



Nursing Homes and Hostels Legislation Amendment Act 1986

No. 115 of 1986

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No. 115 of 1986

An Act to amend the *Aged or Disabled Persons Homes Act 1954*, the *National Health Act 1953* and the *Nursing Homes Assistance Act 1974*, and for related purposes

[Assented to 24 November 1986]

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 *Nursing Homes and Hostels Legislation Amendment Act 1986*.

Commencement

2. (1) Section 30 shall be deemed to have come into operation on 5 June 1985.

(2) Sub-sections 5 (1) and (2) shall be deemed to have come into operation on 22 October 1986.

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(3) Sub-sections 5 (3) and (4) shall come into operation on 6 May 1987.

(4) Sections 7, 16, 17, 21 and 22, sub-section 25 (2) and sections 34, 35, 37 and 38 shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation.

(5) The remaining provisions of this Act shall come into operation on the day on which it receives the Royal Assent.

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

Principal Act

3. The *Aged or Disabled Persons Homes Act 1954*¹ is in this Part referred to as the Principal Act.

Amount of grants

4. Section 9 of the Principal Act is amended—

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

“(1) Subject to this section, the amount of a grant under this Part in respect of an approved home shall be an amount not exceeding—

(a) in a case to which paragraph (b) does not apply—80% of the capital cost of the home or 4 times the amount of the funds of the eligible organisation available for expenditure toward the capital cost of the home, whichever is the less; or

(b) in a case where the Secretary certifies, in writing, that the Secretary is satisfied that the approved home is intended to be used exclusively or almost exclusively for the accommodation of financially disadvantaged persons—the capital cost of the home.”; and

(b) by adding at the end the following sub-sections:

“(3) The Minister may determine, in writing, that a class of persons specified in the determination is a class of financially disadvantaged persons for the purposes of this section.

“(4) Sections 48, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply to certificates made under sub-section (1) and determinations made under sub-section (3) as if in those provisions references to regulations were references to certificates or determinations, references to a regulation were references to a provision of a certificate or determination and references to repeal were references to revocation.

“(5) Certificates made under sub-section (1) and determinations made under sub-section (3) shall not be taken to be statutory rules

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within the meaning of the *Statutory Rules Publication Act 1903*, but sub-sections 5 (3) to (3C) (inclusive) of that Act apply in relation to such certificates and determinations as they apply to statutory rules.

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

“(7) Section 5 of the *Evidence Act 1905* applies to certificates made under sub-section (1) and determinations made under sub-section (3) as that section applies to an order made by the Minister.

“(8) In this section, ‘financially disadvantaged person’ means an eligible person included in a class of persons determined by the Minister, under sub-section (3), to be a class of financially disadvantaged persons.”.

Payments to approved organisations

5. (1) Section 10C of the Principal Act is amended—

(a) by omitting paragraphs (1) (a), (b) and (c) and substituting the following paragraphs:

“(a) in respect of each eligible person who is assessed as requiring hostel care services only and for whom hostel care services are made available by that approved organisation—an amount calculated at the rate of \$1.95 per day or such higher rate as is prescribed in the regulations;

(b) in respect of each eligible person who is assessed as requiring hostel care services and personal care services and for whom those services are made available by that approved organisation—an amount calculated at the rate of \$8.40 per day or such higher rate as is prescribed in the regulations; and

(c) in respect of each respite care bed provided by that approved organisation that is occupied by an eligible person—an amount calculated at the rate of \$7.50 per day or such higher rate as is prescribed in the regulations.”; and

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

“(1A) Without limiting the generality of sub-section (1), regulations made for the purposes of paragraph (1) (a), (b) or (c) may prescribe a method of calculating a rate.”.

(2) The amendments made by sub-section (1) apply in relation to payments in respect of days occurring after 21 October 1986.

(3) Section 10C of the Principal Act is amended by omitting from paragraph (1) (b) “\$8.40” and substituting “\$11.00”.

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(4) The amendment made by sub-section (3) applies in relation to payments in respect of days occurring after 5 May 1987.

