the following provisions of this section.

“(7) If:

(a) notice of a motion to amend the principles is given in either House of the Parliament within 15 sitting days after the principles have been laid before that House; and

(b) the principles, whether or not as amended, are subsequently approved by that House; and

(c) the other House approves the principles in the form approved by the first-mentioned House;

the principles take effect in the form so approved from the day on which that other House approves the principles in that form.

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“(8) If no notice of a motion to amend the principles is given in the House of Representatives or the Senate within 15 sitting days of the particular House after the principles have been laid before that House, the principles take effect from the day immediately after that 15th sitting day or, where that day differs in respect of each House, the later of those days.

Revocation of approval

“39BB. (1) Where the Minister:

- (a) is of the opinion that a person who is an approved operator may not, or may no longer, be a suitable person to be the proprietor of an approved nursing home; and
- (b) is considering revoking the person’s approval as an approved operator; the Minister may, by notice in writing given to the person, inform the person of that fact and the reason why the Minister has formed that opinion.

“(2) A person who receives a notice under subsection (1) may within 14 days after the receipt of the notice make a written submission to the Minister stating reasons why, in the opinion of the person, the approval should not be revoked.

“(3) If the Minister, after considering any submission so made or, if no submission is made, after the period of 14 days referred to in subsection (2), is satisfied that the person is not, or is no longer, a suitable person to be the proprietor of an approved nursing home, the Minister may revoke the approval of the person to be an approved operator.

“(4) The Minister, in exercising powers under this section, must comply with any relevant principles in force under subsection (5).

“(5) The Minister may formulate principles to be complied with by the Minister with respect to powers under this section.

“(6) Where the Minister revokes the approval of a person under this section, the Minister is to notify the person, in writing, accordingly.

“(7) Principles formulated under subsection (5) are to be laid before each House of the Parliament within 15 sitting days of that House after the principles are formulated and take effect only as provided by the following provisions of this section.

“(8) If:

- (a) notice of a motion to amend the principles is given in either House of the Parliament within 15 sitting days after the principles have been laid before that House; and
- (b) the principles, whether or not as amended, are subsequently approved by that House; and
- (c) the other House approves the principles in the form approved by the first-mentioned House;

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the principles take effect in the form so approved from the day on which that other House approves the principles in that form.

“(9) If no notice of a motion to amend the principles is given in the House of Representatives or the Senate within 15 sitting days of the particular House after the principles have been laid before that House, the principles take effect from the day immediately after that 15th sitting day or, where that day differs in respect of each House, the later of those days.”.

(2) A person who, immediately before the commencement of this section, was the proprietor of an approved nursing home or the holder of a certificate in force under section 39A or 39B is to be taken to be a person in relation to whom there is in force an approval under section 39BA of the Principal Act as amended by this Act, but the approval may be revoked under the Principal Act as amended by this Act.

Approval of nursing home

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

(a) by inserting after paragraph (6)(aa) the following paragraph:

“(ab) a condition that there is in force in relation to the proprietor of the nursing home an approval under section 39BA;”;

(b) by inserting after paragraph (6) (bb) the following paragraphs:

“(bc) a condition that:

(i) an agreement substantially in the form determined under section 40ABB is to be in force between the proprietor and each qualified nursing home patient of the nursing home; or

(ii) if for any reason a patient does not enter into such an agreement, the proprietor is to comply with any requirement made by the Minister in respect of such a patient or patients, by notice in writing given to the proprietor, being a requirement that is consistent with the Charter of Residents’ Rights and Responsibilities formulated under section 45F;

(bd) a condition that the proprietor is to comply with an agreement in force referred to in paragraph (bc);”;

(c) by omitting paragraphs (6) (cb) and (cc) and substituting the following paragraphs:

“(cb) a condition that, where the proprietor of the nursing home:

(i) enters into an agreement under subsection 4AA (2) or is given a notice under such an agreement; or

(ii) enters into an agreement referred to in paragraph (bc);

the proprietor, subject to any request made under paragraph (cc), is to file the agreement or notice, and keep the

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agreement or notice filed, with the records of the nursing home kept in compliance with section 61;

(cc) a condition that, where the Minister, by notice in writing served on the proprietor of the nursing home, requests the proprietor to produce to an officer of the Department specified in the request, in accordance with the request, such documents, being:

(i) agreements entered into by the proprietor under subsection 4AA (2) or notices given to the proprietor under such agreements; or

