



Health and Community Services Legislation Amendment Act (No. 3) 1992

No. 204 of 1992

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Health and Community Services Legislation Amendment Act (No. 3) 1992

No. 204 of 1992

An Act to amend legislation relating to health and community services

[Assented to 21 December 1992]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 1. This Act may be cited as the *Health and Community Services
Legislation Amendment Act (No. 3) 1992*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

**PART 2—AMENDMENTS OF THE AGED
OR DISABLED PERSONS CARE ACT 1954**

Principal Act

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

5

Interpretation

4. Section 2 of the Principal Act is amended:

(a) by omitting “, hostel care services and personal care services, or respite care services,” from the definition of “hostel place” in subsection (1) and substituting “and personal care services”;

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(b) by omitting “respite care services” from the definition of “respite care place” in subsection (1) and substituting “care services”;

(c) by omitting from subsection (1) the definitions of “relevant care services” and “respite care services”;

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

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“**care service standards**” means the standards set out in the General Conditions as standards to be met in the provision of hostel care services and personal care services;

“**care services**” means hostel care services and personal care services;”.

20

“**Orders**” means the Orders made by the Minister under section 10FH;”.

Purpose

5. Section 3 of the Principal Act is amended by omitting from paragraph (1)(b) “and respite care services”.

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Authority to provide financial assistance

6. Section 10C of the Principal Act is amended by omitting from subsection (1) all the words after “of” (last occurring) and substituting “hostel care services and personal care services”.

Insertion of new section

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7. After section 10D of the Principal Act the following section is inserted:

Payments of financial assistance if a declaration under section 10FI is in force

“10DAA.(1) If the Minister has made a declaration in respect of a hostel under section 10FI, the Minister may, by written notice served on the proprietor, determine that the following rules apply in respect of the payment of financial assistance under section 10D, in respect of the hostel for the period that the declaration operates:

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5 (a) as long as the person who occupied an approved hostel place or an approved respite care place in the hostel on the day the Minister made the declaration continues to occupy that place, the amount of financial assistance and the circumstances in which it becomes payable to the organisation in respect of the place, is as provided for in section 10D;

(b) in either of the following circumstances, the place is taken to be unoccupied for the purposes of section 10D:

10 (i) in the case where the person is occupying an approved hostel care place—if the person ceases to permanently reside in the hostel;

15 (ii) in the case where the person is occupying an approved respite care place—if the person leaves the hostel (other than as part of the respite care stay in the hostel) or begins residing in the hostel permanently.

“(2) The place is taken to be unoccupied for the purposes of section 10D:

(a) in the case of subparagraph (1)(b)(i)—from the day after the person ceases to reside permanently in the hostel; and

20 (b) in the case of subparagraph (1)(b)(ii)—from either the day after the person leaves the hostel or the day the person begins residing permanently in the hostel, as the case may be.

25 “(3) Subsection (1) cannot operate so as to make financial assistance payable to an organisation if, apart from this section and section 10D, that financial assistance would not otherwise be payable.”.

Insertion of new Divisions

8. After Division 4 of Part III of the Principal Act the following Divisions are inserted:

“Division 5—Hostel Standards Review Panels

30 **Establishment**

“10FD. The Minister may establish a Hostel Standards Review Panel for each State, the Australian Capital Territory and the Northern Territory.

Functions

35 “10FE.(1) The functions of a Hostel Standards Review Panel for a State or Territory are:

(a) to review and to report, in writing, to the Minister on the operation of an approved hostel in relation to which the Minister proposes to make a declaration under section 10FI; and

40 (b) to undertake such other functions as the Minister directs.

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“(2) The Panel is to perform its functions:

- (a) at the Minister’s direction; or
- (b) at the written request of an approved operator of an approved hostel in relation to which the Minister proposes to make a declaration under section 10FI.

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“(3) In conducting the review, the Panel is to consider whether the care service standards are being met in respect of the provision of care services.

“(4) The Panel’s report is to include its findings and the reasons for those findings.

10

“(5) In making a report referred to in paragraph (1)(a), the Panel must recommend, on the basis of its findings and the reasons for those findings:

- (a) whether the Minister should make a declaration under section 10FI in respect of the approved hostel; and
- (b) whether the Minister should make a determination under section 10DAA and for how long the determination should remain in force; and
- (c) whether the Panel’s report should be released to the approved operator, the hostel staff and the hostel residents.

