

LEGISLATIVE COUNCIL

Read 1^o 16 October 1985

(Brought in by the Honourable D. R. White)

A BILL

to amend the *Nurses Act* 1958 and for other purposes.

Nurses (Amendment) Act 1985

The Parliament of Victoria enacts as follows:

Purposes.

1. The purposes of this Act are as follows:

- 5 (a) To revise the disciplinary provisions of the Principal Act;
- (b) To enable the Council to impose conditions, limitations or restrictions on the practice of the holder of, or the applicant for, a practising certificate;
- 10 (c) To enable remuneration, travelling and other allowances to be paid to members of the Council, the Executive Committee, and advisory committees;
- (d) To make other amendments which are desirable to improve the operation of the Principal Act.

Commencement.

2. This Act comes into operation on a day or days to be proclaimed.

15 **Principal Act.**

3. In this Act the *Nurses Act* 1958 is called the Principal Act.

No. 6328.
Reprinted to
No. 9784.

Definition of registered person.

4. In section 3 of the Principal Act after the interpretation of “Registered mothercraft nurse” there is inserted the following interpretation:

“Registered person” means a person registered under section 18.’. 5

Remuneration and allowances.

5. (1) In section 5 of the Principal Act after sub-section (1) there are inserted the following sub-sections:

“(1A) A member of the Council is in respect of that member’s position on the Council entitled to be paid the remuneration (if any) and the travelling and other allowances (if any) determined from time to time by the Governor in Council. 10

(1B) A person holding any full-time office in the service of the State of Victoria who is appointed as a member of the Council is not entitled to receive any remuneration in respect of that person’s position as a member of the Council.”. 15

(2) In section 10 of the Principal Act after sub-section (1) there are inserted the following sub-sections:

“(1A) A member of the Executive Committee is in respect of that member’s position on the Executive Committee entitled to be paid the remuneration (if any) and the travelling and other allowances (if any) determined from time to time by the Governor in Council. 20

(1B) A person holding any full-time office in the service of the State of Victoria who is appointed as a member of the Executive Committee is not entitled to receive any remuneration in respect of that person’s position as a member of the Executive Committee.”. 25

(3) In section 13 of the Principal Act—

(a) in sub-section (3) the words “and such co-opted persons shall be paid such fees and expenses as are prescribed” are repealed; and 30

(b) after sub-section (3) there are inserted the following sub-sections:

“(4) A member of any advisory committee is in respect of that member’s position on an advisory committee, and any person co-opted to sit with an advisory committee is, in respect of that person’s position in sitting with the advisory committee, entitled to be paid the remuneration (if any) and the travelling and other allowances (if any) determined from time to time by the Governor in Council. 35 40

(5) A person holding any full-time office in the service of the State of Victoria who is appointed as a member of an advisory committee or who is co-opted to sit with an

advisory committee is not entitled to receive any remuneration in respect of that person's position as a member of that advisory committee or as a person co-opted to sit with that committee."

5 Repeal of age limit.

6. In section 19 (1) (a) of the Principal Act the words "and attained the prescribed age for registration in such branch" are repealed.

Disciplinary and ill health procedures.

10 7. (1) In section 11 (3) (e) of the Principal Act after the word "certificate" there are inserted the words "or the imposition of a condition, limitation or restriction on the practice of a nurse".

(2) For section 23 of the Principal Act there are substituted the following sections:

Imposition of conditions, limitations and restrictions on practice.

15 "23. (1) Where—

(a) a person who has applied for a practising certificate under section 28 has a physical or mental impairment which may interfere with that person's ability to practise nursing; or

20 (b) that a person who currently holds a practising certificate has a physical or mental impairment which may interfere with that person's ability to practise nursing—

the Council may issue a practising certificate or refrain from suspending a practising certificate and place conditions, limitations or restrictions on the practice of the applicant for or holder of the practising certificate.