(ii) agreements referred to in paragraph (bc) entered into by the proprietor;

as are specified in the request, the proprietor is to comply with the request to the extent that the proprietor is capable of doing so;"

(d) by inserting after paragraph (6) (ce) the following paragraphs:

"(cf) a condition that the proprietor of the nursing home is to allow a person authorised for the purposes of this paragraph to enter the nursing home at any reasonable time for the purpose of ascertaining whether the nursing home care provided in the nursing home satisfies the standards determined under section 45D and is to provide the authorised person with all reasonable facilities and assistance, including access to patients, staff and documents, in achieving that purpose;

(eg) a condition that the proprietor of the nursing home is to allow a person who is designated by the Minister to be a community visitor in relation to the nursing home to enter the nursing home at any reasonable time:

(i) for the purpose of meeting with patients; and

(ii) for the purpose of observing the nursing home care provided;

and is to provide the person with all reasonable facilities and assistance, including access to patients and staff, in achieving those purposes;

(ch) a condition that the proprietor of the nursing home is to allow a person authorised for the purposes of this paragraph to enter the nursing home at any reasonable time for purposes relating to the review of the classification of a nursing home patient under section 40AFE or a review under section 40AFF and is to provide that person with all reasonable facilities and assistance, including access to patients, staff and documents, in achieving those purposes;

(cj) a condition that the proprietor of the nursing home is to allow a person (not being an officer of the Department)

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engaged in the provision of advocacy services on behalf of patients of nursing homes, being a person who is, or who is employed by a person or group of persons who are, approved by the Minister to provide such advocacy services, to enter the nursing home at any reasonable time for the purpose of meeting with patients and is to provide the person with all reasonable facilities and assistance in achieving that purpose;”;

(e) by inserting after subsection (6B) the following subsections:

“(6BA) A person who is a community visitor referred to in paragraph (6)(cg) may inform an officer of the Department or the proprietor of the relevant nursing home of any matter relating to the provision of nursing home care in the nursing home that comes to the notice of the person, including matters brought to the person’s notice by a patient.

“(6BB) Despite the provisions of any State law, a person, including the proprietor of a nursing home, may do anything reasonably required to enable compliance with a condition specified in subsection (6).”;

(f) by omitting subsection (10).

Approval of admission to approved nursing home

27. Section 40AB of the Principal Act is amended:

- (a) by omitting from subsection (2) “shall” and substituting “may”; and
- (b) by inserting after subsection (2) the following subsection:

“(2A) A certificate given under subsection (2) is to be taken into account by the Minister in considering an application.”.

28. After section 40AB of the Principal Act the following section is inserted:

Agreement between proprietor and patient

“40ABB. (1) The Minister may formulate a common form of agreement that may be entered into between the proprietor of an approved nursing home and a person in relation to whom an approval for admission to an approved nursing home has been given under subsection 40AB (3), being a form of agreement relating to the care of the person as a patient of the approved nursing home.

“(2) A form of agreement formulated by the Minister must be consistent with the statement formulated under section 45F and may make provision in relation to such matters as the Minister considers appropriate.

“(3) Without limiting the generality of subsection (2), a form of agreement so formulated may make provision in relation to:

- (a) fees and other charges to be imposed by the proprietor in respect

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- of the provision of accommodation and care in the nursing home;
and
- (b) the services that are to be provided for the patient by the proprietor;
and
 - (c) the nature of the occupancy of the patient of the nursing home and the circumstances (if any) in which that occupancy may be altered or terminated by the proprietor; and
 - (d) participation of the patient in decision-making relating to care of patients and quality of life issues in the nursing home; and
 - (e) the resolution of disputes (if any) between the patient and the proprietor.

“(4) A form of agreement formulated by the Minister is to be laid before each House of the Parliament within 15 sitting days of that House after it is formulated and takes effect only as provided by the following provisions of this section.

“(5) If:

- (a) notice of a motion to amend the form of agreement is given in either House of the Parliament within 15 sitting days after it has been laid before that House; and
- (b) the form of agreement, whether or not as amended, is subsequently approved by that House; and
- (c) the other House approves it in the form approved by the first-mentioned House;

the form of agreement takes effect in the form so approved from the day on which that other House approves it in that form.