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

Principal Act

6. The *National Health Act 1953*² is in this Part referred to as the Principal Act.

Interpretation

7. Section 4 of the Principal Act is amended by omitting from sub-section (1) the definition of “Government nursing home” and substituting the following definition:

“‘Government nursing home’ means a nursing home specified by the Minister by notice in writing;”.

8. Section 39 of the Principal Act is repealed and the following sections are substituted:

Interpretation

“39. In this Part, unless the contrary intention appears—

‘authorised’ means authorised, in writing, by the Minister;

‘Commonwealth benefit’ means an amount payable by the Commonwealth by way of benefit in accordance with Part VA;

‘maximum bed number’, in relation to a State or Territory in relation to a relevant period, means the number specified in a notice in force under sub-section 39AA (1) as the maximum bed number for that State or Territory for that period;

‘maximum ordinary bed number’, in relation to a region within a State or Territory in relation to a relevant period, means the number specified in a notice in force under sub-section 39AA (2) as the maximum ordinary bed number for that region for that period;

‘maximum special bed number’, in relation to a State or Territory in relation to a relevant period, means the number specified in a notice in force under sub-section 39AA (3) as the maximum special bed number for that State or Territory for that period;

‘Nursing Homes Act’ means the *Nursing Homes Assistance Act 1974*;

‘relevant period’ means—

- (a) the period commencing on 1 December 1986 and ending on 30 June 1987;
- (b) the year commencing on 1 July 1987; or
- (c) a succeeding year;

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‘special needs group’ means a class of persons determined by the Minister, in writing, to be a special needs group for the purposes of this definition.

Determination of maximum bed numbers, &c.

“39AA. (1) The Minister may, by notice in writing published in the *Gazette*, specify a number as the maximum bed number for a State or Territory for a relevant period.

“(2) The Minister may, by notice in writing published in the *Gazette*, specify a number as the maximum ordinary bed number for a region within a State or Territory for a relevant period.

“(3) The Minister may, by notice in writing published in the *Gazette*, specify a number as the maximum special bed number for a State or Territory for a relevant period.

“(4) The aggregate of the numbers specified at any time in notices in force under sub-section (2) and the notice in force under sub-section (3) in relation to a State or Territory in relation to a relevant period shall not exceed the number specified at that time in the notice in force under sub-section (1) in relation to that State or Territory in relation to that period.

“(5) The Minister shall not, at any time during a relevant period—

- (a) grant or vary a certificate under sub-section 39A (2) or (3) of this Act or sub-section 3A (2) or (3) of the Nursing Homes Act;
- (b) make, vary or revoke a determination under sub-section 39A (4A) of this Act or sub-section 3A (4A) of the Nursing Homes Act;
- (c) make a determination under paragraph 40AA (6) (a) or sub-section 40AD (1) of this Act or paragraph 4 (6) (a) or sub-section 9 (1) of the Nursing Homes Act;
- (d) make, vary or revoke a determination under sub-section 40AA (6AAB) of this Act or sub-section 4 (6AB) of the Nursing Homes Act; or
- (e) make, vary or revoke a determination under sub-section 40AD (1AC) of this Act or sub-section 9 (1AB) of the Nursing Homes Act,

if the effect of doing so would be that—

- (f) the number of approved beds in a State or Territory at that time would exceed the maximum bed number for that State or Territory for that period;
- (g) the number of ordinary approved beds in a region within a State or Territory at that time would exceed the maximum ordinary bed number for that region for that period; or
- (h) the number of approved beds in a State or Territory that are, at that time, approved in relation to special needs groups would exceed the maximum special bed number for that State or Territory for that period.

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“(6) For the purposes of this section, the number of approved beds in a State or Territory, or in a region within a State or Territory, at a particular time shall, subject to sub-sections (9), (10) and (11), be taken to be the number equal to the aggregate of—

- (a) the numbers of beds specified in certificates in force at that time under sub-sections 39A (2) and (3) of this Act;
- (b) the numbers of beds specified in determinations in force at that time under paragraph 40AA (6) (a) of this Act;
- (c) the numbers of beds specified in certificates in force at that time under sub-sections 3A (2) and (3) of the Nursing Homes Act; and
- (d) the numbers of beds specified in determinations in force at that time under paragraph 4 (6) (a) of that Act,

being certificates granted or determinations made in relation to nursing homes, or proposed nursing homes, in that State or Territory, or in that region, as the case may be.