25 (2) The Council may place conditions, limitations or restrictions on the practice of a person if it is satisfied that the physical or mental impairment of the person is not so serious as to warrant refusal to issue a practising certificate or suspension of a practising certificate.

(3) Before acting under sub-section (1) the Council must—

30 (a) give notice of the proposed placing of the condition, limitation or restriction; and

(b) hold an inquiry into the matter.

35 (4) A notice of the proposed placing of a condition, limitation or restriction must be in writing sent by registered post to the person at the address of the applicant or the address appearing on the register (as the case requires) and must state the ground on which it is proposed to place the condition, limitation or restriction and the time of holding the inquiry.

40 (5) The person to whom an inquiry under sub-section (3) relates is entitled to be present at the inquiry and to have legal representation

but if the person does not appear at the notified time the Council may proceed with the inquiry in the person's absence.

(6) The Council may require the person upon the practice of whom it is proposed to place a condition, limitation or restriction to be medically examined by a legally qualified medical practitioner or practitioners acceptable to that person and the Council, or, if they cannot agree, nominated by the Chief General Manager of the Department of Health.

(7) The Council must bear the cost (if any) of a medical examination held under sub-section (6).

(8) A medical practitioner conducting an examination under sub-section (6) must report to the Council upon the condition of the person examined within seven days after the examination."

Immediate suspension of practising certificate.

"23A. (1) If the Council is satisfied that the ability of a registered person to continue practising nursing is seriously impaired, whether because of a physical or mental impairment or because that person has acted in such a manner as to come within any one or more of the grounds specified in paragraphs (d) to (h) of section 23C (1), the Council may immediately suspend that person's practising certificate.

(2) A suspension of a practising certificate under this section takes effect from the date on which the Council gives notice in writing of the suspension.

(3) Notice of suspension of a person's practising certificate must be in writing sent by registered post to the person at the address appearing on the register and must state the reason for which the person's practising certificate is suspended.

(4) A person whose practising certificate is suspended under this section may—

(a) in the case of a suspension because of a physical or mental impairment, request that an inquiry be held in accordance with section 23B; or

(b) in the case of a suspension because the person has acted in such a manner as to come within any one or more of the grounds specified in paragraphs (d) to (h) of section 23C (1), request that an inquiry be held in accordance with section 23C.

(5) Upon receiving a request under sub-section (4) the Council must immediately act to give effect to the request.

(6) Where no request has been received under sub-section (4) a suspension under this section operates for three months or until the day on which the practising certificate would have expired (whichever is the earlier)."

Suspension of practising certificate on grounds of ill health.

5 “23B. (1) If the Council is satisfied that the holder of a practising certificate has a physical or mental impairment which is such that it will seriously interfere with that person’s ability to practise nursing the Council may suspend that person’s practising certificate.

(2) Before suspending a person’s practising certificate under this section the Council must—

(a) give notice that it intends to suspend that person’s practising certificate; and

10 (b) hold an inquiry into the matter.

(3) Notice of intention to suspend a person’s practising certificate must be in writing sent by registered post to the person at the address appearing on the register and must state the reason for which it is proposed to suspend the person’s practising certificate and the time of holding the inquiry.

15 (4) The person about whom the inquiry is being held is entitled to be present at the inquiry and to have legal representation but if the person does not appear at the notified time the Council may proceed with the inquiry in the person’s absence.

20 (5) Where the Council intends to suspend a person’s practising certificate under this section it may require that person to be medically examined by a legally qualified medical practitioner or practitioners agreed upon between the person and the Council and, if no agreement can be reached, nominated by the Chief General Manager of the Department of Health.

25 (6) The Council must bear the cost (if any) of a medical examination under sub-section (5).

30 (7) Where a person is medically examined under sub-section (5), a medical practitioner conducting the examination must report to the Council upon the physical and mental condition of the person examined within seven days after the examination.

35 (8) If a person who is required to be medically examined refuses to do so or obstructs the examination, the Council may suspend that person’s practising certificate for the period it thinks fit and may at any time revoke the suspension.

