Digest of Bill

Purpose
The Bill will amend a number of Acts administered by this portfolio. The main amendment will be to allow a charter of residents' rights and responsibilities for residents of Commonwealth funded hostels to be introduced.

Background

The proposed charter of rights and responsibilities follows considerable change in the area of aged care since 1986. Changes have largely centered on the role of nursing homes and hostels and which type provides the most appropriate treatment for a particular person. As well, such institutions have been encouraged to offer a wider range of options to meet the varying needs of residents. The emphasis has since changed to protecting and promoting the rights of residents of nursing homes and hostels.

In August 1988, the Minister commissioned a consultant to report on this area. The report, Residents Rights in Nursing Homes and Hostels, was delivered in May 1989. One of the main difficulties perceived was the balancing of an individual's rights with the rights of other residents and staff. The report recommended that residents enter into contracts with the management of a home or hostel and that the ability to enter such contracts be a precondition for Commonwealth funding. The report contains a draft agreement which centers on items such as the right to occupancy; the services to be provided and fees payable; and dispute resolution. The contracts were seen as the best way of enabling both parties to be aware of their rights and obligations from the beginning and to clarify many of the existing uncertainties. Two main disadvantages were seen. First, the introduction of outsiders, mainly lawyers, into the relationship between the resident and management. While this was seen to have problems, the protection gained and the ability to keep using informal procedures if desired were seen to outweigh any disadvantage. The second difficulty was the administrative workload if all current residents were required to enter into such a contract simultaneously. The recommended course of action was that all new residents be required to enter into the contracts before...
entering the institution, while all existing residents have the right to enter such agreements if they desire.

Main Provisions

**Aged or Disabled Persons Homes Act 1954**
This Act will be amended by Part 2 of the Bill (clauses 3 to 5). Proposed section 10DA will allow the Minister to formulate a Charter of Residents Rights and Responsibilities. The Charter may deal with a right to be treated as an individual; to personal independence; to privacy; to documents concerning them; and the responsibility to respect others rights. The Charter will be subject to Parliamentary disallowance.

The Minister will be able to determine a common agreement between residents and eligible organisations. The agreement is to be consistent with the Charter and, amongst other matters, may deal with fees, services to be provided, participative decision making and dispute resolution (proposed section 10DB).

Proposed section 10FB will allow the publication of relevant information regarding bodies approved under the Act. Relevant information is defined to include information as to whether standards are met; the number of beds and physical size of the institution; and the fees charged. Before publication, the institution concerned is to have at least 30 days to comment on the information.

**First Home Owners Act 1983**
Section 17 of this Act will be amended to require at least one of the applicants for a grant to have had their principal place of residence in Australia for 12 months before becoming eligible for a grant. This is estimated to save $2 million in 1989–90 and $3 million for each of the next three years.

**National Health Act 1953**
Proposed section 39BA provides that the Minister is to approve an operator of a nursing home if satisfied that the person is suitable. The proposed section also allows the Minister to formulate principles to be used to determine if the person is suitable and decisions must follow any principles. The principles will be disallowable by Parliament. Similarly, the Minister may formulate principles to be followed in determining if approval should be revoked (proposed section 39BB).

Section 40AA of this Act, which deals with the approval of nursing homes, will be amended by clause 26 to insert new conditions which must be satisfied before approval. The proprietor must be approved under proposed section 39BA, and must enter into agreements substantially the same as outlined in proposed section 40ABB (see below) or, if a patient does not enter such an agreement, comply with conditions set by the Minister which must be consistent with the Charter. As well, the proprietor is to allow a community visitor to enter the premises to meet with patients or to observe the care provided.
Proposed section 40ABB deals with the agreement. The Minister may determine the form of a common agreement which must be consistent with the Charter.

Proposed section 45F will allow a Charter of Residents' Rights and Responsibilities to be inserted into this Act.

Clause 33 will amend section 85B of this Act to alter the calculation of the special patient contribution, which applies where the manufacturer and the Commonwealth cannot agree on the maximum price for the drug. The special contribution will be the difference between the price claimed by the manufacturer and the price that the Commonwealth determines. The special contribution is currently determined by the Minister.

Nursing Homes Assistance Act 1974
Amendments to this Act will introduce lodgement and processing fees for reviews of decisions. Unless a higher amount is set by the Minister, the maximum processing fee will be $1,000 per day.

For further information, if required, contact the Education and Welfare Group.

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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