“(7) For the purposes of this section, the number of approved beds in a State or Territory, or in a region within a State or Territory, that are, at a particular time, approved in relation to special needs groups shall, subject to sub-sections (9), (10) and (11), be taken to be the number equal to the aggregate of—

- (a) the numbers of beds specified in determinations in force at that time under sub-section 39A (4A) of this Act;
- (b) the numbers of beds specified in determinations in force at that time under sub-sections 40AA (6AAB) and 40AD (1AC) of this Act;
- (c) the numbers of beds specified in determinations in force at that time under sub-section 3A (4A) of the Nursing Homes Act; and
- (d) the numbers of beds specified in determinations in force at that time under sub-sections 4 (6AB) and 9 (1AB) of that Act,

being determinations made in relation to nursing homes, or proposed nursing homes, in that State or Territory, or in that region, as the case may be.

“(8) For the purposes of this section, the number of ordinary approved beds in a region within a State or Territory at a particular time shall, subject to sub-sections (9), (10) and (11), be taken to be the number equal to the difference between—

- (a) the number of approved beds in the region at that time; and
- (b) the number of approved beds in the region that are, at that time, approved in relation to special needs groups.

“(9) Where—

- (a) a certificate is granted under sub-section 39A (2) of this Act, or sub-section 3A (2) of the Nursing Homes Act, in relation to premises; and
- (b) the premises are subsequently approved as a nursing home under section 40AA of this Act or section 4 of the Nursing Homes Act,

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the certificate, and any determination made in relation to the certificate under sub-section 39A (4A) of this Act or 3A (4A) of the Nursing Homes Act, shall, as from the time of the approval, be disregarded for the purposes of this section.

“(10) Where—

- (a) a determination is made in relation to a nursing home under paragraph 40AA (6) (a) of this Act or paragraph 4 (6) (a) of the Nursing Homes Act; and
- (b) while the determination is in force, a certificate is granted in relation to the nursing home under sub-section 39A (3) of this Act or sub-section 3A (3) of the Nursing Homes Act,

the determination, and any determination in force in relation to the nursing home under sub-section 40AA (6AAB) or 40AD (1AC) of this Act or sub-section 4 (6AB) or 9 (1AB) of the Nursing Homes Act, shall be disregarded for the purposes of this section while the certificate is in force.

“(11) Where—

- (a) a certificate is granted in relation to a nursing home under sub-section 39A (3) of this Act or sub-section 3A (3) of the Nursing Homes Act; and
- (b) a determination is made in relation to the nursing home under sub-section 40AD (1) of this Act or sub-section 9 (1) of the Nursing Homes Act giving effect to the certificate,

the certificate, and any determination made in relation to the certificate under sub-section 39A (4A) of this Act or sub-section 3A (4A) of the Nursing Homes Act, shall, as from the time of the making of the determination, be disregarded for the purposes of this section.

“(12) In this section—

- (a) a reference to a determination in force under paragraph 40AA (6) (a) of this Act includes a reference to such a determination as affected by a determination or determinations under sub-section 40AD (1) or (1A) of this Act; and
- (b) a reference to a determination in force under paragraph 4 (6) (a) of the Nursing Homes Act includes a reference to such a determination as affected by a determination or determinations under sub-section 9 (1) or (1A) of that Act.

“(13) In this section, ‘nursing home’ includes a nursing home within the meaning of the Nursing Homes Act.”.

Approval in principle of nursing home, &c.

9. Section 39A of the Principal Act is amended—

- (a) by omitting sub-section (1);
- (b) by omitting from sub-section (2) “made in accordance with the appropriate authorized form in response to an invitation under sub-section (1)” and substituting “in writing”;

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- (c) by omitting from sub-section (3) "made in accordance with the appropriate authorized form in response to an invitation under sub-section (1)" and substituting "in writing";
- (d) by omitting from sub-section (4) "made in accordance with the appropriate authorized form" and substituting "in writing";
- (e) by inserting after sub-section (4) the following sub-sections:

“(4A) Where the Minister, pursuant to paragraph (2) (b), (3) (b) or (4) (b), specifies a number of beds in a certificate granted under sub-section (2) or (3), the Minister may determine, in writing, that such number of those beds as is specified in the determination are approved in relation to a particular special needs group or particular special needs groups.