“(6) If no notice of a motion to amend the form of agreement is given in the House of Representatives or the Senate within 15 sitting days of the particular House after it has been laid before that House, the form of agreement takes effect from the day immediately after that 15th sitting day or, where that day differs in respect of each House, the later of those days.”.

Repeal

29. Section 40ABA of the Principal Act is repealed.

30. After section 45D of the Principal Act the following section is inserted:

Statements may be published in relation to approved nursing homes

“45DA. (1) The Minister may, from time to time, prepare and publish a statement containing all or any of the relevant information in relation to each approved nursing home.

“(2) The following is relevant information for the purposes of subsection (1):

- (a) information relating to whether the standards referred to in section

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45D have been satisfied in the provision of nursing home care in the nursing home;

- (b) the level of nursing home care provided in the nursing home by reference to those standards;
- (c) the number of beds in the nursing home and the physical size of the nursing home;
- (d) the location of the nursing home and its proximity to community facilities, for example, public transport, shops, libraries and community centres;
- (e) services provided in the nursing home;
- (f) fees imposed, and charges made, in the nursing home;
- (g) activities at the nursing home in which patients may participate;
- (h) the name of the proprietor of the nursing home.

“(3) Without limiting the means by which a statement is able to be published, a copy of a statement is to be made available for public inspection at each office of the Department.

“(4) The information contained in a statement must not be such as to enable the identification of an individual patient of a nursing home.

“(5) Before publishing a statement under this section, the Minister must allow the proprietor of the nursing home not less than 30 days to consider the statement and to make submissions to the Minister in relation to the content of the statement.

“(6) Where it appears to the Minister in the light of any submission made by the proprietor that the content of the statement should be altered, the Minister is to alter the statement accordingly before it is published.”.

31. After section 45E of the Principal Act the following section is inserted in Part V:

Charter of Residents’ Rights and Responsibilities

“45F. (1) The Minister may formulate a statement of the rights and responsibilities of the patients of approved nursing homes.

“(2) The statement, which if approved by both Houses of the Parliament is to be known as the Charter of Residents’ Rights and Responsibilities in Approved Nursing Homes, is to set out the rights and responsibilities of patients in relation to approved nursing homes as formulated by the Minister and regarded by the Minister as appropriate for inclusion in the statement.

“(3) Without limiting the generality of subsection (2), the Charter may state that the patient has:

- (a) a right to be treated as an individual; and
- (b) a right to personal independence; and
- (c) a right to privacy; and

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- (d) a right of access to all documents relating to the patient; and
- (e) a responsibility to respect the rights of others.

“(4) A copy of the statement is to be laid before each House of the Parliament within 15 sitting days of that House after the statement is formulated and takes effect only as provided by the following provisions of this section.

“(5) If:

- (a) notice of a motion to amend the statement is given in either House of the Parliament within 15 sitting days after the statement has been laid before that House; and
- (b) the statement, whether or not as amended, is subsequently approved by that House; and
- (c) the other House approves the statement in the form approved by the first-mentioned House;

the statement takes effect in the form so approved from the day on which that other House approves the statement in that form.

“(6) If no notice of a motion to amend the statement is given in the House of Representatives or the Senate within 15 sitting days of the particular House after the statement has been laid before that House, the statement takes effect from the day immediately after that 15th sitting day or, where that day differs in respect of each House, the later of those days.”

Approval of person as approved person in relation to a patient

32. Section 58E of the Principal Act is amended by omitting subsection (6) and substituting the following subsection:

“(6) An approval under this section must specify the date on which it is to take effect, which may be earlier than the date on which the approval is given but must not be earlier than:

- (a) if the Secretary is satisfied that an earlier application has been lost, being an application that the Secretary would have approved under this section—one day after whichever of the following is the later:
 - (i) the date on which, as determined by the Secretary, the certificate referred to in subparagraph (1) (c) (i) was given for the purposes of the earlier application;
 - (ii) the date on which, as determined by the Secretary, the certificate referred to in subparagraph (1) (c) (ii) was given for the purposes of that application; or
- (b) if the Secretary is satisfied that the application to which the approval relates has been delayed by a person who has given a certificate referred to in paragraph (1) (c) for the purposes of the application—the date on which the application is received or a date 14 days after the date, as determined by the Secretary, on which the person who

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- first gave such a certificate was requested to give the certificate, whichever is the earlier; or
- (c) in any other case—the date on which the application to which the approval relates is received.”.

Determination of special patient contribution in respect of certain drugs etc.

