

Nurses (Amendment) Bill

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EXPLANATORY MEMORANDUM

General

The purpose of this Bill is to make miscellaneous amendments to the **Nurses Act 1993** and to amend the **Drugs, Poisons and Controlled Substances Act 1981** and for other purposes.

Clause Notes

PRELIMINARY

- Clause 1 sets out the purposes of the Bill.
- Clause 2 is the commencement provision. The provisions of the Act come into operation as follows—
- sections 1 and 2 come into operation on the day after the day on which the Act receives the Royal Assent; and
 - the remaining provisions come into operation on a day or days to be proclaimed or on 1 November 2001, which ever occurs first.

AMENDMENTS TO THE NURSES ACT 1993

- Clause 3 provides for certain amendments and new insertions to be made to the definitions in section 3(1) of the Nurses Act.
- Clause 4 revises the Board's requirements for applications for registration and includes a new provision that enables the Board to require satisfactory evidence that the applicant will be covered by professional indemnity insurance.
- Clause 5 inserts a new provision that will enable the Board to refuse general registration to an applicant if that applicant has made inadequate arrangements for professional indemnity insurance or the Board may grant registration on condition that the nurse

holds, or the nursing care provided by the nurse is covered by, professional indemnity insurance that meets the minimum terms and conditions of the Board.

- Clause 6 inserts new provisions that, upon application by a nurse, empowers the Board to endorse the registration of that nurse if she or he has satisfactorily completed a course of studies which, in the opinion of the Board, qualifies that nurse to use the title nurse practitioner and to obtain, sell or supply certain Schedule 2, 3, 4 or 8 poisons within the meaning of the **Drugs, Poisons and Controlled Substances Act 1981** in respect of a certain category or categories of nurse practitioner.
- Clause 7 provides for the Board to impose conditions, limitations or restrictions on an endorsement of registration.
- Clause 8 entitles an applicant for an endorsement of registration to be provided the opportunity to make submissions if the Board intends to refuse the application or to impose any condition, limitation or restriction on the endorsement.
- Clause 9 requires the Board, once it has determined to grant or not grant an endorsement of registration, to notify certain information to the applicant.
- Clause 10 provides for an application for renewal of registration to be accompanied, where applicable, by an application for renewal of an endorsement to that registration for the same period.
- Clause 11 enables the Board, upon application by a person whose name was removed from the register as a result of not renewing that registration, to restore that person to the register within a period of 2 years from the date the name was removed from the register.
- Clause 12 provides for the Board, when intending to refuse a renewal of registration or a renewal of an endorsement to a registration of a person who has not had sufficient nursing experience in the preceding 5 years, to firstly notify the nurse of its intentions, to give the nurse an opportunity to make a submission or to provide written submissions from any registered nurse about the nurse's experience or competence as a nurse and will require the Board to consider those submissions.

- Clause 13 provides for qualifications or training, in addition to that required for registration, to be recognized by the Board if it considers it relevant to the practice of nursing, for a list of such recognized qualifications or training to be published by the Board at least once each year and, upon application by a nurse, to have that recognized qualification or training noted on the register in relation to that nurse.
- Clause 14 provides that the registration of a person is deemed not to be endorsed under the Act during any period where an endorsement of registration is suspended by the Board.
- Clause 15 provides for the Board to conduct a hearing and, if at the end of the hearing the Board determines that an endorsement of a registration has been obtained by fraud or misrepresentation or that the qualifications relied upon to obtain that endorsement have been withdrawn, the Board must cancel the endorsement of registration.
- Clause 16 makes a minor amendment to the heading to Division 2 of Part 2 of the Nurses Act.
- Clause 17 requires the Board to include details of an endorsement in the register kept under the Act and makes provision for a certificate of evidence to contain information about an endorsement of registration.
- Clause 18 inserts a new provision that requires a nurse to return her or his current certificate of registration for notation by the Board, in any instance where the Board has notified that nurse of any condition, limitation or restriction it has imposed on the nurse's registration or endorsement of registration.
- Clause 19 inserts new provisions that require a registered nurse or an applicant for registration as a nurse to notify the Board about the details of any decision of a court in relation to—
- a case of negligence brought against the nurse or the employer of the nurse; or
 - if a nurse has in respect of an indictable offence, been committed for trial or has been convicted or found guilty of the offence.