“(4B) The Minister may, at any time, on application in writing by the holder of a certificate in force under sub-section (2) or (3) or otherwise, revoke or vary a determination made under sub-section (4A) in relation to the certificate.”;

- (f) by omitting from sub-section (5) "(1), (2), (3) or (4)" and substituting "(2), (3), (4), (4A) or (4B)";
- (g) by omitting from sub-section (6) "(1), (2), (3) and (4)" and substituting "(2), (3), (4), (4A) and (4B)";
- (h) by omitting from sub-section (9) "prescribed" and substituting "specified by the Minister in writing"; and
- (j) by omitting sub-sections (13) and (14) and substituting the following sub-sections:

“(13) Where the Minister makes a decision under sub-section (2), (3), (4), (4A) or (4B) the Minister shall publish a notice in the *Gazette* that sets out such particulars in relation to the decision as the Minister considers to be appropriate.

“(14) Where the Minister makes a decision under sub-section (2), (3), (4), (4A) or (4B) refusing, or otherwise than in accordance with, an application, the Minister shall give the applicant notice in writing of the decision.”.

Approval of nursing home

10. Section 40AA of the Principal Act is amended—

- (a) by omitting paragraph (3) (a);
- (b) by omitting from paragraph (3) (b) "being an opinion that, where the premises are in a State, is formed by the Minister after consulting with the authority in that State responsible for the administration of nursing homes in that State,";
- (c) by omitting from sub-section (6) "except in the case of a Government nursing home,";

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- (d) by inserting after paragraph (6) (a) the following paragraph:
 - “(aa) a condition that, where the Minister determines, in writing, that the admission of persons to the nursing home as qualified nursing home patients is to be in accordance with a special purpose of the nursing home specified in the determination, the operations of the nursing home are to be carried out in a manner consistent with that determination;”;
- (e) by inserting in paragraph (6) (c) “,except in the case of a Government nursing home” after “a condition that”;
- (f) by inserting in paragraph (6) (ca) “,except in the case of a Government nursing home” after “a condition that”; and
- (g) by inserting after sub-section (6) the following sub-sections:

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

“(6AAB) Where the Minister, under paragraph (6) (a), determines, or has at any time determined, the approved number of beds in relation to a nursing home, the Minister may determine, in writing, that such number of those beds as is specified in the second determination are approved in relation to a particular special needs group or particular special needs groups.

“(6AAC) The Minister may, on application in writing made by the proprietor of a nursing home or otherwise, revoke or vary a determination made under sub-section (6AAB) in relation to the nursing home.”.

Approval of admission as qualified nursing home patient

11. Section 40AB of the Principal Act is amended by inserting in sub-section (4AA) “a determination by the Minister for the purposes of paragraph 40AA (6) (aa) of a special purpose in relation to a nursing home is in force or” after “Where”.

Approval of admission as short-term respite care patient

12. Section 40ABA of the Principal Act is amended by inserting in sub-section (5) “a determination by the Minister for the purposes of paragraph 40AA (6) (aa) of a special purpose in relation to a nursing home is in force or” after “Where”.

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Alteration of conditions applicable to a nursing home

13. Section 40AD of the Principal Act is amended—

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

“(1AB) The Minister may, at any time, on application in writing by the proprietor of a nursing home or otherwise, alter the conditions applicable to the nursing home by determining conditions in relation to the nursing home for the purposes of paragraph 40AA (6) (aa) or by revoking or varying any conditions previously determined by the Minister in relation to the nursing home for the purposes of that paragraph.

“(1AC) Where the Minister, under sub-section (1) or (1A), determines, or has at any time determined, a number of beds in relation to a nursing home, the Minister may determine, in writing, that such number of those beds as is specified in the second determination are approved in relation to a particular special needs group or particular special needs groups.

