

**Nursing Homes and Hostels Legislation Amendment Act 1987**

**No. 72 of 1987**

**TABLE OF PROVISIONS**

PART I—PRELIMINARY

Section

1. Short title

2. Commencement

PART II—AMENDMENTS OF THE NATIONAL HEALTH ACT 1953

3. Principal Act

4. Interpretation

5. Recognised days of absence of qualified nursing home patients etc.

6. Interpretation

7. Determination of maximum bed numbers etc.

8. Approval in principle of nursing home etc.

9. Approval of nursing home

10. Approval of admission to approved nursing home

11. Insertion of new section:

40ac. Declaration that patient not in need of nursing home care

12. Alteration of conditions applicable to nursing home

13. Ministerial review of decisions

14. Insertion of new sections:

40ag. Determination of standard ordinary care fee

40ah. Standard infrastructure allowance

15. Certificate of approval

16. Insertion of new sections in Part V:

45d. Standards for nursing home care

45e. Consequences of noncompliance with standards

TABLE OF PROVISIONS—*continued*

Section

17. Insertion of new section:

46a. Approved nursing home patient

18. Basic benefit for nursing homes, other than transferred homes

19. Insertion of new section:

48a. Basic benefit for nursing home care in transferred homes

20. Repeal of section 49 and substitution of new section:

49. Extensive care benefit

21. Claims for benefits

22. Insertion of new section in Part Va:

51a.Advances of benefit

23. Direction that Commonwealth benefit not to be subject to reduction

24. Information to be furnished by proprietor of approved nursing home

25. Offences

26. Applications for review by Tribunal of certain decisions under Part V

27. Time for commencing prosecutions

28. Evidence

29. Certain notices subject to disallowance

30. Transitional provision: approval of admission

31. Transitional provisions in relation to transferred homes

32. Transitional provision in relation to certain certificates under the Nursing Homes Assistance Act

33. Transitional provision: advance payments to transferred homes

PART III—AMENDMENTS OF THE NURSING HOMES ASSISTANCE ACT 1974

34. Principal Act

35. Amendment of title

36. Interpretation

37. Repeal

38. Approval in principle of nursing home etc.

39. Approval of nursing home

40. Alteration of conditions applicable to a nursing home

41. Transitional provisions in relation to nursing homes

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

42. Principal Act

43. Interpretation

44. Terms and conditions of grants

45. Amounts of grants



**Nursing Homes and Hostels Legislation Amendment Act 1987**

**No. 72 of 1987**

**An Act to amend certain legislation relating to nursing homes and hostels, and for related purposes**

[*Assented to 5 June 1987*]

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 1987.*

**Commencement**

**2.** **(1)** Sections 1 and 2 shall come into operation on the day on which this Act receives the Royal Assent.

**(2)** Section 30 shall come into operation on a day to be fixed by Proclamation.

**(3)** The remaining provisions of this Act shall come into operation on 1 July 1987.

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

**Principal Act**

**3.** The *National Health Act 1953*1is in this Part referred to as the Principal Act.

**Interpretation**

**4.** Section 4 of the Principal Act is amended:

(a) by inserting after the definition of “nursing home care” in subsection (1) the following definition:

“ ‘nursing home for disabled people’ means:

(a) a nursing home approved on or after 1 July 1987 where the certificate of approval under section 41 states that the home is approved as a nursing home for disabled people; or

(b) any other approved nursing home declared by the Minister, by written notice, to be a nursing home for disabled people;”; and

(b) by inserting after the definition of “Territory” in subsection (1) the following definition:

“transferred home’ means:

(a) a nursing home approved on or after 1 July 1987 where:

(i) an application for a certificate under subsection 3a (2) of the *Nursing Homes Assistance Act 1974* was made before 1 July 1987;

(ii) the object of the proposal to which the application for a certificate related was to transfer to the nursing home an approval under the *Nursing Homes Assistance Act 1974* in respect of another nursing home conducted by the same proprietor on the same or a different site;

(iii) a certificate under subsection 39a (2) is granted on or after 1 July 1987; and

(iv) the proprietor, in the application for approval of the nursing home, requests that the nursing home be treated as a transferred home for the purposes of this Act;

(b) a nursing home, other than a nursing home to which paragraph (a) applies, approved on or after 1 July 1987 but before 1 July 1991 where:

(i) a certificate under subsection 3a (2) of the *Nursing Homes Assistance Act 1974* was in force on 30 June 1987; and

(ii) the proprietor, in the application for approval of the nursing home, requests that the nursing home be treated as a transferred home for the purposes of this Act; and

(c) a nursing home, other than a nursing home to which paragraph (a) or (b) applies, that:

(i) on 30 June 1987 was an approved nursing home within the meaning of the *Nursing Homes Assistance Act 1974*;and

(ii) is not specified in a notice published under subsection 41 (1) of the *Nursing Homes and Hostels Legislation Amendment Act 1987*;”.

**Recognised days of absence of qualified nursing home patients etc.**

**5.** Section 4aa of the Principal Act is amended:

(a) by omitting from paragraph (5) (d) “and” (last occurring);

(b) by adding at the end of subsection (5) the following paragraph:

“and (f) in the case of a transferred home, limiting bed retention fees to an amount not exceeding the amount applicable for the purpose of subparagraph 47 (2) (b) (iii).”;

(c) by omitting from subsection (9) “47, 48” and substituting “46a, 47, 48, 48a”; and

(d) by omitting from paragraph (9) (a) “a qualified” (second occurring) and substituting “an approved”.