33. Section 85B of the Principal Act is amended:

- (a) by omitting paragraph (1) (c) and substituting the following paragraph:

“(c) the quantity or number of units of the pharmaceutical benefit relevant for the purpose of determining an amount referred to in paragraph (d) or (e); and”;

- (b) by adding at the end of subsection (1) the following word and paragraph:

“; and (e) the amount that is, for the purposes of this Part, to be taken to be:

(i) in a case to which subparagraph (a) (i) applies—the price claimed by the manufacturer as the manufacturer’s price for sales of the form of the drug or medicinal preparation to approved pharmacists; or

(ii) in a case to which subparagraph (a) (ii) applies—the price claimed by the manufacturer as the manufacturer’s price for sales of the pharmaceutical benefit to approved pharmacists.”;

- (c) by omitting subsection (2) and substituting the following subsection:

“(2) The amount that is, for the purposes of this Part, to be taken to be the special patient contribution in relation to the supply of a pharmaceutical benefit to which this section applies is an amount calculated using the formula:

$$\text{MCP} - \text{CP}$$

where:

‘MCP’ [Manufacturer’s Commonwealth Price] means the price that would have been the Commonwealth price referred to in section 99 in relation to the supply of the pharmaceutical benefit if that price had been based on the price determined by the Minister under subsection 85B (1) to be the price claimed by the manufacturer as the manufacturer’s price for sales of that benefit;

‘CP’ [Commonwealth Price] means the Commonwealth price referred to in section 99 in relation to the supply of the pharmaceutical benefit.”.

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Limited charges for pharmaceutical benefits

34. Section 87 of the Principal Act is amended:

- (a) by omitting from subsection (2) "An approved pharmacist" and substituting "Subject to subsection (2A), an approved pharmacist";
- (b) by omitting from subsection (2) "(other than a pharmaceutical benefit in respect of which there is in force a determination under section 85B)";
- (c) by omitting subsection (2A) and substituting the following subsection:

“(2A) In addition to any amount that may be charged in accordance with subsection (2), an approved pharmacist or an approved medical practitioner acting in accordance with his or her approval may, in respect of each supply (including each repeated supply) of a pharmaceutical benefit in respect of which there is in force a determination under section 85B, charge the person to whom it is supplied an amount equal to the amount calculated under subsection 85B (2) to be the special patient contribution in relation to the supply of that benefit.”;
- (d) by omitting from subsection (3) "or (2A), as the case requires" and "or (2A), as the case may be";
- (e) by omitting from subsection (5) "subsection (2) or (2A), as the case requires" and substituting "subsections (2) and (2A)".

35. After section 87 of the Principal Act the following section is inserted:

Entitlement to refund in certain circumstances

"87A. (1) This section applies where:

- (a) under this Act an approved supplier charges a person an amount in respect of a supply of a pharmaceutical benefit, being a person who is a concessional beneficiary, a dependant of a concessional beneficiary, a pensioner, a dependant of a pensioner, the holder of an entitlement card or a person who is eligible to be issued with an entitlement card; and
- (b) the information referred to in section 84AA relevant to that person was not written or marked on the prescription upon which the pharmaceutical benefit was supplied.

"(2) If the Secretary is satisfied:

- (a) that the failure to write or mark the relevant information on the prescription occurred otherwise than through inadvertence; and
- (b) that in the circumstances, including the circumstance that the person was incapable at the relevant time of providing the information, the person should be treated as if the relevant information had been written or marked on the prescription;

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the person is entitled to be paid by the Commonwealth an amount equal to any amount that he or she paid that would not have been payable if the relevant information had been so written or marked.”.

Payment for supply of benefits

36. Section 99 of the Principal Act is amended:

- (a) by omitting from subsection (2) “(other than a pharmaceutical benefit in respect of which there was in force, at the time of supply, a determination under section 85B)”;
- (b) by omitting from paragraphs (2A) (a) and (aa) all the words after “does not, at the time of the supply,” and substituting “exceed \$11.00; or”;
- (c) by omitting from paragraph (2A) (b) all the words after “does not, at the time of the supply,” and substituting “exceed \$11.00;”;
- (d) by omitting from paragraphs (2B) (a) and (b) all the words after “does not, at the time of the supply,” and substituting “exceed \$2.50; or”;
- (e) by omitting from paragraph (2B) (c) all the words after “does not, at the time of the supply,” and substituting “exceed \$2.50;”;
- (f) by omitting subsection (2C).