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20

“(6) A reference in this section to a ‘Territory’ is a reference to the Australian Capital Territory or the Northern Territory.

Powers

“10FF. Subject to this Part, a Hostel Standards Review Panel has power to do all things necessary or convenient to be done in connection with the performance of its functions.

25

Performance of a Hostel Standards Review Panel’s functions

“10FG. In performing its functions, a Hostel Standards Review Panel:

- (a) must act with as little formality as possible; and
- (b) must act as quickly as is appropriate given the requirements of this Part and the need to properly consider a matter before it; and
- (c) is not bound by the rules of evidence; and
- (d) may inform itself on anything relevant to the matter before it in any way it thinks fit; and
- (e) may receive information or submissions orally or by written statements; and
- (f) may, in respect of a matter before it, consult such persons as it thinks fit.

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Minister may make Orders

“10FH. The Minister may make Orders providing for the following matters:

- 5 (a) the notice requirements to be complied with before the Minister makes a declaration under section 10FI;
- (b) the procedures to be followed before a Hostel Standards Review Panel conducts a review under section 10FE;
- (c) the procedures to be followed by the Panel in conducting the review;
- 10 (d) the appointment, terms and conditions of appointment, resignation and termination of appointment of Panel members;
- (e) the duties associated with holding office as a Panel member;
- (f) any other matter relating to the establishment or the operation of a Panel in relation to which it is necessary or convenient to
15 make an Order under this section.

“Division 6—Failure to meet care service standards in the provision of care services

Declaration of failure to meet standards

“10FI.(1) If:

- 20 (a) an approved operator is receiving a grant of financial assistance under this Part in respect of the provision of care services in a hostel; and
- (b) the operator is not meeting the care service standards in respect of the provision of the services as required by the General
25 Conditions;

the Minister may make a declaration stating that the operator is not meeting the standards in respect of the provision of the services in the hostel and, consequently, is in breach of the General Conditions.

- 30 “(2) The declaration must specify the hostel in respect of which the operator is not meeting the care service standards in the provision of care services.

“(3) The Minister must provide a copy of the declaration to the operator concerned.

- 35 “(4) A declaration operates from the day the Minister makes it and remains in force until the day the Minister revokes it.

- 40 “(5) If the Minister is satisfied that the operator is not meeting the standards in respect of the provision of care services in the hostel, the Minister may take such action as he or she thinks fit under section 10FAA in respect of the hostel whether or not the Minister proposes to, or has taken, action under this section.

Certain matters to occur before Minister makes a declaration

“10FJ.(1) The Minister must not make a declaration under section 10FI in relation to a hostel unless:

- (a) a Hostel Standards Review Panel has been established for the State or Territory in which the hostel is situated; and 5
- (b) any requirements of the Orders have been complied with; and
- (c) if the approved operator of the hostel has applied, under the Orders, to the Panel for a review under section 10FE of the performance of the hostel—the Minister has considered the Panel’s report on the hostel’s performance. 10

“(2) In this section, a reference to ‘Territory’ is a reference to the Australian Capital Territory or the Northern Territory.

Information about Minister’s declaration may be made available to the public

“10FK. Despite the operation of section 10FB, if the Minister has made a declaration under section 10FI in respect of a hostel, the Minister may make public, in any way the Minister thinks fit, any or all of the following information: 15

- (a) the name and address of the hostel (‘declared hostel’) the subject of the declaration; 20
- (b) the name and address of any other hostel that the operator of the declared hostel operates;
- (c) the operator’s business name and address;
- (d) details of the operator’s failure to meet the care service standards in respect of the provision of care services in the declared hostel; 25
- (e) the actions taken by the Minister because of the operator’s failure to meet the standards.”.

Certain instruments are disallowable instruments

9. Section 10K of the Principal Act is amended by inserting after paragraph(f) the following paragraph: 30

“(fa) Orders made under section 10FH;”.

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

Principal Act 35

10. In this Part, “Principal Act” means the *Health Insurance Act 1973*².

Determination of maximum licensed collection centres that may be operated by approved pathology authorities

11. Section 23DNB of the Principal Act is amended by adding at the end the following subsection:

- 5 “(8) Despite the operation of section 23DNC, a determination of the Minister under subsection (1) may be varied or revoked as provided for by subsection 33(3) of the *Acts Interpretation Act 1901*.”.

Determination of circumstances where additional licensed collection centres may operate.