**Interpretation**

**6.** Section 39 of the Principal Act is amended:

(a) by inserting before the definition of “authorised” the following definition:

“assessed annual infrastructure cost’, in relation to an approved nursing home, means the annual infrastructure cost of that nursing home determined in accordance with principles formulated under subsection 40aa (7);”;

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

“estimated daily average bed number’, in relation to an approved nursing home for a financial year, means the estimated daily average number of beds in the nursing home to be occupied during the financial year determined in accordance with principles formulated under subsection 40aa (7);”; and

(c) by omitting the definition of “Nursing Homes Act”.

**Determination of maximum bed numbers etc.**

**7.** Section 39aa of the Principal Act is amended:

(a) by omitting paragraphs (5) (a) to (e) (inclusive) and substituting the following paragraphs:

“(a) grant or vary a certificate under subsection 39a (2), (2a) or (3);

(b) make, vary or revoke a determination under subsection 39a (4a);

(c) make a determination under paragraph 40aa (6) (a) or subsection 40ad (1);

(d) make, vary or revoke a determination under subsection 40aa (6aab); or

(e) make, vary or revoke a determination under subsection 40ad (1ac);”;

(b) by omitting subsections (6) and (7) and substituting the following subsections:

“(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 subsections (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 subsections 39a (2), (2a) and (3); and

(b) the numbers of beds specified in determinations in force at that time under paragraph 40aa (6) (a);

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 subsections (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 subsection 39a (4a); and

(b) the numbers of beds specified in determinations in force at that time under subsections 40aa (6aab) and 40ad (1ac);

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.”; and

(c) by omitting subsections (9) to (13) (inclusive) and substituting the following subsections:

“(9) Where:

(a) a certificate is granted under subsection 39a (2) or (2a) in relation to premises; and

(b) the premises are subsequently approved as a nursing home;

the certificate, and any determination made in relation to the certificate under subsection 39a (4a) 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); and

(b) while the determination is in force, a certificate is granted in relation to the nursing home under subsection 39a (2a) or (3);

the determination and any determination in force in relation to the nursing home under subsection 40aa (6aab) or 40ad (1ac) 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 subsection 39a (3); and

(b) a determination is made in relation to the nursing home under subsection 40ad (1) giving effect to the certificate;

the certificate and any determination made in relation to the certificate under subsection 39a (4a) shall, as from the time of the making of the determination under subsection 40ad (1), be disregarded for the purposes of this section.

“(12) For the purposes of this section, the number of beds specified in certificates, or determinations, relating to nursing homes for disabled people shall be disregarded.

“(13) In this section, a reference to a determination in force under paragraph 40aa (6) (a) includes a reference to such a determination as affected by a determination or determinations under subsection 40ad (1) or **(**1a).”.

**Approval in principle of nursing home etc.**

**8.** Section 39a of the Principal Act is amended:

(a) by omitting paragraph (2) (c) and substituting the following paragraph:

“(c) if the Minister considers it appropriate to do so, stating that if that approval is granted:

(i) the approval shall be as a nursing home for disabled people; or

(ii) the admission of persons to the nursing home as qualified nursing home patients will be in accordance with a special purpose of the nursing home specified in the certificate.”;

(b) by inserting after subsection (2) the following subsection:

“(2a) On application in writing by a person who is, or proposes to become, the proprietor of an approved nursing home and who proposes to demolish the premises occupied by the nursing home and to erect other premises (in this subsection called ‘reconstructed premises’) on the same site, the Minister may, in his or her discretion, grant to the applicant a certificate in writing:

(a) stating that if the applicant, within the period specified in the certificate, applies under subsection 40aa (1) for approval of the reconstructed premises specified in the certificate and the reconstructed premises comply, at the time of the last-mentioned application, with the specifications (if any) set out in the certificate, the application will not be refused under subsection 40aa (3) or (3a);

(b) stating that if that approval is granted, the number of beds determined in relation to the nursing home for the purposes of paragraph 40aa (6) (a) will not be less than the number of beds specified in the certificate; and

(c) if the Minister considers it appropriate to do so, stating that if that approval is granted:

(i) the approval shall be as a nursing home for disabled people; or

(ii) the admission of persons to the nursing home as qualified nursing home patients will be in accordance with a special purpose of the nursing home specified in the certificate.”;

(c) by inserting after subsection (3) the following subsection:

“(3a) On application in writing by the proprietor of an approved nursing home who proposes to make an alteration or addition to the premises occupied by the nursing home, not being an alteration or addition to which subsection (3) refers, the Minister may, in his or her discretion, grant to the applicant a certificate in writing:

(a) approving that alteration or addition; and

(b) if the Minister considers it appropriate to do so, stating that the admission of persons to the nursing home as qualified nursing home patients will be in accordance with a special purpose of the nursing home specified in the certificate.”;

(d) by omitting from subsection (4) “or (3)” and substituting “, (2a), (3) or (3a)”;

(e) by omitting subsection (4a) and substituting the following subsection:

“(4a) Where the Minister, under paragraph (2) (b), (2a) (b), (3) (b) or (4) (b), specifies a number of beds in a certificate granted

under subsection (2), (2a) 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.”;

(f) by omitting from subsection (4b) “or (3)” and substituting “, (2a) or (3)”;

(g) by omitting from subsections (5), (6), (9), (13) and (14) “(3)” and substituting “(2a), (3), (3a)”;

(h) by inserting in paragraph (7) (a) “or (2a)” after “(2)”;

(j) by omitting paragraph (7) (b) and substituting the following paragraph:

“(b) the need to control unnecessary growth in the numbers of approved nursing homes; and”; and

(k) by omitting subsection (12).