- Clause 20 extends the provisions related to the making of a complaint to the Board against a registered nurse to enable the complaint to be made irrespective of whether the nurse is still registered.
- Clause 21 makes a consequential amendment to a reference to a complaint about a registered nurse.
- Clause 22 makes further provision for the Board to institute a hearing into professional conduct, before or after conducting a preliminary investigation into the professional conduct of a registered nurse.
- Clause 23 allows the Board to suspend the registration of a nurse at any time after it makes a determination to conduct an investigation or hearing. It also removes the need for a complaint to be made to the Board before it may determine to conduct a preliminary investigation.
- Clause 24 makes provision for the Board to suspend an endorsement of registration until a hearing is completed where the Board considers there is a serious risk that the health and safety of the public will be endangered.
- Clause 25 enables an officer employed by the Board, as well as a member of the Board, to conduct a preliminary investigation into the health of a nurse.
- Clause 26 makes provision for the Board to implement an agreement with a nurse who has been the subject of a preliminary investigation in relation to suspending or imposing any condition, limitation or restriction on an endorsement of registration.
- Clause 27 makes provision for a registered nurse to voluntarily seek suspension of registration or their endorsement of registration or seek a condition, limitation or restriction on their endorsement of registration in instances where the nurse believes their health is affecting their ability to practice.
- Clause 28 provides for the removal by the Board of any suspension or condition, limitation or restriction where a nurse satisfies the Board that their health is no longer affected.
- Clause 29 provides power for the Board to suspend an endorsement of registration of a nurse when it refers a matter relating to that nurse to a formal hearing.

- Clause 30 inserts provisions that enable the Board to constitute a hearing panel, in any instance where there are insufficient Board members available, by appointing persons to the panel from a list of persons approved by the Governor in Council for that purpose and to suppress the publication or broadcasting of the identity of a registered nurse prior to the panel making its final determination.
- Clause 31 provides for an endorsement of registration to be considered in findings and determinations at formal hearings.
- Clause 32 makes provision for the Board to conduct or to continue to conduct investigations into persons who are no longer registered.
- Clause 33 provides that an employee of the Board who makes a complaint under the Act is ineligible to conduct a preliminary investigation or to be appointed to a panel to conduct a hearing into the matter of that complaint.
- Clause 34 provides for the removal of any suspension of an endorsement of registration by the Board where a panel has determined that removal should occur.
- Clause 35 provides that the Board must notify, in various ways, any determination of a hearing panel that either suspends, cancels or imposes any condition, limitation or restriction on an endorsement of registration of a nurse.
- Clause 36 creates an offence to publish information identifying a nurse until the panel makes a final determination of the matter.
- Clause 37 makes some miscellaneous amendments to the Board's notification provisions after a review by VCAT.
- Clause 38 makes various amendments to restrict the use of the title "nurse practitioner".
- Clause 39 makes it an offence for a person to arrange for another person, who is not a nurse practitioner, to work as a nurse practitioner.
- Clause 40 inserts new provisions related to advertising nursing services, providing for the Governor in Council, on the recommendation of the Board, to issue guidelines about the advertising of nursing

services and for the courts to require corrective advertising to rectify contravention of the advertising provisions.

- Clause 41 inserts new functions of the Board.
- Clause 42 alters the provisions related to the membership of the Board.
- Clause 43 inserts the methods by which the Board may make resolutions without meeting and the approved methods of communication available to the Board.
- Clause 44 inserts new provisions related to the identification of persons appointed by the Board to execute search warrants and the powers and duties related to entry of premises with a search warrant.
- Clause 45 enables regulations made under the Act to refer to an endorsement of registration.
- Clause 46 is a transitional provision that enables a registered nurse, for a period of up to 10 years from the commencement of the amendments related to nurse practitioners, to apply for an endorsement of their registration in respect of a particular category of nurse practitioner without first complying with the requirements of section 8B of the Act, where the Board believes that the nurse holds sufficient clinical experience in that category of nurse practitioner to be granted that endorsement.

AMENDMENTS TO THE DRUGS, POISONS AND CONTROLLED SUBSTANCES ACT 1981

- Clause 47 inserts a definition of nurse practitioner into the **Drugs, Poisons and Controlled Substances Act 1981**.
- Clause 48 provides for the authority of a defined nurse practitioner to obtain and have in his or her possession and to use, sell or supply any Schedule 2, 3, 4 or 8 poisons that are prescribed in the regulations in respect of a category or categories of nurse practitioner; but not to sell or supply such poisons by retail in an open shop.

- Clause 49 makes various provisions related to a nurse practitioner prescribing, supplying or administering schedule 8 poisons to drug-dependent persons, including the need for that practitioner to give prior notice to the Secretary in that regard.
- Clause 50 establishes offence provisions for a nurse practitioner to prescribe, supply or administer a Schedule 8 poison to a drug-dependent person, or to prescribe, supply or administer a schedule 8 poison to a person (other than a drug-dependent person) for a continuous period greater than 8 weeks unless that practitioner holds a permit under the Act to do so and complies with the provisions of that permit.
- Clause 51 amends the regulation making powers in the Act so as to enable controls to be exercised over nurse practitioners in a manner that presently applies to other health practitioners authorized under section 13 of the Act.

CONSEQUENTIAL AMENDMENTS TO THE CHINESE MEDICINE REGISTRATION ACT 2000

- Clause 52 makes several minor terminology changes to item 4 in the Schedule to the **Chinese Medicine Registration Act 2000** that provided for the issue of endorsements under the **Nurses Act 1993** in relation to the practice of Chinese medicine by nurses.

