

Nurses (Amendment) Bill

EXPLANATORY MEMORANDUM

The aim of this Bill is to make a number of unrelated amendments to improve the operation of the *Nurses Act 1958*.

Clause Notes

Clause 1 sets out the purposes of the Bill.

Clause 2 enables the provisions of the Act to be brought into operation on a day, or days, to be proclaimed.

Clause 3 identifies the *Nurses Act 1958* as being the Principal Act.

Clause 4 defines "registered person" as a person registered under section 18. This expression is used in several of the new provisions to be inserted into the Principal Act by clause 7.

Clause 5 amends the relevant sections of the Principal Act to enable members of the Victorian Nursing Council, its Executive Committee, members of an advisory committee and persons co-opted to an advisory committee, other than Government employees, to be paid such remuneration and allowances as are fixed from time to time by the Governor in Council.

Clause 6 repeals the requirement in section 19 (1) (a) of the Principal Act that, in order to be qualified to be registered in a branch of nursing, a person must have attained the prescribed age for registration in such branch. The remaining requirements will be that the person has completed the prescribed course of training, passed the prescribed examinations, paid the prescribed fees, and satisfied the Council that the person is of good character.

Clause 7 (1) makes an amendment to section 11 (3) (e) of the Principal Act to permit the Council to delegate to the Executive Committee the power to impose conditions, limitations or restrictions on the practice of a nurse. This power will be vested in the Council by proposed new section 23. The capacity to delegate such power will be consistent with the other matters which may be delegated to the Executive Committee under section 11 of the Principal Act.

Clause 7 (2) substitutes a number of new sections for section 23 of the Principal Act.

Proposed section 23 will enable the Council to—

- (a) issue a practising certificate to a person subject to conditions, limitations or restrictions; or
- (b) place conditions, limitations or restrictions on a person who already holds a current practising certificate—
where the applicant for, or the holder of, the practising certificate—
- (c) has a physical or mental impairment which may interfere with the person's ability to practise nursing; and
- (d) the Council is satisfied that the impairment is not so serious as to warrant refusing the application or suspending the certificate.

Conditions, restrictions or limitations may only be imposed after an inquiry (at which the person to whom the inquiry relates is entitled to be present and be legally represented) has been conducted by the Council.

The Council may require the person concerned to undergo a medical examination before any condition, restriction or limitation is imposed. Such examination will be at the expense of the Council.

Proposed section 23A will empower the Council to immediately suspend a practising certificate if the Council is satisfied that the ability of a registered person is seriously impaired whether because of a physical or mental impairment, or because the person has acted in such a manner as to come within any one or more of the grounds specified in proposed section 23C (1) (d) to (h).

Any person whose certificate is suspended under the section may request that an inquiry be held by the Council, and the Council is obliged to act immediately to give effect to the request.

Unless such a request has been received, a suspension continues in operation for three months, or until the practising certificate would have expired.

Proposed section 23B gives the Council the capacity to suspend a person's practising certificate where the Council is satisfied that the person has a physical or mental impairment which will seriously interfere with that person's ability to practise nursing.

The Council is required to hold an inquiry before suspending a practising certificate and the person to whom the inquiry relates is entitled to be present and legally represented. Where the Council intends to suspend a practising certificate it may require the person concerned to undergo a medical examination at the cost of the Council. A suspension under the section lasts until the day the certificate would have expired, the day the Council specifies it should expire, or the day the suspension is removed, whichever occurs first.

Proposed section 23C largely re-enacts existing section 23 of the Principal Act with amendments.

The new section will permit the Council to cancel the registration of a nurse on a number of grounds.

Where registration has been obtained by fraud or misrepresentation, a qualification has been withdrawn, or the registered person has been convicted of an indictable offence, registration may be cancelled by giving notice to the person concerned.

Where the Council proposes to cancel the registration of a person because that person has been convicted of an offence against the Act or the regulations, is unfit to practice nursing, has acted improperly, has been guilty of professional misconduct, or has become incompetent to practise, the Council must first hold an inquiry into the matter. The person, to whom the inquiry relates is entitled both to be present, and to legal representation, at such inquiry.

Proposed section 23D provides for applications to the Council for restoration of a person's registration where that person's registration has been cancelled by the Council.

Proposed section 23E makes provision for application for removal of the suspension where a practising certificate has been suspended under proposed section 23B.

Proposed section 23F provides for applications for the removal of the condition, limitation or restriction where the Council has placed a condition, limitation or restriction on the practice of a person.

Clause 7 (3) makes a consequential amendment to section 28 (3) of the Principal Act. In part, this sub-section provides that before issuing an annual practising certificate or renewal thereof, the Council may satisfy itself that the person concerned is of sound health. The amendment will substitute for "of sound health" the words "has no physical or mental impairment which may interfere with that person's ability to practise nursing."

Clause 8 makes two amendments to section 24 of the Principal Act which, inter alia, provides for appeals against decisions of the Victorian Nursing Council.

The present section 24 (2) enables appeals to be addressed to a magistrates court by any person aggrieved by any order of the Council cancelling or suspending that person's registration, or refusing to register such person.

The amendment proposed in clause 8 (1) will insert an additional right of appeal against any condition, limitation or restriction placed on the practice of the person by the Council.

Section 24 (3) sets out the powers of the stipendiary magistrate in determining an appeal and provides that the decision of the magistrate "shall be final and without appeal". Clause 8 (2) will repeal these words so that appeals, particularly in relation to matters of law, can be referred to a higher court.

Clause 9 amends section 30 of the Principal Act which, among other things, requires the Council to keep rolls in respect of persons who are registered, and who are in possession of an annual practising certificate. Section 30 (9) empowers the Council to charge the prescribed fee for an inspection of the roll, but it does not enable the Council to make a charge for copies of the roll. The rolls are computerized and the cost of providing copies can be significant, particularly if a special programme needs to be prepared to meet an individual requirement. The amendment to the section is designed to permit the Council to recover the cost of the providing copies of the roll, or parts thereof.

Clause 10 adjusts the maximum fees may be prescribed under section 38A of the Principal Act for the registration, and renewal of registration, of nurses agents. The proposed maximum levels are more commensurate with the costs incurred by the Council in providing this service than those provided for at the present time.

Clause 11 substitutes a modern auditing and reporting provision for section 40 of the Principal Act which deals with the auditing of the annual accounts of the Council and requires the tabling in the Parliament of the Council's annual report and audited financial statement.

Clause 12 revises the monetary penalties in the Principal Act, and expresses such penalties as penalty units.

Clause 13 makes several amendments to the power to make regulations under the Principal Act. Paragraph (a) amends section 45 (ja) and, in particular, takes up the suggestion of the Legal and Constitutional Committee that the Council's powers of entry and inspection in the Nurses' Agents Regulations 1984 should be supported by more specific powers than those currently available in section 45 (ja).

Paragraph (b) corrects an obvious error in section 45 (jc) by amending the word "removal" to read "refusal".

Clause 14 substitutes non sexist language for masculine and feminine terms used in the Principal Act.