**Approval of nursing home**

**9.** Section 40aa of the Principal Act is amended:

(a) by inserting after subsection (2) the following subsection:

“(2a) Where the Minister approves premises as an approved nursing home under subsection (2), the Minister may, if the Minister considers it appropriate to do so, also approve the premises as a nursing home for disabled people.”;

(b) by inserting in subsection (3) “or (2a)” after “39a(2)”;

(c) by omitting from subsection (3a) “39a (2)” (wherever occurring) and substituting “39a (2) or (2a)”;

(d) by omitting from paragraph (3d) (b) “within the meaning of this Act or the *Nursing Homes Assistance Act 1974*”;

(e) by omitting paragraph (6) (b) and substituting the following paragraph:

“(b) a condition that a person will not be admitted to the nursing home as a qualified nursing home patient unless an approval under subsection 40ab (3) in relation to the person is in force or the circumstances are such that it is not practicable for such an approval to be obtained before the admission of the person;”;

(f) by omitting from subparagraph (6) (bb) (i) “or” (last occurring);

(g) by inserting in subparagraph (6) (bb) (ii) “or transferred home” after “home” (second occurring);

(h) by adding at the end of paragraph (6) (bb) the following subparagraph:

“or (iii) where the nursing home is a transferred home, charge a short-term respite care patient who occupies the permanent patient’s bed during the absence of the permanent patient a fee in respect of nursing home care

that exceeds the amount applicable for the purpose of subparagraph 47 (2) (b) (iii);”;

(j) by inserting after paragraph (6) (cc) the following paragraph:

“(cd) a condition that, except in accordance with the conditions referred to in subparagraph (6) (bb) (ii) or (iii) or paragraph (c), the proprietor of the nursing home shall not, in respect of the admission to the home of a person who, on admission, would become a qualified nursing home patient, charge any fee or solicit any contribution or financial assistance to the nursing home or any other body or organisation, whether from that person or otherwise; or”;

(k) by omitting subsections (7) and (7a) and substituting the following subsection:

“(7) The Minister may, by written instrument, formulate principles for the determination of:

(a) scales of fees for the purpose of subparagraph (6) (c) (i) in relation to nursing homes generally or specified classes of nursing homes; and

(b) any matter required by this Act to be determined in accordance with principles formulated under this subsection.”;

(m) by omitting subsection (9) and substituting the following subsection:

“(9) An approval under subsection (8) of an admission has effect for the purposes of this Act as if:

(a) it had been given under subsection 40ab (3) before the admission; and

(b) it were expressed to have effect for a period that includes the day of the admission.”; and

(n) by adding at the end the following subsections:

“(13) Where a person is admitted to an approved nursing home as a qualified nursing home patient or as a short-term respite care patient without approval having been obtained under section 40ab or 40aba, the proprietor of the nursing home shall, as soon as practicable and, in any case, within 3 days after the day of admission, notify the Secretary of the admission of the person.

“(14) An application for approval under subsection (8) or (10) shall be in accordance with the authorised form and shall be sent, by prepaid post, to the Secretary.

“(15) Subject to subsection (16), approval under subsection (8) or (10) of the admission of a person to a nursing home shall not be given unless:

(a) notification has been given in accordance with subsection (13); and

(b) the application for approval is made within 3 days after the day of admission.

“(16) Notwithstanding subsection (15), approval under subsection (8) or (10) may be given where:

(a) an application is made in accordance with subsection (14) by the proprietor of a nursing home;

(b) because of special circumstances, it was not practicable for the application to be made within the period specified in subsection (15);

(c) notification was given in accordance with subsection (13); and

(d) the application was made as soon as was practicable.

“(17) The period of 3 days referred to in subsection (15) shall be ascertained exclusive of Saturday, Sunday and any day that is a public holiday in the place in which the nursing home is situated.

“(18) Where a person is admitted to an approved nursing home as a qualified nursing home patient without approval under section 40ab, the proprietor of the nursing home shall, while the person remains a patient in the home without approval under subsection (8) or section 40ab, make the deduction required by subsection (5a) in the amount that would have been required if the person were an approved nursing home patient.”.

**Approval of admission to approved nursing home**

**10.** Section 40ab of the Principal Act is amended:

(a) by inserting in subsection (3) “, by written instrument,” after “shall”; and

(b) by inserting after subsection (3) the following subsection:

“(3a) An approval under subsection (3) has effect in relation to the admission of a person to a nursing home if the admission takes place within the period specified in the instrument of approval.”.

**11.** After section 40aba of the Principal Act the following section is inserted:

**Declaration that patient not in need of nursing home care**

“40ac. (1) The Minister may, by written notice served on a person who is an approved nursing home patient and on the proprietor of the approved nursing home in which the person is a patient, declare that the person is no longer an approved nursing home patient if the Minister is satisfied:

(a) that the person is no longer a person who, because of infirmity, illness, disease, incapacity or disability, requires such nursing care as warrants the person continuing as a patient in a nursing home; and

(b) that, having regard to the medical condition of the person and to any other relevant circumstances, the needs of the person would be adequately, and more suitably, provided for in accommodation in a place other than an approved nursing home and that such accommodation is available to the person.

“(2) Subject to subsection (3), a declaration under subsection (1) takes effect at the end of the period, or further period, allowed under subsection 105aab (2) for the making of a request under that subsection.

“(3) Where:

(a) a request is made under subsection 105aab (2) for the reconsideration of a declaration under subsection (1); and

(b) the Minister affirms or varies the declaration;

the declaration, or the declaration as varied, as the case may be, takes effect on the day following the day on which notice of the decision of the Minister on the reconsideration is served for the purpose of subsection 105aab (6).

“(4) Without limiting the generality of the directions that may be given under section 6 to a delegate of the power under subsection (1), such a direction may make provision:

(a) requiring the delegate to exercise the power in accordance with the views of a group of persons;

(b) for the manner in which that group is to be constituted; and

(c) for the procedures to be followed in ascertaining the views of that group.”.