- 10 12. Section 23DNC of the Principal Act is amended by omitting from subsection (2) “the Minister” (second occurring) and substituting “he or she”.

Application for grant of licence

13. Section 23DND of the Principal Act is amended:

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

20 “(2) An application by an approved pathology authority in respect of a specimen collection centre operated immediately before this section commenced must state whether or not the specimen collection centre is a temporary collection centre.”;

(b) by inserting in paragraph (5)(c) “or after” after “on”;

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

 “(8) For the purposes of paragraph (5)(b), if:

25 (a) an approved pathology authority (**‘original authority’**) operates, as part or all of its business, a temporary collection centre; and

(b) the original authority’s business merges with the business of, or is taken over by, another approved pathology authority (**‘new authority’**); and

30 (c) the original authority operated the centre for a period beginning before 1 July 1991 and ending on the day of the merger or takeover; and

(d) the new authority applied for a licence in respect of the centre;

35 the centre is taken to have been continuously operated by the new authority for that period.”.

Grant of licence

14. Section 23DNE of the Principal Act is amended by omitting subsection (5).

**PART 4—AMENDMENTS OF THE NATIONAL HEALTH ACT
1953 RELATING TO THE PAYMENT OF BENEFIT IN RESPECT
OF UPGRADED NURSING HOMES**

Principal Act

15. In this Part, “Principal Act” means the *National Health Act 1953*. 5

Secretary may give information to purchaser of approved nursing home

16. Section 42A of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

“(3) If the Secretary believes that a person is considering buying an approved nursing home, the Secretary may give to the person: 10

(a) any information about the current, or any future, scale of fees determined in respect of the nursing home that, in the Secretary’s opinion, the person ought to know before completing the contract of sale of the nursing home; and 15

(b) information as to whether the proprietor, or a previous proprietor, of the nursing home has received a grant of Commonwealth benefit in respect of the home and the amount of the grant so received.”.

Insertion of new Part 20

17. After Part VAB of the Principal Act the following Part is inserted:

**“PART VAC—COMMONWEALTH BENEFIT IN RESPECT OF
UPGRADED NURSING HOMES**

“Division 1—Preliminary 25

Interpretation

“58. In this Part:

‘AIP’ means an approval-in-principle granted by the Minister under section 58CA;

‘eligible nursing home’ means an approved nursing home that, in accordance with the principles determined by the Minister under section 58A, is eligible for the payment of Commonwealth benefit under section 58CE. 30

Principles applicable to determining eligible nursing homes

“58A. The Minister must set out in writing principles determining whether all, or specified classes of, approved nursing homes are eligible for the payment of the Commonwealth benefit under section 58CE. 35

***“Division 2—Approval-in-principle of a grant in respect of an
upgraded nursing home***

Application for an approval-in-principle

“58B.(1) If:

- 5 (a) the proprietor of an eligible nursing home is an approved operator; and
(b) the proprietor is undertaking, or proposes to undertake, construction work in respect of the home; and
10 (c) the proprietor believes that the work will increase the well-being of the approved nursing home patients resident in the home;

he or she may apply, in writing, to the Minister for an AIP of a grant of Commonwealth benefit under section 58CE in respect of the upgrading work.

15 “(2) An application:

- (a) must be in a form approved by the Minister; and
(b) be accompanied by such further information and documents (if any) as the Minister, in writing, requests the proprietor to provide.

20 **Principles applicable to the grant of an approval-in-principle**

“58C.(1) The Minister must set out in writing:

- (a) principles for determining whether construction work carried out on an eligible nursing home:
25 (i) is substantial upgrading work; and
(ii) will increase the well-being of the qualified nursing home patients resident in the home; and
(b) principles in accordance with which an AIP may be granted.

30 “(2) Without limiting the matters to which the principles may refer, the principles must require the Minister to take into account in deciding whether to grant an AIP, the following matters:

- (a) the proprietor’s record of financial management in respect of an approved nursing home that he or she is, or has been, the proprietor of; and
35 (b) the extent to which the standards determined under section 45D for the provision of nursing home care are met in the nursing home.

