

NURSES BILL 1991

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to regulate the practice of nursing and to provide for the accreditation of nurses (by registration or enrolment).

The Bill repeals and re-enacts the Nurses Registration Act 1953 with the following modifications:

- (a) the Nurses Registration Board is reconstituted and its membership is reduced from 18 to 10;
 - (b) the functions of the Board are expanded to include:
 - (i) promoting and maintaining professional standards of nursing practice in New South Wales; and
 - (ii) promoting the education of nurses and educational programs relating to nursing;
 - (c) the Board is empowered to establish expert sub-committees in order to provide representation for the various nursing specialities;
 - (d) the provisions relating to the granting of an authorisation to practise as a midwife are revised;
 - (e) power is given to the Board to grant provisional registration;
 - (f) a new disciplinary structure and disciplinary procedures are established, including:
 - (i) the introduction of 2 charges for nurses facing disciplinary proceedings, being unsatisfactory professional conduct (which does not lead to the cancellation of a nurse's accreditation) and professional misconduct (which may lead to cancellation);
 - (ii) the establishment of Professional Standards Committees and a Nurses Tribunal to inquire into and determine complaints about accredited nurses;
 - (g) numerous modifications of a minor nature are made, particularly those which result in a greater conformity with other health professional registration Acts.
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PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 defines expressions used in the proposed Act.

Clause 4 contains definitions of “professional misconduct” and “unsatisfactory professional conduct”.

PART 2—REQUIREMENT FOR REGISTRATION OR ENROLMENT

Clause 5 makes it an offence for a person to falsely represent that he or she is an accredited nurse.

Clause 6 makes it an offence for a person to falsely represent that he or she is an accredited midwife.

Clause 7 prohibits the unauthorised practice of midwifery.

PART 3—THE NURSES REGISTRATION BOARD

Clause 8 constitutes the Nurses Registration Board.

Clause 9 provides for the membership of the Board.

Clause 10 specifies the functions of the Board.

Clause 11 provides that the Board is to be subject to ministerial control.

Clause 12 enables the Board to establish committees to assist it to exercise its functions.

Clause 13 provides for the appointment of a Registrar and the other staff necessary to enable the Board to exercise its functions.

Clause 14 enables the Board to delegate its functions.

Clause 15 gives effect to Schedule 1 which contains further provisions relating to the membership and procedure of the Board.

PART 4—REGISTRATION AND ENROLMENT**Division 1—The Register of Nurses**

Clause 16 requires the Board to keep a Register of Nurses. The Register is to be divided into List “A” and List “B”. A person’s name is to be entered in List “A” or List “B” depending on the person’s qualifications for registration.

Clause 17 requires the Registrar to issue a certificate of registration on the registration of a person as a nurse.

Division 2—Registration

Clause 18 specifies the qualifications for registration that will enable a person to have his or her name entered in List “A” of the Register. List “A” comprises 3-year general nurses.

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Clause 19 specifies the qualifications for registration that will enable a person to have his or her name entered in List “B” of the Register. List “B” comprises nurses other than 3-year general nurses.

Clause 20 specifies the qualifications that will enable a person to be authorised to practise midwifery.

Clause 21 requires the Board to consider and determine applications for registration and authorisation.

Clause 22 enables the Board to enter certain additional qualifications of registered nurses in the Register.

Clause 23 enables the Board to grant provisional registration to a graduand pending the conferring of the graduand’s award.

Clause 24 enables the Board to grant temporary registration to persons who are sufficiently qualified and who desire to practise nursing temporarily in New South Wales.

Clause 25 enables nurses registered outside New South Wales to practise in New South Wales for a maximum period of 24 hours without the necessity for New South Wales registration.

Division 3—The Roll of Nurses

Clause 26 requires the Board to keep a Roll of Nurses. The Roll is to be divided into List “A” and List “B”. List “A” is to contain the relevant particulars of enrolled nurses and List “B” is to contain the relevant particulars of enrolled nurses (mothercraft).

Division 4—Enrolment

Clause 27 specifies the qualifications for enrolment that will enable a person to have his or her name entered in List “A” of the Roll.

Clause 28 specifies the qualifications for enrolment that will enable a person to have his or her name entered in List “B” of the Roll.

Clause 29 requires the Registrar to issue a certificate of enrolment on the enrolment of a person as a nurse.

Division 5—Supplementary

Clause 30 enables the Board to specify alternative requirements for students preparing for accreditation as nurses if a course of study is discontinued or ceases to be recognised by the Board

Clause 31 prevents the accreditation of a person as a nurse if the person’s knowledge of the English language is not adequate for the practice of nursing.

Clause 32 provides a right of appeal to the District Court for a person who is dissatisfied with the Board’s determination of his or her application for accreditation.

Clause 33 requires the payment by accredited nurses of an annual practising fee.

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Clause 34 provides for the cancellation of a nurse's accreditation if the nurse has died, ceases to be qualified for accreditation or becomes mentally incapacitated.