**Alteration of conditions applicable to nursing home**

**12.** Section 40ad of the Principal Act is amended:

(a) by omitting subsection (1ad);

(b) by inserting after subsection (1b) the following subsection:

“(1ba) Where, on or after 26 February 1988, the proprietor of an approved nursing home, other than a transferred home, applies under subsection (1b) for an alteration of the conditions applicable to the nursing home, the Secretary, in making a decision on the application, shall not take into account:

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

(b) any part of a cost that was taken into account in the determination of the scale of fees in force on 30 June 1987, being a part that was not taken into account in the determination of that scale.”;

(c) by omitting subsection (1cb) and substituting the following subsection:

“(1cb) The Minister shall not exercise a power under subsection (1ab) in relation to a nursing home in a manner inconsistent with:

(a) a certificate in force in respect of the home under subsection 39a (2), (2a) or (3) and containing a statement for the purpose of paragraph 39a (2) (c), (2a) (c) or (3) (c); or

(b) a determination in force in relation to the home under subsection (1ac) or subsection 40aa (6aab).”; and

(d) by inserting after subsection (1e) the following subsection:

“(1f) For the purpose of subsection (1e), a decision altering the conditions applicable to a nursing home in a way different from that sought by an application shall be taken to be a decision refusing the application.”.

**Ministerial review of decisions**

**13.** **(1)** Section 40ae of the Principal Act is amended by inserting after subsection (2) the following subsection:

“(2a) A request under subsection (2) shall be made within 42 days after the day on which notice of the decision of the Secretary is served on the proprietor.”.

**(2)** The amendment made by subsection (1) applies in relation to decisions made on or after 1 July 1987.

**14.** After section 40af of the Principal Act the following sections are inserted:

**Determination of standard ordinary care fee**

“40ag. (1) In this section:

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

‘Class 1 nursing home’ means an approved nursing home that:

(a) was approved under this Act before 1 July 1987;

(b) became a transferred home on 1 July 1987 by virtue of section 4 of the *Nursing Homes and Hostels Legislation Amendment Act 1987*;

(c) was approved under this Act on or after 1 July 1987 following the issue, before 1 April 1987, of a certificate under subsection 39a (2) of this Act or subsection 3a (2) of the *Nursing Homes Assistance Act 1974*;or

(d) was approved under this Act on or after 1 July 1987 where:

(i) an application for a certificate under subsection 39a (2) of this Act or subsection 3a (2) of the *Nursing Homes Assistance Act 1974* was made before 1 July 1987;

(ii) the object of the proposal to which the application related was to transfer to the nursing home an approval

under the *Nursing Homes Assistance Act 1974* or this Act in respect of another nursing home conducted by the same proprietor on the same or a different site; and

(iii) a certificate under subsection 39a (2) or (2a) was issued on or after 1 July 1987;

‘Class 2 nursing home’ means an approved nursing home, other than a Class 1 nursing home.

“(2) The Secretary shall, by written instrument, determine the standard ordinary care fee for each approved nursing home for a financial year.

“(3) The Secretary:

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

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

“(4) In the determination of a scale of fees for an approved nursing home for the purposes of subparagraph 40aa (6) (c) (i), the standard ordinary care fee for a nursing home shall be taken into account, in accordance with principles formulated under subsection 40aa (7), together with such other matters (if any) as the principles require.

“(5) The standard ordinary care fee for a Class 1 nursing home is the amount calculated in accordance with the formula:



“(6) The standard ordinary care fee for a Class 2 nursing home is the amount calculated in accordance with the formula:



“(7) For the purposes of subsections (5) and (6):

(a) **AIA** is the annual infrastructure allowance in respect of the nursing home for the financial year to which the determination relates;

(b) **NPC** is the annual nursing and personal care cost of the nursing home for that financial year determined in accordance with principles formulated under subsection 40aa (7);

(c) **ECB** is the estimated amount of extensive care benefit that will become payable to the proprietor of the nursing home during that financial year determined in accordance with principles formulated under subsection 40aa (7);

(d) in the case of a nursing home that was approved before 1 July 1988 or became a transferred home on 1 July 1987, **ABD** is the number obtained by multiplying the estimated daily average bed number for the nursing home for the financial year commencing on 1 July 1987 by 366;

(e) in the case of a nursing home approved on or after 1 July 1988, **ABD** is the number obtained by multiplying the estimated daily average bed number for the nursing home for the financial year in which the home was approved by the number of days in that financial year;

(f) **ABE** is the number obtained by multiplying the number of days in the financial year to which the determination relates by the estimated daily average bed number for the nursing home for that financial year; and

(g) **SAM** is the standard infrastructure allowance per occupied bed per day.

“(8) For the purposes of subsection (7), the annual infrastructure allowance in respect of a nursing home for a financial year is the amount calculated in accordance with the formula:



where:

**SAM** has the same meaning as in subsection (7);

**A** is:

(a) in respect of a financial year commencing on or before 1 July 1990, the factor declared by the Minister, by written notice, to be the component A for the purposes of this subsection in respect of that year;

(b) in respect of a financial year commencing on or after 1 July 1991, the factor 1;

**ABD** has the same meaning as in subsection (7);

**AAC** is the assessed annual infrastructure cost of the nursing home; and

**B** is:

(a) in respect of a financial year commencing on or before 1 July 1990, the factor declared by the Minister, by written notice, to be the component B for the purposes of this subsection in respect of that year;

(b) in respect of a financial year commencing on or after 1 July 1991, the factor 0.

**Standard infrastructure allowance**

“40ah. The standard infrastructure allowance per occupied bed per day is:

(a) $27.65; or

(b) such higher amount as is specified in, or ascertained in accordance with, a determination by the Minister by written notice.”.