(9) A suspension of a practising certificate under this section takes effect on and from the date specified by the Council after conducting the inquiry required by this section.

40 (10) A suspension of a practising certificate under this section operates until—

(a) the day on which the practising certificate would have expired; or

- (b) the day (if any) on which the Council specifies that the suspension should expire; or
 (c) the day on which the suspension is removed—
 (whichever is the earliest).”

Cancellation of registration.

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“23C. (1) The Council may by order cancel the registration in any one or more parts of the register of any registered person—

- (a) whose registration has been obtained by fraud or misrepresentation; or
 (b) whose qualification for registration, if obtained wholly or in part elsewhere than in Victoria, has been (otherwise than for non-payment of a fee) in whole or in part withdrawn or cancelled by the public authority through which it was acquired or by which it was awarded; or
 (c) who, after registration, has been convicted of an indictable offence or of any offence which if committed in Victoria would be an indictable offence; or
 (d) who has been convicted of an offence against this Act or the regulations; or
 (e) who is unfit to practise nursing—
 (i) whether because of that person’s habitual intoxication or habitual taking dependence upon or addiction to a drug of dependence within the meaning of section 4 of the *Drugs Poisons and Controlled Substances Act 1981*; or
 (ii) because that person has been convicted of an offence against that Act; or
 (f) who has acted improperly and in such a way as to seriously interfere with that person’s ability to practise nursing; or
 (g) who has been guilty of professional misconduct; or
 (h) who has become incompetent to practise in the branch of nursing for which that person is registered.

(2) A nurse is not guilty of professional misconduct only on the ground of action taken by that nurse pursuant to an industrial dispute.

(3) Upon the making of the order of cancellation the person whose registration has been cancelled ceases to be registered and is disqualified from registration on any part of the register specified by the Council in the order.

(4) Before cancelling the registration of any person for any one or more of the grounds specified in paragraphs (a) to (h) of sub-section (1) the Council must—

- (a) give notice that it intends to cancel that person’s registration; and

(b) hold an inquiry into the matter.

5 (5) A notice of intention to cancel registration for any one or more of the grounds specified in paragraphs (a) to (h) of sub-section (1) must be in writing sent by registered post to the person at the address appearing on the register and must state the ground on which it is proposed to cancel registration and the time of the holding of the inquiry.

10 (6) A cancellation of registration as the result of an inquiry under sub-section (4) takes effect on and from the time specified by the Council after conducting the inquiry.

(7) The person to whom an inquiry under sub-section (4) relates is entitled to be present at the inquiry and to have legal representation but if the person does not appear at the notified time the Council may proceed with the inquiry in the person's absence.

15 (8) Before cancelling the registration of a registered person for any one or more of the grounds specified in paragraphs (a) to (c) of sub-section (1) the Council must give notice that it intends to cancel that person's registration.

20 (9) A notice of intention to cancel registration for any one or more of the grounds specified in paragraphs (a) to (c) of sub-section (1) must be in writing sent by registered post to the person at the address appearing on the register and must state the day on which cancellation is to take effect from."

Restoration of cancelled registration.

25 "23D. (1) A person whose registration has been cancelled may apply to the Council for restoration of that registration.

(2) The Council may restore the registration of a person if the Council is satisfied the person will be able to carry out the duties and functions required of the person.

30 (3) Where the Council restores a registration under this section that registration is of full force and effect and the Council must cause the necessary alterations to be made to the register."

Removal of suspension of practising certificate.

35 "23E. (1) A person whose practising certificate has been suspended under section 23B may apply to the Council for removal of that suspension.

(2) The Council may remove the suspension of a practising certificate if the Council is satisfied the person will be able to carry out the duties and functions required of the person.

40 (3) Where the Council removes a suspension under this section, that person's practising certificate is of full force and effect and the

Council must cause the necessary alterations to be made to the relevant roll.”