Applications for review by Tribunal of certain decisions under Part V

37. Section 105AAB of the Principal Act is amended by inserting in subsection (1) “section 39BA, or 39BB,” after “Minister, under”.

Officers to observe secrecy

38. Section 135A of the Principal Act is amended by inserting in subsection (1) “or for the purpose of enabling a person to perform functions under the *Health Insurance Commission Act 1973*” after “under this Act” (first occurring).

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

Principal Act

39. In this Part, “Principal Act” means the *Nursing Homes Assistance Act 1974*⁶.

Interpretation

40. Section 3 of the Principal Act is amended by inserting in subsection (1) the following definition:

“‘Committee processing fee’ means the fee referred to in subsection 15F (1) payable by the proprietor of a nursing home;”.

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41. (1) After section 15 of the Principal Act the following sections are inserted:

Request for review

“15A. (1) A request to the Minister for a review referred to in subsection 14 (1):

- (a) is to be made only on the appropriate authorised form; and
- (b) is to be made within 42 days after the day on which notice of the Secretary’s decision is served on the proprietor of the nursing home.

“(2) The request is to be taken not to have been made if the proprietor does not, in the request, authorise the deduction of:

- (a) the lodgment fee of \$500 or, if the Minister has, by notice, fixed another amount, that other amount; and
- (b) the Committee processing fee;

from any amount or amounts payable to the proprietor under an agreement entered into under section 15 or under Part VA of the *National Health Act 1953*.

“(3) Where a proprietor has, in a request, authorised the deduction of the lodgment fee payable by the proprietor from any such amount or amounts, the amount of the lodgment fee may be deducted accordingly.

“(4) A notice under paragraph (2) (a) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Request for review may be withdrawn

“15B. Where the proprietor of a nursing home has requested the Minister to review a decision, the request may, at any time before the Minister has confirmed or varied the decision, be withdrawn by notice in writing signed by the proprietor and lodged with the Secretary.

Refund of lodgment fee

“15C. (1) Where:

- (a) a proprietor has requested the Minister to review a matter; and
- (b) the lodgment fee has been deducted under subsection 15A (3) from any amount or amounts payable to the proprietor;

the lodgment fee is to be refunded to the proprietor if:

- (c) the request is withdrawn under section 15B before the end of the period of 42 days after the last day on which such a request could have been made; or
- (d) the decision is varied by the Minister in a manner wholly or substantially favourable to the proprietor.

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“(2) If, before the lodgment fee has been deducted under subsection 15A (3):

- (a) the request is withdrawn under section 15B within the period referred to in paragraph (1) (c); or
- (b) the decision is varied by the Minister in a manner that is wholly or substantially favourable to the proprietor;

the lodgment fee is not to be so deducted.

Referral of request to a Nursing Homes Advisory Committee

“15D. (1) Where a request for a review has not been withdrawn under section 15B, the Minister must, not earlier than the end of the period of 42 days after the last day on which such a request could have been made, refer the matter to the appropriate Nursing Homes Advisory Committee in accordance with the agreement under section 15.

“(2) The Minister must not refer the matter to the Committee unless the proprietor has provided the Minister with:

- (a) a statement setting out fully and in detail the reasons for the request; and
- (b) a copy of such accounts, books, documents and records as are relevant to the review of the decision by the Minister; and
- (c) such information or documents as the Minister specifies under subsection (3).

“(3) The Minister may, by notice published in the *Gazette*, specify information or documents that are to be provided to the Minister for the purposes of a review.

“(4) The Minister may, by notice in writing given to the proprietor, require the proprietor to supply to the Minister such further information or documents as the Minister considers necessary for the purpose of deciding the request and the Minister may refuse to refer the matter to the Committee until that information or those documents, as the case requires, are supplied to the Minister.

Report of Committee

“15E. Without limiting the generality of the matters that may be included in the report of the Committee, such a report is to contain a report of the days, and the hours in those days, during which the Committee met to examine the matter that is the subject of the report and is to specify the fee payable by the proprietor of the nursing home to which the report relates, being the fee calculated under section 15F.

Committee processing fee

“15F. (1) The amount of the Committee processing fee is to be:

- (a) if the relevant period does not exceed 4 hours—the prescribed amount; or

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(b) if the relevant period exceeds 4 hours:

- (i) in respect of each period of 4 hours included in the relevant period—the prescribed amount; and
- (ii) if the relevant period includes an additional period of less than 4 hours—the prescribed amount in respect of that additional period.