**Certificate of approval**

**15.** Section 41 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) Upon the approval of premises as an approved nursing home, the Minister shall cause to be issued to the proprietor of the nursing home a certificate of approval that:

(a) is in the authorised form;

(b) specifies the conditions applicable to the nursing home; and

(c) if the nursing home is approved as a nursing home for disabled people—includes a statement to that effect.”.

**16.** After section 45c of the Principal Act the following sections are inserted in Part V:

**Standards for nursing home care**

“45d. The Minister may, by written notice, determine standards to be observed in the provision of nursing home care in approved nursing homes.

**Consequences of noncompliance with standards**

“45E. (1) If the nursing home care provided in an approved nursing home does not satisfy the standards determined under section 45d, the Minister may, by written notice served on the proprietor of the nursing home, declare that the home does not satisfy those standards.

“(2) Where a declaration is in force under subsection (1), the Minister may, by written notice served on the proprietor of the nursing home, determine that, while the declaration remains in force, Commonwealth benefit is not payable to the proprietor of the nursing home in respect of a patient admitted to the nursing home after the making of the determination.

“(3) Where:

(a) a declaration under subsection (1) is in force in respect of a nursing home that is a Class 1 nursing home for the purposes of section 40ag; and

(b) the assessed annual infrastructure cost of the nursing home is less than the amount calculated by multiplying the component ABD as defined in subsection 40ag (7) by the standard infrastructure allowance;

the Minister may, by written instrument, direct that the Secretary, in making any determination under section 40ag in respect of the nursing home for the financial year commencing on the next 1 July after the giving of the direction or any later financial year, shall make the determination on the basis set out in subsection (4).

“(4) A determination under section 40ag to which a direction under subsection (3) applies shall be made as if it related to the financial year in which the direction is given or such later financial year as the Secretary thinks appropriate, being a financial year not later than the financial year in which the determination is made.

“(5) The Minister may, in respect of the same nursing home, take action under either or both of subsections (2) and (3).

“(6) While a determination under subsection (2) is in force:

(a) Commonwealth benefit is not payable to the proprietor of the nursing home in respect of a patient admitted to the home after the making of the determination; and

(b) the proprietor is obliged to make the deduction required by subsection 40aa(5a) in the amount that would have been required if the determination had not been made and Commonwealth benefit were payable in respect of each patient referred to in paragraph (a).

“(7) On the revocation of a declaration under subsection (1), any determination or direction under subsection (2) or (3) ceases to have effect.

“(8) Where a direction under subsection (3) ceases to have effect in relation to a nursing home by virtue of subsection (7) or is revoked, the Secretary shall make a fresh determination under section 40ag in relation to the financial year current when the direction ceases to have effect or is revoked, as the case may be.

“(9) A determination made for the purpose of subsection (8) shall be made in accordance with section 40ag in relation to the financial year but shall have effect only for the part of the financial year remaining after the date of the determination.”.

**17.** After section 46 of the Principal Act the following section is inserted:

**Approved nursing home patient**

“46a. For the purposes of this Part, a person is an approved nursing home patient on a day if:

(a) the person is a qualified nursing home patient on that day;

(b) the person was admitted to a nursing home:

(i) pursuant to an approval under this Act; or

(ii) before 1 July 1987 pursuant to an approval under the *Nursing Homes Assistance Act 1974*;and

(c) a determination under section 40ac in relation to the person has not been made or, if such a determination has been made, has not taken effect.”.

**Basic benefit for nursing homes, other than transferred homes**

**18.** Section 47 of the Principal Act is amended:

(a) by omitting from subsection (1) “in respect of each qualified” and substituting “other than a transferred home, in respect of each approved”;

(b) by omitting from subsection (2) “a qualified” and substituting “an approved”; and

(c) by omitting subsection (3).

**19.** After section 48 of the Principal Act the following section is inserted:

**Basic benefit for nursing home care in transferred homes**

“48a. (1) Subject to this Part and Part Vc, a Commonwealth benefit is payable to the proprietor of a transferred home in respect of each approved nursing home patient or Repatriation nursing home patient for each day on which the patient receives nursing home care in the home.

“(2) Subject to subsections (3) and (4), the benefit payable under subsection (1) is equal to the difference between:

(a) the lowest fee in the scale of fees applicable to the home on the relevant day; and

(b) the amount for the time being applicable for the purpose of subparagraph 47 (2) (b) (iii).

“(3) In relation to a patient who is entitled to be provided with medical treatment under the *Veterans’ Entitlements Act 1986* in respect of war-caused injury or disease, subsection (2) has effect as if the amount being taken into account for the purpose of paragraph (2) (b) were the amount per day that the patient is liable to pay for nursing home care provided under that Act.

“(4) If the Secretary is satisfied that, because of special circumstances related to the capacity of a patient to pay fees for nursing home care, the benefit payable in respect of the patient should be increased, the Secretary may, by written instrument, determine that the amount to be taken into account under paragraph (2) (b) shall be decreased to the amount specified in the determination, and subsection (2) shall have effect accordingly.”.

**20.** Section 49 of the Principal Act is repealed and the following section is substituted:

**Extensive care benefit**

“49. Subject to this Part and to Part Vc, if on any day an approval under section 40af is in force in respect of:

(a) an approved nursing home patient in relation to an approved nursing home; or

(b) a Repatriation nursing home patient in relation to a transferred home;

there is payable for that day (in addition to any other Commonwealth benefit payable under this Part) to the proprietor of the approved nursing home or transferred home, as the case may be, in respect of the patient in respect of whom the approval is given, a Commonwealth benefit of $6 or such higher amount as is determined by the Minister by notice in writing.”.