Clause 35 requires notice of the mental incapacity of a nurse to be given to the Board by persons identified in the regulations to be made under the proposed Act.

Clause 36 provides that the cancellation or suspension of registration of a nurse who is authorised to practice midwifery also cancels or suspends that authorisation.

Clause 37 entitles an accredited nurse to wear a badge issued by the Board.

Division 6—Offences

Clause 38 makes it an offence for a nurse who is registered in a list of the Register to claim to be registered in a different list.

Clause 39 makes it an offence for a nurse who is enrolled in a list of the Roll to claim to be enrolled in a different list.

Clause 40 prohibits a person from using other qualifications in relation to the person's accreditation as a nurse except with the authority of the Board.

Clause 41 makes it an offence to make or cause to be made any false entry in the Register or the Roll or to make any false or misleading statement for the purpose of obtaining accreditation.

Clause 42 requires a person whose registration or enrolment as a nurse is cancelled to immediately return his or her certificate of registration or enrolment to the Registrar.

PART 5—COMPLAINTS AND DISCIPLINARY PROCEEDINGS**Division 1—Complaints**

Clause 43 enables the Board to establish professional codes of conduct for accredited nurses.

Clause 44 provides for the making of complaints about accredited nurses to or by the Board or the Director-General of the Department of Health.

Clause 45 provides for the referral of complaints to a Committee or the Nurses Tribunal by the Board. The Board must refer any complaint which may warrant the suspension or cancellation of the accreditation of an accredited nurse to the Tribunal, but may also refer complaints involving the physical or mental health of a nurse to a committee.

Clause 46 provides for the referral of complaints to the Board, a Committee or the Tribunal by the Director-General. The Director-General must refer any complaint which may warrant the suspension or cancellation of the accreditation of an accredited nurse to the Tribunal, but may also refer complaints involving the physical or mental health of nurses to the Board.

Clause 47 requires the Board to refer certain complaints to the Director-General for investigation and the Director-General to investigate those complaints as well as any complaints referred by the Director-General to the Board, a committee or the Tribunal.

Clause 48 empowers the Board to suspend (for a period not exceeding 30 days), or impose conditions on, an accredited nurse if it is satisfied that such action is necessary for the purpose of protecting the life, or the physical or mental health, of any person. If the Board takes such action, the matter must be referred to the Tribunal or in cases

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involving the health of a nurse it may be referred to a Committee. A period of suspension may be extended for periods of up to 30 days, but only with the written approval of the Chairperson or a Deputy chairperson of the Tribunal.

Clause 49 gives a person affected by a suspension or conditions imposed under clause 48 a right to appeal to the Tribunal.

Division 2—Hearing of complaints by Professional Standards Committees

Clauses 50 and **51** provide for Professional Standards Committees. For the purposes of hearing a complaint, a Committee will consist of 2 accredited nurses appointed by the Board and a lay person nominated by the Minister, and those persons may or may not be members of the Board. More than one Committee may be constituted at one time so as to enable more than one matter to be heard at one time.

Clause 52 provides that proceedings before a Committee are to be held in the absence of the public, unless the Committee otherwise directs, and that the Committee may conduct the proceedings as it thinks fit.

Clause 53 enables a complainant or an accredited nurse about whom a complaint is made to be accompanied, but not represented, by a barrister or solicitor or another adviser in an inquiry before a Committee.

Clause 54 requires a Committee to terminate an inquiry and refer a complaint to the Tribunal if at any time the Committee forms the opinion that a complaint may provide grounds for the suspension or cancellation of accreditation of an accredited nurse or becomes aware that the complaint or another complaint about the same person has been referred to the Tribunal.

Clause 55 sets out the powers of a Committee if it finds the subject-matter of a complaint to have been proved.

Clause 56 provides for the making of decisions by a Committee and requires it to make its reasons for its decisions available to the complainant, the nurse concerned and such other persons as it thinks fit.

Clause 57 gives a complainant or a nurse a right of appeal to the Tribunal against a finding of or the exercise of a power by a Committee. Appeals will be dealt with by way of a new hearing.

Clause 58 provides for appeals with respect to a point of law, whether or not an inquiry has concluded.

Division 3—Hearing of matters by the Nurses Tribunal

Clause 59 constitutes the Nurses Tribunal. For the purposes of conducting an inquiry or hearing an appeal, the Tribunal will consist of the Chairperson or a Deputy Chairperson, 2 accredited nurses appointed by the Board and a lay person nominated by the Minister, and those persons may or may not be members of the Board. More than one group of persons constituting the Tribunal may sit at one time so as to enable more than one matter to be heard at one time.

Clause 60 provides for District Court judges and experienced legal practitioners to be appointed as the Chairperson and Deputy Chairpersons of the Tribunal.

Clause 61 provides that proceedings before the Tribunal are to be held in public, unless the Tribunal otherwise directs, and that the Tribunal may conduct the proceedings as it thinks fit.