“(1AD) The Minister may, at any time, on application in writing by the proprietor of a nursing home or otherwise, revoke or vary a determination made under sub-section (1AC) in relation to the nursing home.”; and

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

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

Certificate of approval

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

Furnishing of audited accounts by proprietors of certain approved nursing homes

15. Section 43A of the Principal Act is amended by omitting from sub-section (3) “having the prescribed qualifications” and substituting “who is a registered company auditor under a law of a State or Territory”.

Basic benefit payable in respect of nursing home care

16. Section 47 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “prescribed from time to time” (wherever occurring) and substituting “determined by the Minister”;
- (b) by omitting sub-paragraph (2) (b) (iii) and substituting the following sub-paragraph:

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- “(iii) \$6.70, or if a higher amount is determined by the Minister for the purposes of this sub-paragraph, the amount so determined,”;
- (c) by inserting after sub-section (2A) the following sub-section:
 - “(2B) A determination by the Minister under sub-section (1) or (2) shall be made by notice in writing.”; and
- (d) by omitting sub-section (4).

Extensive care benefit payable in respect of nursing home care

17. Section 49 of the Principal Act is amended by omitting “prescribed from time to time” and substituting “determined by the Minister by notice in writing”.

Interpretation

18. Section 58D of the Principal Act is amended by omitting “prescribed” from the definition of “registered nurse” in sub-section (1) and substituting “determined by the Minister by notice in writing published in the *Gazette*”.

Applications for review by Tribunal of certain decisions under Part V

19. Section 105AAB is amended—

- (a) by omitting sub-section (1) and substituting the following sub-section:
 - “(1) In this section, ‘reviewable decision’ means a decision of the Minister, or of a delegate of the Minister, under sub-section 40AA (8) or (10), section 40AB or 40ABA, sub-section 40AD (1A) or 43A (4), section 44 or 45A or sub-section (2) of this section.”;
- (b) by omitting from sub-section (2) “, not being a decision under sub-section 39A (1), (2), (3) or (4),”;
- (c) by omitting sub-section (2A); and
- (d) by omitting from sub-section (5) “or (2A)”.

Statements to accompany notification of decisions

20. Section 105AC of the Principal Act is amended by omitting from paragraph (1A) (a) “or (2A), as the case may be”.

21. After section 139A of the Principal Act the following section is inserted:

Certain notices to be subject to disallowance

“139B. (1) In this section, ‘notice’ means a notice by the Minister under sub-section 47 (2B) or section 49.

“(2) Part XII of the *Acts Interpretation Act 1901* applies in relation to a notice as if in that Part references to regulations were references to a notice, references to a regulation were references to a provision of a notice and references to a repeal were references to a revocation.

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

“(4) For the purposes of the application of sub-section 5 (3B) of the *Statutory Rules Publication Act 1903* in accordance with sub-section (3) of this section, the reference in the first-mentioned sub-section to the Minister of State for Sport, Recreation and Tourism shall be read as a reference to the Minister administering the provisions referred to in sub-section (1) of this section.

“(5) Section 5 of the *Evidence Act 1905* applies to a notice as that section would apply to an order made by the Minister administering the provisions referred to in sub-section (1).”.

Certain notices to be subject to disallowance

22. Section 139B of the Principal Act is amended by inserting in sub-section (1) “under the definition of ‘Government nursing home’ in sub-section 4 (1) or” after “Minister”.

Transitional

23. Notwithstanding the amendments of the Principal Act made by sections 19 and 20, the Principal Act continues to apply, after the commencement of this section, in relation to applications for review by the Administrative Appeals Tribunal made before the commencement of this section.

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

Principal Act

24. The *Nursing Homes Assistance Act 1974*³ is in this Part referred to as the Principal Act.

Interpretation

25. (1) Section 3 of the Principal Act is amended by inserting after the definition of “Secretary” in sub-section (1) the following definition:

“‘special needs group’ has the same meaning as in section 39 of the *National Health Act 1953*;”.

(2) Section 3 of the Principal Act is amended by omitting from sub-section (1) the definition of “Government nursing home” and substituting the following definition:

“‘Government nursing home’ means a nursing home specified by the Minister by notice in writing;”.

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

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Determination of maximum bed numbers, &c.

“3AA. Sections 3A, 4 and 9 have effect subject to section 39AA of the *National Health Act 1953*.”.

Approval in principle of nursing home, &c.