**Claims for benefits**

**21.** Section 51 of the Principal Act is amended by omitting from subsection (2) “Payment” and substituting “Subject to section 51a, payment”.

**22.** After section 51 of the Principal Act the following section is inserted in Part Va:

**Advances of benefit**

“51a. (1) The Minister may, in his or her discretion, authorise the payment to the proprietor of an approved nursing home, other than a Government nursing home, of an advance or advances in respect of Commonwealth benefit that may become payable to the proprietor.

“(2) If the proprietor of a nursing home receives, by way of advance on account of Commonwealth benefit payable in respect of a period, an amount that exceeds the amount of benefit payable to the proprietor in respect of that period, the proprietor is liable to repay to the Commonwealth the amount of the excess.

“(3) If the proprietor of a nursing home receives an amount by way of advance on account of Commonwealth benefit payable in respect of a period and benefit does not become payable to the proprietor in respect of that period, the proprietor is liable to repay to the Commonwealth the amount so received.

“(4) The Minister may deduct an amount repayable by a person under subsection (2) or (3) or part of such an amount from an amount (including an advance) payable, or to be paid, to the person under this Part.”.

**Direction that Commonwealth benefit not to be subject to reduction**

**23.** Section 60a of the Principal Act is amended by inserting “for disabled people” after “a nursing home”.

**Information to be furnished by proprietor of approved nursing home**

**24.** Section 60b of the Principal Act is amended:

(a) by omitting “For the purpose of ascertaining whether the conditions to which the approval of a nursing home is subject are being complied with” and substituting “For the purposes of Parts V and Va”; and

(b) by omitting “Penalty: $1,000” and substituting:

“Penalty:

(a) in the case of a natural person—$1,000 or imprisonment for 6 months, or both; or

(b) in the case of a body corporate—$5,000.”.

**Offences**

**25.** Section 62 of the Principal Act is amended:

(a) by omitting from subsection (2) “section 60b, furnish information” and substituting “subsection 43a (1) or section 60b, furnish information or a document”; and

(b) by omitting from subsection (3) “statement or information” and substituting “statement, information or document”.

**Applications for review by Tribunal of certain decisions under Part V**

**26.** Section 105aab of the Principal Act is amended by omitting from subsection (1) “or 40aba,” and substituting “, 40aba or 40ac,”.

**Time for commencing prosecutions**

**27.** Section 134b of the Principal Act is amended by inserting “, other than an offence against section 62,” after “regulations”.

**Evidence**

**28.** Section 139a of the Principal Act is amended:

(a) by omitting from paragraph (1a) (a) “or” (last occurring); and

(b) by adding at the end of subsection (1a) the following paragraph:

“or (c) that:

(i) the document annexed to the certificate is a true copy of an approval, determination, certificate or variation that has or had effect as if it were given or made under this Act; and

(ii) the approval, determination, certificate or variation had such effect during the period or on a date specified in the certificate.”.

**Certain notices subject to disallowance**

**29.** Section 139b of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) In this section, ‘notice’ means a notice under:

(a) the definition of ‘nursing home for disabled people’ in subsection 4 (1);

(b) subsection 40ag (8) or 47 (2b); or

(c) section 40ah, 45d or 49.”.

**Transitional provision: approval of admission**

**30.** Where:

(a) on the day immediately before the commencement of this section, a qualified nursing home patient occupied a bed in an approved nursing home, being a Government nursing home, for the purpose

of receiving nursing home care or was absent from the home on a recognised day of absence; and

(b) Commonwealth benefit within the meaning of Part Va of the Principal Act was payable in respect of the patient for that day;

the Principal Act, as amended by this Act, has effect as if the admission of the person to the nursing home had been approved under subsection 40ab (3) of the Principal Act, as amended by this Act.

**Transitional provisions in relation to transferred homes**

**31. (1)** In this section:

“nursing home agreement” means an agreement entered into under subsection 15 (1) of the Nursing Homes Act;

“Nursing Homes Act” means the *Nursing Homes Assistance Act 1974.*

**(2)** For the purposes of Parts I, V, Va and Vc of the Principal Act, as amended by this Act, in relation to a transferred home:

(a) an approval, determination, certificate or variation in force, immediately before 1 July 1987, under a provision of the Nursing Homes Act specified in column 1 of an item in the following table has effect, on and after 1 July 1987, as if it were an approval, determination, certificate or variation, as the case may be, under the provision of the Principal Act, as amended by this Act, specified in column 2 of that item; and

(b) on and after 1 July 1987, such an approval, determination, certificate or variation has effect as if a reference in it to a provision of the Nursing Homes Act specified in column 1 of an item in the following table were a reference to the provision of the Principal Act, as amended by this Act specified in column 2 of that item.

TABLE

|  |  |  |
| --- | --- | --- |
|  | Column 1 | Column 2 |
| Item No. | Nursing Homes Act | *National Health Act 1953* |
| 1 | Subsection 3a (3) | Subsection 39a (3) |
| 2 | Subsection 3a (4a) | Subsection 39a (4a) |
| 3 | Subsection 4 (1) | Subsection 40aa (1) |
| 4 | Subsection 4 (2) | Subsection 40aa (*2*) |
| 5 | Subsection 4 (3) | Subsection 40aa (3) |
| 6 | Subsection 4 (3a) | Subsection 40aa (3a) |
| 7 | Subsection 4 (6) (a) | Paragraph 40aa (6) (a) |
| 8 | Paragraph 4 (6) (aa) | Paragraph 40aa (6) (aa) |
| 9 | Subsection (6) (c) | Paragraph 40aa (6) (d) |
| 10 | Subsection 4 (6ab) | Subsection 40aa (6aab) |
| 11 | Subsection 4 (6ac) | Subsection 40aa (6aac) |
| 12 | Subsection 4 (7) | Subsection 40aa (8) |
| 13 | Subsection 8 (1) | Subsection 41 (1) |
| 14 | Subsection 9 (1) | Subsection 40ad (1) |
| 15 | Subsection 11 (2) | Subsection 44 (2) |

**(3)** For the purposes of subsection (2), a certificate of approval under subsection 8 (1) of the Nursing Homes Act has effect as if it specified, as the date on which the approval will cease to have effect, the last day of the period specified in the certificate for the purpose of subsection 8 (6) of that Act.