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Clause 62 enables a complainant or an accredited nurse about whom a complaint is made to be represented by a barrister or solicitor or another adviser in proceedings before the Tribunal.

Clause 63 prohibits the Chairperson or a Deputy Chairperson who has decided a question in a matter from sitting on an inquiry or appeal concerning the matter on which the decision was made.

Clause 64 sets out the powers of the Tribunal if it finds the subject-matter of a complaint to have been proved.

Clause 65 makes provision in relation to accredited nurses who are suspended from practice.

Clause 66 provides for the making of decisions by the Tribunal and requires it to make its reasons for its decisions available to the complainant, the nurse concerned and such other persons as it thinks fit.

Clause 67 gives to a complainant or a nurse a right to appeal to the Supreme Court from a decision of the Tribunal with respect to a point of law or against the exercise of a power by the Tribunal. Appeals with respect to a point of law may be made whether or not an inquiry has concluded.

Clause 68 gives the Tribunal power, on application by a person who has been suspended from practising or whose accreditation has been cancelled, to end the suspension or to register or enrol the person as a nurse.

Clause 69 removes any doubt as to whether an inquiry may be conducted into a complaint about a nurse before any relevant criminal or civil proceedings are completed.

Clause 70 authorises the Board to inform other Australian bodies involved in the accreditation of nurses of determinations of the Tribunal

PART 6—MISCELLANEOUS

Clause 71 requires the Board, the President or an authorised member of the Board to provide a written statement of the reasons for certain decisions.

Clause 72 enables the Board to direct that a notice required to be given under the proposed Part may be given by an alternative means in certain circumstances.

Clause 73 provides for certain documents signed by the Registrar and entries in the Register or the Roll to be evidence in proceedings.

Clause 74 provides for the taking of summary proceedings for offences under the proposed Act and the regulations.

Clauses 75 and 76 provide for fees collected under the proposed Act to be paid to the Health Administration Corporation or the Nurses Registration Board Education and Research Account (established for education and research in nursing).

Clause 77 provides that certain persons given functions under the proposed Act do not incur personal liability for things done in good faith in carrying out those functions.

Clause 78 provides for the making of regulations under the proposed Act.

Clause 79 repeals the Nurses Registration Act 1953.

Clause 80 repeals certain regulations made under the Nurses Registration Act 1953 and the Nurses Registration (Amendment) Act 1985.

Clause 81 is a formal provision which gives effect to Schedule 3.

**SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS AND
PROCEDURE OF THE BOARD**

Schedule 1 contains provisions relating to the members and procedure of the Board.

**SCHEDULE 2—PROCEEDINGS BEFORE A COMMITTEE
AND THE TRIBUNAL**

Schedule 2 contains the following provisions relating to proceedings before a Committee or the Tribunal:

Clause 1 (Proceedings generally) states that a Committee and the Tribunal are not bound to observe the rules of law governing the admission of evidence.

Clause 2 (Power to summon witnesses and take evidence) sets out the powers of a Committee and the Tribunal in relation to compelling the attendance of witnesses and the giving of evidence at an inquiry or appeal.

Clause 3 (Power to obtain documents) sets out the powers of a Committee and the Tribunal to require documents to be produced.

Clause 4 (Evidence of other proceedings) allows a Committee and the Tribunal to admit as evidence the result of or evidence given in the course of proceedings in other courts or tribunals (whether or not in New South Wales).

Clause 5 (Additional complaints) provides for inquiries to be conducted by a Committee or the Tribunal into more than one complaint and for a Committee or the Tribunal to deal with additional matters arising during proceedings as if a complaint had been made in respect of them.

Clause 6 (Release of information) empowers a Committee and the Tribunal to direct that the name or address of a complainant, a nurse or a witness in proceedings, that evidence given in proceedings or that the subject-matter of a complaint not be published, except in a professional publication. It will be an offence with a maximum fine of 20 penalty units (\$2,000) to contravene such a direction.

Clause 7 (Authentication of documents by a Committee or the Tribunal) sets out the manner in which documents of a Committee or the Tribunal may be authenticated.

Clause 8 (Nominal complainant) provides for the Director-General or a person appointed by the Director-General to act as nominal complainant in proceedings before a Committee or the Tribunal.

Clause 9 (intervention by Director-General) empowers the Director-General to intervene in proceedings before a Committee or the Tribunal.

Clause 10 (Expedition of inquiries and appeals) imposes a duty on a Committee and the Tribunal to hold and determine inquiries and appeals as soon as practicable after a complaint or matter is referred to the Committee or the Tribunal, or an appeal or application is made to the Tribunal, as the case may be.

Clause 11 (certain complaints may not be heard) enables a Committee and the Tribunal to decide not to commence or to terminate certain proceedings.

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS

Schedule 3 contains savings and transitional provisions consequent on the enactment of the proposed Act.