Grant of an approval-in-principle

40 “58CA.(1) Upon receiving an application under section 58B, if the Minister is satisfied that the construction work referred to in the application would, when completed:

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- (a) be substantial upgrading work; and
 - (b) increase the well-being of the qualified nursing home patients resident in the home;
- the Minister may, in accordance with the principles set out under paragraph 58C(1)(b), grant an AIP to the applicant. 5
- “(2) The AIP must:
- (a) be in writing; and
 - (b) set out the conditions (if any) to which it is subject; and
 - (c) state that if:
 - (i) the applicant applies under section 58CC within the application period for a grant of Commonwealth benefit in respect of the upgrading of the nursing home that is the subject of the AIP; and 10
 - (ii) at the time of so applying, the work has been completed and paid for; and 15
 - (iii) the applicant has complied with the conditions (if any) set out in the AIP;
- the application for a grant of Commonwealth benefit will not be refused.
- “(3) If the holder of an AIP applies in writing, the Minister may vary the AIP by extending the period referred to in subparagraph (2)(c)(i) by 12 months or such lesser period of time as the Minister thinks fit. 20
- “(4) The Minister must revoke an AIP if the holder of the AIP applies, in writing, to the Minister for the AIP to be revoked.
- “(5) An AIP comes into force on the day on which the Minister grants it and remains in force until the period specified in the AIP expires. 25
- “(6) In this section:
- ‘application period’**, in relation to an AIP means:
- (a) the period of 12 months beginning immediately after the grant of the AIP; or 30
 - (b) if the Minister has varied the AIP under subsection (3) by extending the period referred to in subparagraph (2)(c)(i)—the extended period.
- Minister may revoke an approval-in-principle at any time before an approval of grant is given 35**
- “58CB.(1) The Minister may revoke an AIP in respect of an eligible nursing home if the Minister is of the opinion that a condition of the AIP has not been complied with.
- “(2) Before the Minister revokes the AIP, he or she must give 40 written notice to the holder of the AIP that:

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- (a) states that the Minister is considering revoking it; and
- (b) sets out the condition of the AIP that the Minister thinks has not been complied with; and
- (c) sets out the facts and reasons supporting the Minister's opinion.

5 “(3) The holder of the AIP may, within 14 days after receiving the notice, make a written submission to the Minister stating reasons why the AIP should not be revoked.

 “(4) The Minister may then revoke the AIP if:

- (a) the holder of the AIP did not make a submission; or
- 10 (b) after considering any submission made by the holder of the AIP, the Minister still thinks that a condition of the AIP has not been complied with.

 “(5) The Minister, in exercising powers under subsection (4), must comply with any relevant principles in force under subsection (6).

15 “(6) The Minister may set out in writing principles to be complied with in respect to his or her powers under subsection (4).

 “(7) If the Minister revokes an AIP the Minister must notify the person who held it accordingly.

 “(8) The Minister may revoke an AIP before it expires.

20 “***Division 3—Approval of grant of Commonwealth benefit in respect of upgraded nursing homes***

Application for Commonwealth benefit

 “58CC. If the proprietor of an eligible nursing home holds a current AIP he or she may apply, in writing, to the Minister for the grant of a Commonwealth benefit in respect of the upgrading of the nursing home.

Principles applicable for grant of Commonwealth benefit

 “58CD. The Minister must set out in writing principles for determining the amount of a grant of Commonwealth benefit.

Approval of grant

30 “58CE.(1) Subject to subsection (2), on receiving an application under section 58CC for the grant of a Commonwealth benefit in respect of the upgrading of a nursing home, the Minister may, in accordance with the principles, approve the grant of a Commonwealth benefit to the applicant.

35 “(2) The Minister must not approve the grant of a benefit to an applicant unless the applicant declares in writing that the condition of the AIP referred to in subparagraph 58CA(2)(c)(i) has been complied with.

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Note: The condition requires that the upgrading work on the home be completed and paid for before the persons applies for a grant under section 58CC.

- “(3) The approval of the Minister must be in writing and set out:
- (a) the total amount of the grant; and
 - (b) the rate at which the benefit will be paid; and
 - (c) the period over which the benefit will be paid; and
 - (d) any conditions subject to which the benefit is payable.

5

Entitlement to benefit

“58CF. If the grant of a Commonwealth benefit to the proprietor of an eligible nursing home has been approved by the Minister, the Commonwealth benefit is payable to the proprietor in accordance with the Minister’s approval.

10

Appropriation

“58CG.(1) Subject to subsection (2), payments of Commonwealth benefit under this Part before 1 July 1993 are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

“(2) Payments out of the Consolidated Revenue Fund under subsection (1) may not exceed \$3,021,000.