**(4)** For the purposes of Parts I, V, Va and Vc of the Principal Act, as amended by this Act, where:

(a) a certificate under subsection 9 (2) of the Nursing Homes Act relating to an alteration of the conditions of approval of a nursing home was issued before 1 July 1987; and

(b) the nursing home, on 1 July 1987, became a transferred home within the meaning of the Principal Act, as amended by this Act;

the certificate has the same effect on and after 1 July 1987 as it would have had if:

(c) this Act had been in force when the certificate was granted; and

(d) the certificate had been granted under subsection 40ad (2) of the Principal Act, as amended by this Act.

**(5)** Subject to subsections (6) and (8), a nursing home agreement in relation to a nursing home that, on 1 July 1987, becomes a transferred home shall cease to have effect on 1 July 1987.

**(6)** A nursing home agreement referred to in subsection (5) shall continue, on and after 1 July 1987, to have effect:

(a) to the extent that it contains provisions referred to in paragraph 12 (2) (b) or (c) or subsection 12 (3) or 14 (1) of the Nursing Homes Act; and

(b) in relation to matters arising under such provisions, including the payment or recovery of moneys due;

in respect of a year or other period ending on or before 30 June 1987.

**(7)** Where:

(a) a provision of a nursing home agreement, being a provision of a kind referred to in subsection 14 (1) of the Nursing Homes Act, has effect under subsection (6); and

(b) notice of an approval or determination is given to the proprietor of the nursing home on or after 1 July 1987;

a request under the provision for review of the approval or determination, being a request made after the commencement of this section is not effective unless it is made within the period of 42 days commencing on the day on which that notice is given.

**(8)** Where:

(a) on 30 June 1987 an approval was in force under section 6 of the Nursing Homes Act in respect of services provided or to be provided by the proprietor of a nursing home for a specified class of persons; and

(b) the nursing home, on 1 July 1987, becomes a transferred home within the meaning of the Principal Act, as amended by this Act;

the nursing home agreement in relation to that nursing home shall continue in force to the extent that it relates to the provision of those services to patients who are members of the class, other than patients of a nursing home, until 30 June 1988 and amounts payable by the Commonwealth to the proprietor in respect of the provision of those services.

**(9)** The amendments of the Principal Act effected by section 5, paragraph 9 (m), sections 11, 17, 18 and 20 do not apply to a Government nursing home until the commencement of section 30.

**(10)** Where, on 1 July 1987:

(a) an application has been made for a certificate under subsection 3a (2) of the Nursing Homes Act;

(b) the application has not been determined; and

(c) the application relates to a proposed nursing home that:

(i) cannot be approved under the Nursing Homes Act; and

(ii) if it were approved under the Principal Act, as amended by this Act, would become a transferred home for the purposes of that Act;

the application shall, if the Minister for Community Services so directs, have effect as an application for a certificate under section 39a of the Principal Act, as amended by this Act, and the Minister shall deal with the application accordingly.

**Transitional provision in relation to certain certificates under the Nursing Homes Assistance Act**

**32.** **(1)** Subject to subsection (2), a certificate granted under subsection 3a (2) of the *Nursing Homes Assistance Act 1974* before 1 July 1987 has effect, on and after that date, as if:

(a) it were a certificate under subsection 39a (2) of the Principal Act, as amended by this Act; and

(b) a reference in it to a provision of the *Nursing Homes Assistance Act 1974* specified in column 1 of an item in the table in subsection 31 (2) were a reference to the provision of the Principal Act, as amended by this Act, specified in column 2 of that item.

**(2)** Subsection (1) does not apply to a certificate which is specified by the Minister in a notice for the purpose of this section published in the *Gazette.*

**Transitional provision: advance payments to transferred homes**

**33.** Where:

(a) in accordance with an agreement under section 15 of the *Nursing Homes Assistance Act 1974*, an amount has been paid by the Commonwealth to the proprietor of a nursing home as an advance

on account of an amount that may become payable under the agreement in respect of a day after 30 June 1987; and

(b) on 1 July 1987, the nursing home becomes a transferred nursing home within the meaning of the Principal Act;

the amount shall be taken to have been paid as an advance in relation to Commonwealth benefit that may become payable in respect of that day under the Principal Act.

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

**Principal Act**

**34.** The *Nursing Homes Assistance Act 1974*2is in this Part referred to as the Principal Act.

**Amendment of title**

**35.** Thetitle of the Principal Act is amended by adding at the end “for disabled persons under the age of 70 years”.

**Interpretation**

**36.** Section 3 of the Principal Act is amended:

(a) by inserting after the definition of “common form of agreement” in subsection (1) the following definition:

“ ‘disabled person’ means a person who is included in the target group for the purposes of Part II of the *Disability Services Act 1986*;”;

(b) by omitting from subsection (1) the definition of “nursing home” and substituting the following definition:

“nursing home’ means premises used exclusively for the purpose of providing nursing home care to persons, the majority of whom are disabled persons under the age of 70 years;”; and

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

“(3a) For the purposes of the definition of ‘nursing home’ in subsection (1), a reference to premises does not include premises the maintenance expenditure of which is provided for under arrangements entered into under the *Tuberculosis Act 1948*”*.*