Removal of a condition, limitation or restriction on practice.

“23F. (1) Where the Council has placed a condition, limitation or restriction on the practice of a person that person may apply for removal of that condition, limitation or restriction. 5

(2) The Council may remove a condition, limitation or restriction if the Council is satisfied the person will be able to carry out the duties and functions required of that person.

(3) Where the Council removes a condition, limitation or restriction under this section that person’s practising certificate is of full force and effect and the Council must cause the necessary alterations to be made to that person’s practising certificate.”. 10

(3) In the second proviso to section 28 (3) of the Principal Act for the words “is of sound health” there are substituted the words “has no physical or mental impairment which may interfere with that person’s ability to practise nursing”. 15

Appeals.

8. (1) In section 24 (2) of the Principal Act after the words “of such person” there are inserted the words “or the placing of any condition, limitation or restriction on the practice of the person”. 20

(2) In section 24 (3) of the Principal Act the words “and his decision shall be final and without appeal” are repealed.

Fees to be charged in relation to nurses rolls.

9. In section 30 of the Principal Act for sub-section (9) there are substituted the following sub-sections: 25

“(9) A copy of any roll must at all times at which the office of the Council is open for business be open for inspection by any person.

(10) The Council may charge the fee (if any) prescribed by the Governor in Council for— 30

(a) the provision of a copy of any roll for inspection; or

(b) the provision of a copy of any roll or a part of a copy of any roll to a person for their own use.”.

Increased fees for registration of nurses agents.

10. In section 38A (7) (b) of the Principal Act— 35

(a) for the expression “\$20” there is substituted the expression “\$200”; and

(b) for the expression “\$5” there is substituted the expression “\$200”.

Audit.

11. For section 40 of the Principal Act there is substituted the following section:

Accounts and annual report of the Council.

- 5 “40. (1) The Council must ensure that there are kept proper accounts and records of the transactions and affairs of the Council and any other records which will sufficiently explain the financial operations and financial position of the Council.
- 10 (2) The Council must do all things necessary to—
- (a) ensure that all money payable to the Council is properly collected; and
- (b) ensure that all money expended by the Council is correctly expended and properly authorized; and
- 15 (c) ensure that adequate control is maintained over assets owned by or in the custody of the Council; and
- (d) ensure that all liabilities incurred by the Council are properly authorized; and
- (e) ensure efficiency and economy of operations and the avoidance of waste and extravagance; and
- 20 (f) develop and maintain an adequate budgeting and accounting system; and
- (g) develop and maintain an adequate internal audit system.
- (3) The Council must at the end of each financial year prepare financial statements which must—
- 25 (a) contain the information determined by the Treasurer; and
- (b) be prepared in the manner and form approved by the Treasurer; and
- (c) present fairly the results of the financial transactions of the Council during the financial year to which they relate and the financial position of the Council at the end of that year; and
- 30 (d) be signed by the principal accounting officer (by whatever name called) of the Council and by the Chairperson and another member of the Council who must—
- 35 (i) certify that in their opinion the financial statements present fairly the results of the financial transactions of the Council during the financial year to which they relate and that they sufficiently explain the financial position of the Council at the end of that year; and
- 40 (ii) state whether at the date of signing the financial statements they were aware of any circumstances that would render any particulars included in the statements

misleading or inaccurate and if so particulars of the circumstances.

(4) The financial statements must be audited by the Auditor-General who has in respect of the accounts and records of the Council all the powers conferred on the Auditor-General by any law from time to time in force relating to the audit of the public accounts. 5

(5) The Council must as soon as practicable after the end of each financial year and not later than the following 31 October submit to the Minister a report of its operations during the financial year together with the audited financial statements. 10

(6) The Minister must cause the report and the audited financial statements submitted to the Minister under this section to be laid before each House of Parliament before the end of the fourteenth sitting day of that House after their receipt by the Minister.