27. Section 3A of the Principal Act is amended—

- (a) by omitting sub-section (1);
- (b) by omitting from sub-section (2) “made in accordance with the appropriate authorized form in response to an invitation under sub-section (1)” and substituting “in writing”;
- (c) by omitting from sub-section (3) “made in accordance with the appropriate authorized form in response to an invitation under sub-section (1)” and substituting “in writing”;
- (d) by omitting from sub-section (4) “made in accordance with the appropriate authorized form” and substituting “in writing”;
- (e) by inserting after sub-section (4) the following sub-sections:

“(4A) Where the Minister, pursuant to paragraph (2) (b) or (3) (b), specifies a number of beds in a certificate granted under sub-section (2) or (3), the Minister may determine, in writing, that such number of those beds as is specified in the determination are approved in relation to a particular special needs group or particular special needs groups.

“(4B) The Minister may, at any time, on application in writing by the holder of a certificate in force under sub-section (2) or (3) or otherwise, revoke or vary a determination made under sub-section (4A) in relation to the certificate.”;

- (f) by omitting from sub-section (5) “(1), (2), (3) or (4)” and substituting “(2), (3), (4), (4A) or (4B)”;
- (g) by omitting from sub-section (6) “(1), (2), (3) and (4)” and substituting “(2), (3), (4), (4A) and (4B)”;
- (h) by omitting from sub-section (9) “prescribed” and substituting “specified by the Minister in writing”; and
- (j) by omitting sub-sections (12) and (13) and substituting the following sub-sections:

“(12) Where the Minister makes a decision under sub-section (2), (3), (4), (4A) or (4B), the Minister shall publish a notice in the *Gazette* that sets out such particulars in relation to the decision as the Minister considers to be appropriate.

“(13) Where the Minister makes a decision under sub-section (2), (3), (4), (4A) or (4B) refusing, or otherwise than in accordance with, an application, the Minister shall give the applicant notice in writing of the decision.”.

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Approval of nursing home

28. Section 4 of the Principal Act is amended—

- (a) by omitting from paragraph (3) (b) “being an opinion that, if the premises are in a State, is formed by the Minister after consulting with the authority in that State responsible for the administration of nursing homes in that State,”;
- (b) by inserting after paragraph (6) (a) the following paragraph:

“(aa) a condition that, where the Minister determines, in writing, that the admission of persons to the nursing home as qualified nursing home patients is to be in accordance with a special purpose of the nursing home specified in the determination, the operations of the nursing home are to be carried out in a manner consistent with that determination;”;

and

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

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

“(6AB) Where the Minister, under paragraph (6) (a), determines, or has at any time determined, the approved number of beds in relation to a nursing home, the Minister may determine, in writing, that such number of those beds as is specified in the second determination are approved in relation to a particular special needs group or particular special needs groups.

“(6AC) The Minister may, on application in writing made by the proprietor of a nursing home or otherwise, revoke or vary a determination made under sub-section (6AB) in relation to the nursing home.”.

Application of National Health Act

29. Section 5 of the Principal Act is amended by inserting in paragraph (1) (a) “, as if the reference in sub-section (4AA) of that section to a determination by the Minister for the purposes of paragraph 40AA (6) (aa) of that Act were a reference to a determination by the Minister for the purposes of paragraph 4 (6) (aa) of this Act” after “under this Act”.

Approval of additional services

30. Section 6 of the Principal Act is amended by omitting sub-section (3A) and inserting the following sub-sections:

“(3A) Subject to sub-sections (3B) and (3C), the Minister shall not, on or after 21 August 1985, approve an application made under sub-section (1).

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“(3B) The Minister may, on or after 21 August 1985, approve an application made under sub-section (1) if the Minister had, before that date, informed the applicant under sub-section (3) that the application would not be refused.

“(3C) The Minister may, on or after 21 August 1985, approve an application made under sub-section (1) by a proprietor of a nursing home in relation to particular services in relation to a particular class of persons in relation to particular premises if there was in force immediately before that day, or there is in force at any time on or after that day, an approval under sub-section (2) in relation to a proprietor of the nursing home in relation to those services in relation to that class of persons in relation to those premises.”.