**Repeal**

**37.** Section 3aa of the Principal Act is repealed.

**Approval in principle of nursing home etc.**

**38.** Section 3a of the Principal Act is amended by omitting from paragraph (7) (b) “within the meaning of this Act or the *National Health Act 1953*”*.*

**Approval of nursing home**

**39.** Section 4 of the Principal Act is amended:

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

“(2) Subject to subsections (3), (3a), (3b) and (4), where:

(a) an application is made under subsection (1); and

(b) the Minister is satisfied that the premises to which the application relates are a nursing home;

the Minister shall approve the premises as a nursing home for the purposes of this Act.”;

(b) by omitting from paragraph (3) (a) “other than premises referred to in paragraph (2) (a)”;

(c) by omitting from paragraph (3) (b) “this Act and premises approved, or proposed to be approved, as nursing homes under the *National Health Act 1953-74*)”and substituting “this Act) and premises approved, or proposed to be approved, as nursing homes under the *National Health Act 1953*”*;*

(d) by omitting from subsection (3a) “other than premises referred to in paragraph (2) (a)”; and

(e) by omitting from paragraph (3d) (b) “within the meaning of this Act or the *National Health Act 1953*”*.*

**Alteration of conditions applicable to a nursing home**

**40.** Section 9 of the Principal Act is amended:

(a) by omitting subsection (1ac); and

(b) by omitting subsection (1cb) and substituting the following subsection:

“(1cb) The Minister shall not exercise a power under subsection (1aa) in relation to a nursing home in a manner inconsistent with:

(a) a certificate in force in respect of the home under subsection 3a (2) or (3) and containing a statement for the purpose of paragraph 3a (2) (c) or (3) (c); or

(b) a determination in force in relation to the home under subsection (1ab) or subsection 4 (6ab).”.

**Transitional provisions in relation to nursing homes**

**41.** (1) Where:

(a) on 30 June 1987 a nursing home was an approved nursing home under the Principal Act; and

(b) the Minister for Community Services has, by instrument published in the *Gazette*, declared the nursing home to be a nursing home to which this section applies;

the nursing home shall be taken to be an approved nursing home within the meaning of the Principal Act, as amended by this Act.

**(2)** The Minister shall not grant an approval under section 4 of the Principal Act of premises that are an approved nursing home for the purposes of the *National Health Act 1953* if the application for approval was made on or after 7 May 1987.

**(3)** An approval under section 4 of the Principal Act of premises that, immediately before the approval was granted, were an approved nursing home for the purposes of the *National Health Act 1953* is void if:

(a) the approval was granted before the commencement of this section; and

(b) the application for the approval was made on or after 7 May 1987.

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

**Principal Act**

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

**Interpretation**

**43.** Section 2 of the Principal Act is amended:

(a) by inserting after the definition of “building” in subsection (1) the following definition:

“capital cost’, in relation to an approved home, means:

(a) in the case of an approved home erected, or to be erected, by an eligible organisation, the sum of:

(i) such amount in respect of the whole or a part of the land acquired or to be acquired for the purposes of, or to be used in connection with, the home as the Secretary, in his or her discretion, determines; and

(ii) the amount that the Secretary is satisfied is the cost of erecting the home, including the cost of necessary fixtures in the home; or

(b) in the case of an approved home acquired or to be acquired by an eligible organisation, the amount that the Secretary is satisfied is the sum of:

(i) the market value of the estate or interest acquired or to be acquired by the organisation in the land on which the home is erected and the improvements on the land; and

(ii) the cost of making any necessary alterations to the home and installing any necessary fixtures;

less the market value of the organisation’s estate or interest in any part of the land not required for the purposes of the home;”; and

(b) by omitting from subsection (1) the definition of “the capital cost”.

**Terms and conditions of grants**

**44.** Section 8 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

“(3) Without limiting the generality of subsection (2), an agreement under subsection (2) may include provision regarding:

(a) the giving of security for the fulfilment of terms and conditions; and

(b) the use and disposal of, and the recovery of amounts that under the terms and conditions are to be taken as representing the Commonwealth’s interest in:

(i) land acquired (with or without buildings);

(ii) buildings acquired, erected, altered or extended; and

(iii) fixtures installed in such buildings;

as a result of the application of the grant or of the grant and other money.”.

**Amounts of grants**

**45.** Section 9 of the Principal Act is amended:

(a) by omitting from subsection (1a) “For the purpose of subsection (1)” and substituting “Subject to subsection (1b)”;

(b) by inserting in subsection (1a) “the notional amount (if any) to be taken into account under subsection (1b),” after “the sum of”; and

(c) by inserting after subsection (1a) the following subsections:

“(1b) The notional amount to be taken into account in a calculation under subsection (1a) is the market value, at the time at which the calculation is made, of the eligible organisation’s estate or interest in the land to be used for the provision of the home or the market value of the organisation’s estate or interest in the land immediately after acquisition, whichever is the greater.

“(1c) The Secretary may, in his or her discretion, determine in writing that all land or particular land donated to the eligible organisation:

(a) by the Commonwealth; or

(b) by an authority established by or under a law of the Commonwealth;

shall not be taken into account for the purposes of subsection (1b).

“(1d) Moneys expended in acquiring land taken into account for the purposes of subsection (1b) shall not be taken into account, for the purposes of subsection (1a), as moneys expended.”.

**NOTES**

1. 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, 75, 94 and 115, 1986.

2. 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; and No. 115, 1986.

3. 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; and Nos. 115 and 163, 1986.

[*Minister’s second reading speech made in—*

*House of Representatives on 7 May 1987*

*Senate on 14 May 1987*]