(7) The Council must pay each year to the Consolidated Fund an amount to be determined by the Auditor-General to defray the costs and expenses of the audit under sub-section (4). 15

(8) The Council may engage a registered company auditor to carry out an intermediate inspection and audit if the Council considers it necessary. 20

(9) The financial year of the Council is the year ending on 30 June.”

Change from monetary penalties to penalty units.

12. (1) In section 31 (1) of the Principal Act for the expression “\$40” there is substituted the expression “10 penalty units”. 25

(2) In section 42 (2) of the Principal Act for the expression “\$100” there is substituted the expression “20 penalty units”.

(3) In section 45 (p) of the Principal Act for the expression “\$100” there is substituted the expression “20 penalty units”.

Amendment of regulation making powers. 30

13. In section 45 of the Principal Act—

(a) in paragraph (ja) after the words “nurses’ agents” there are inserted the words “and inspection of the mode of business of nurses’ agents, in particular the books and records of the business of any nurses’ agent and the premises at which business is carried on”; and 35

(b) in paragraph (jc) for the word “removal” there is substituted the word “refusal”.

Change to non-specific language.**14. The Principal Act is amended as follows:**

- 5 (a) In section 4 (3) for the words “her deputy” there are substituted the words “the deputy of the Chief Nursing Officer”;
- (b) In section 5—
- 10 (i) in sub-section (2) for the word “his” (where twice appearing) there are substituted the words “that member’s”; and
- (ii) in sub-section (3) for the word “his” there are substituted the words “that person’s”;
- (c) In section 7—
- 15 (i) in sub-section (1) for the word “chairman” (wherever appearing) there is substituted the word “chairperson”; and
- (ii) in sub-section (2) for the word “chairman” (wherever appearing) there is substituted the word “chairperson” and for the word “his” there are substituted the words “the chairperson’s”; and
- 20 (iii) in sub-section (3) for the word “chairman” there is substituted the word “chairperson”;
- (d) In section 10—
- 25 (i) in sub-section (1) for the word “Chairman” there is substituted the word “chairperson”; and
- (ii) in sub-section (2) for the word “he” there are substituted the words “the member” and for the word “his” there are substituted the words “that member’s”; and
- 30 (iii) in sub-section (4) for the words “as Chairman” there are substituted the words “as chairperson” and for the words “Deputy Chairman” there are substituted the words “deputy chairperson”;
- (e) In section 12 (1) for the word “chairman” (where first occurring) there is substituted the word “chairperson”;
- 35 (f) In section 13 (1) for the word “chairman” there is substituted the word “chairperson”;
- (g) In section 14—
- 40 (i) in sub-section (3) for the word “he” (wherever appearing) there are substituted the words “that person” and for the word “his” (where twice appearing) there are substituted the words “that person’s”; and
- (ii) in sub-section (4) for the word “he” there are substituted the words “that person” and for the word “his” there are substituted the words “that person’s”;

- (h) In section 15—
- (i) in sub-section (1) for the word “his” there are substituted the words “the Minister’s”; and
 - (ii) in sub-section (2) for the word “he” there are substituted the words “the Minister”; 5
- (i) In section 24 (3) for the word “he” there are substituted the words “the Magistrate” and for the word “his” (wherever appearing) there are substituted the words “the Magistrate’s”;
- (j) In section 26 for the word “him” there are substituted the words “that registrar”; 10
- (k) In section 30 (8) for the word “Chairman” there is substituted the word “chairperson”;
- (l) In section 31 (1) for the word “she” there are substituted the words “that person”; 15
- (m) In section 33 (2) for the word “her” there are substituted the words “that midwife’s”;
- (n) In section 38A—
- (i) in sub-section (4) for the word “his” there are substituted the words “that person’s”; and
 - (ii) in sub-section (5) for the word “him” there are substituted the words “that nurses’ agent”; 20
- (o) In section 40 (3) for the word “him” (wherever appearing) there are substituted the words “the Minister”.