Alteration of conditions applicable to a nursing home

31. Section 9 of the Principal Act is amended—

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

“(1AA) The Minister may, at any time, on application in writing by the proprietor of a nursing home or otherwise, alter the conditions applicable to the nursing home by determining conditions in relation to the nursing home for the purposes of paragraph 4 (6) (aa) or by revoking or varying any conditions previously determined by the Minister in relation to the nursing home for the purposes of that paragraph.

“(1AB) Where the Minister, under sub-section (1) or (1A), determines, or has at any time determined, a number of beds in relation to a nursing home, the Minister may determine, in writing, that such number of those beds as is specified in the second determination are approved in relation to a particular special needs group or particular special needs groups.

“(1AC) The Minister may, at any time, on application in writing by the proprietor of a nursing home or otherwise, revoke or vary a determination made under sub-section (1AB) in relation to the nursing home.”; and

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

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

Review of decisions

32. Section 11A of the Principal Act is amended—

(a) by omitting from sub-section (1) the definition of “reviewable decision” and substituting the following definition:

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“‘reviewable decision’ means a decision of the Minister, or of a delegate of the Minister, under sub-section 4 (7), section 6, sub-section 9 (1A) or (1B), section 11 or sub-section (2) of this sub-section.”;

- (b) by omitting from sub-section (2) “, not being a decision under sub-section 3A (1), (2), (3) or (4),”;
- (c) by omitting sub-section (2A); and
- (d) by omitting from sub-section (5) “or (2A)”.

Statements to accompany notification of decisions

33. Section 11B of the Principal Act is amended by omitting from paragraph (1) (a) “or (2A), as the case may be”.

Common form of nursing home agreement

34. Section 12 of the Principal Act is amended—

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

“(1A) In this section, ‘relevant association’ means an association that—

- (a) represents eligible organisations; and
 - (b) is specified by the Minister by notice in writing published in the *Gazette* as a relevant association for the purposes of this section.”; and
- (b) by omitting from sub-section (1) “prescribed associations representing eligible organizations” and substituting “relevant associations”.

Fees

35. Section 13 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “prescribed from time to time” and substituting “determined by the Minister”;
- (b) by omitting from paragraph (1) (d) “regulations” and substituting “rate determined by the Minister”; and
- (c) by inserting after sub-section (1) the following sub-section:

“(1A) A determination by the Minister under sub-section (1) shall be made by notice in writing.”.

Remuneration and allowances

36. Section 18 of the Principal Act is amended by omitting from sub-section (1) “, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.”.

37. After section 36 of the Principal Act the following section is inserted:

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Certain notices to be subject to disallowance

“36A. (1) In this section, ‘notice’ means a notice by the Minister under sub-section 13 (1A).

“(2) Part XII of the *Acts Interpretation Act 1901* applies in relation to a notice as if in that Part references to regulations were references to a notice, references to a regulation were references to a provision of a notice and references to a repeal were references to a revocation.

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

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

“(5) Section 5 of the *Evidence Act 1905* applies to a notice as that section would apply to an order made by the Minister.”.

Certain notices to be subject to disallowance

38. Section 36A of the Principal Act is amended by inserting in sub-section (1) “under the definition of ‘Government nursing home’ in sub-section 3 (1) or” after “Minister”.

Transitional

39. Notwithstanding the amendments of the Principal Act made by sections 32 and 33, the Principal Act continues to apply, after the commencement of this section, in relation to applications for review by the Administrative Appeals Tribunal made before the commencement of this section.

**PART V—AMENDMENTS OF THE HEALTH LEGISLATION
AMENDMENT ACT (NO. 2) 1983**

Principal Act

40. The *Health Legislation Amendment Act (No. 2) 1983*^a is in this Part referred to as the Principal Act.

Omission of provisions

41. Sub-sections 35 (4), 40 (2), (3) and (4), 41 (2) and 54 (3) and (5) of the Principal Act are omitted.

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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; and Nos. 24, 95 and 127, 1985.
2. 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; and Nos. 28 and 75, 1986.
3. 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; and Nos. 24, 52 and 65, 1985.
4. No. 139, 1983.

*{Minister's second reading speech made in—
House of Representatives on 15 October 1986
Senate on 11 November 1986}*