“(2) The amount of the Committee processing fee is not to exceed \$1,000 per day, or, if the Minister has, by notice, fixed another amount, that other amount.

“(3) Where a proprietor has in a request for review, authorised the deduction of the Committee processing fee payable to the proprietor from any amount or amounts payable to the proprietor, the amount of the Committee processing fee may be deducted from the payment of any such amount or amounts.

“(4) The Committee processing fee may be recovered by the Commonwealth in a court of competent jurisdiction as a debt due and payable to the Commonwealth.

“(5) A notice referred to in subsection (2) and in the definition of ‘prescribed amount’ in subsection (6) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

“(6) In this section:

‘prescribed amount’ means \$500 or, if the Minister has, by notice, fixed another amount, that other amount;

‘relevant period’ means the period, or the aggregate of the periods, during which the Committee met to examine the matter that is the subject of the Committee’s report.

Ministerial review of decisions

“15G. The Minister must, after such investigation of the matter as the Minister considers necessary, either confirm or vary the decision of the Secretary, and advise the proprietor accordingly.

Refund of Committee processing fee etc.

“15H. Where:

- (a) a proprietor has requested the Minister to review a decision; and
- (b) the decision is varied in a manner that is wholly or substantially favourable to the proprietor;

then:

- (c) if the Committee processing fee has been deducted under subsection 15F (3)—the fee must be refunded to the proprietor; and
- (d) if the Committee processing fee has not been so deducted—the fee must not be deducted.”.

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- (2) Where:
- (a) before the commencement of this section a proprietor had, under an agreement entered into under section 15 of the Principal Act, requested the Minister to review a matter; and
 - (b) the request had not, before that commencement, been referred to the appropriate Nursing Homes Advisory Committee;
- the Minister must, by notice in writing given to the proprietor of the nursing home, notify the proprietor that unless the proprietor, not later than 28 days after receipt of the Minister's notice, authorises the Minister to proceed with the request, the request is to be taken to have been withdrawn.
- (3) Where the proprietor does not authorise the Minister to proceed with the request as required by subsection (2), the request is to be taken to have been withdrawn.
- (4) Where the proprietor authorises the Minister to proceed with the request under subsection (2):
- (a) the request is to be taken to have been validly made under the agreement; and
 - (b) the fee specified in the Committee's report may be deducted from any amount or amounts payable to the proprietor under the agreement; and
 - (c) in the case of an authorisation that relates to a request made on or after 24 August 1988, an authorisation lodgment fee of \$500 may be deducted from any amount or amounts payable to the proprietor under the agreement.

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; Nos. 72 and 132, 1987; Nos. 79, 99 and 155, 1988; and No. 87, 1989.
2. No. 87, 1989.
3. No. 46, 1983, as amended. For previous amendments, see No. 23, 1985; Nos. 38 and 155, 1988; and No. 59, 1989.
4. No. 42, 1974, as amended. For previous amendments, see No. 58, 1975; Nos. 59, 91, 101, 109 and 157, 1976; No. 75, 1977; Nos. 36, 89 and 133, 1978; Nos. 53 and 123, 1979; No. 132, 1980; Nos. 118 and 176, 1981; Nos. 49, 80 and 112, 1982; Nos. 54 and 139, 1983; Nos. 15, 46, 63, 120, 135 and 165, 1984; Nos. 24, 65, 70, 95 and 167, 1985; Nos. 28, 75 and 94, 1986; Nos. 44, 131, 132 and 141, 1987; Nos. 85, 87, 99 and 155, 1988; and No. 95, 1989.
5. 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.

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NOTES—continued

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; Nos. 22, 44, 72, 118, 131 and 132, 1987; Nos. 79, 87, 99 and 155, 1988; and No. 95, 1989.

6. No. 147, 1974, as amended. For previous amendments, see No. 91, 1976; No. 100, 1977; No. 118, 1980; No. 118, 1981; Nos. 26 and 80, 1982; No. 139, 1983; No. 63, 1984; Nos. 24, 52 and 65, 1985; No. 115, 1986; No. 72, 1987; and No. 95, 1989.

[*Minister's second reading speech made in—
House of Representatives on 21 November 1989
Senate on 12 December 1989*]