15

“(3) Payments of Commonwealth benefit under this Part on or after 1 July 1993 are to be made out of money appropriated by the Parliament for that purpose.”.

Certain instruments subject to disallowance

20

18. Section 139B of the Principal Act is amended by inserting after paragraph (1)(eb) the following paragraph:

“(ec) a setting out of principles under section 58A or 58CD or under subsection 58C(1) or 58CB(6);”.

**PART 5—AMENDMENTS OF THE NATIONAL HEALTH
ACT 1953 RELATING TO THE APPOINTMENT OF
NURSING HOME ADVISERS**

25

Principal Act

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

30

Interpretation

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

“‘nursing home adviser’ means a person included in a class of persons that the Secretary determines by instrument in writing to be advisers for the purposes of this definition;”.

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Approval of nursing home

21. Section 40AA of the Principal Act is amended by inserting after paragraph (6)(ck) the following paragraph:

5 “(cl) a condition that, if directed by the Secretary under section 45EB, the proprietor of the nursing home must:

- (i) appoint a nursing home adviser for the period stipulated in the Secretary’s direction under section 45EB; and
- (ii) pay for the services of the appointed adviser for the period of appointment;”.

10 **Variation or revocation of approval**

22. Section 44 of the Principal Act is amended by inserting after subsection (2) the following subsection:

15 “(2A) The Minister may give the proprietor of the approved nursing home written notice of his or her intention to vary the nature of the approval or revoke or suspend the approval as the case may be.”.

Insertion of new section

23. After section 45EA of the Principal Act the following section is inserted:

Secretary may direct proprietor to appoint a nursing home adviser

20 “45EB.(1) The Secretary may direct the proprietor of an approved nursing home to appoint a nursing home adviser in respect of the home in the following circumstances:

(a) if:

- 25
- (i) there has been a breach of one or more of the conditions applicable to the home other than the condition in paragraph 40AA(6)(ck); and
 - (ii) a declaration under subsection 45EA(1) is in force in respect of the home;

(b) if:

- 30
- (i) subparagraph (a)(i) applies in respect of the home; and
 - (ii) the Minister has given the proprietor written notice of his or her intention to revoke or suspend the nursing home’s approval;

(c) if:

- 35
- (i) there has been a breach of one or more conditions applicable to the home and the condition, or one of the conditions, breached is the condition in paragraph 40AA(6)(ck); and

- 40
- (ii) there is in force in respect of the home, a declaration under subsection 45E(1);

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(d) if:

- (i) subparagraph (c)(i) applies in respect of the home; and
- (ii) the Minister has given the proprietor written notice of his or her intention to revoke or suspend the nursing home's approval.

5

“(2) A direction must be in writing and stipulate the period for which the nursing home adviser is to be appointed.”

Officers to observe secrecy

24. Section 135A of the Principal Act is amended:

(a) by inserting in subsection (5B) “or an appointed nursing home adviser” before “information”;

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(b) by inserting in subsection (24) the following definition:

“**‘appointed nursing home adviser’** means a nursing home adviser who holds an appointment, as such an adviser, in respect of an approved nursing home;”

15

NOTES

1. No. 81, 1954, as amended. For previous amendments, see No. 47, 1957 (as amended by No. 68, 1969); 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; No. 72, 1987; No. 132, 1987 (as amended by No. 155, 1988); No. 79, 1988 (as amended by No. 155, 1988); Nos. 99 and 155, 1988; No. 87, 1989; Nos. 3, 87 and 141, 1990; No. 211, 1991; and Nos. 88 and 136, 1992.
2. 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; Nos. 59, 84, 95 and 164, 1989; Nos. 3, 106 and 141, 1990; Nos. 6, 57, 68, 70, 73, 84, 116, 141, 171, 172, 175, 190, 193 and 211, 1991; and Nos. 88 and 136, 1992.
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; Nos. 22, 44, 72, 118, 131 and 132, 1987; Nos. 79, 87, 99 and 155, 1988; No. 95, 1989; Nos. 3, 84, 106 and 141, 1990; Nos. 6, 68, 70, 73, 83, 84, 115, 116, 119, 122, 141, 169, 175, 208 and 211, 1991; and Nos. 70, 81, 88 and 136, 1992.

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*[Minister's second reading speech made in—
House of Representatives on 4 November 1992
Senate on 24 November 1992]*